



**Windstream's Response**

**For**



**Request for Proposal**

**High Speed Transport Services for participants of  
Network Nebraska**

**Solicitation No: 5761 Z1**

**Original**

**February 15, 2018, 2:00PM CST**



February 15, 2018

Thank you for allowing Windstream Services, LLC, on behalf of itself and its Affiliates authorized to provide services in the applicable jurisdiction for the particular service(s) ordered, the opportunity to answer State of Nebraska's request for Ethernet Connectivity (RFP 5761 Z1). As a nationwide, enterprise-focused communications and technology service provider with a commitment to be our customers' trusted advisor, we believe we are ideally suited to support the communications requirements of State of Nebraska.

As a registered vendor in the System for Award Management (SAM), and GSA contract holder, Windstream understands the unique challenges government entities face today. That is why we have developed innovative solutions to effectively manage and upgrade your organization's communications technology infrastructure. Windstream's distinctive ability to design and provide smart solutions enables thousands of government entities to reduce network expenses, leverage current technology and improve efficiency. At the same time, these solutions are designed to meet complex security, infrastructure and budgetary demands at the federal, state and local government levels.

We believe that technology should bring people together. "The Windstream Advantage" begins with great service and a local presence. Windstream empowers employees who have direct contact with our customers to act on behalf of the corporation in all matters of service and contract fulfillment. Our local, dedicated account teams have the unconditional support of executive management in ensuring that our customers receive prompt and effective servicing.

At Windstream, we focus on creating smart solutions that deliver proven, long-lasting value – collaborating with our customers and partners to develop custom solutions that best fit their needs. We are confident you will conclude that Windstream is best positioned to address the unique communications needs of State of Nebraska.

On behalf of the Windstream team, I thank you once again for this opportunity and look forward to fulfilling all RFP requirements as our next step.

Sincerely,

DocuSigned by:  
*Hollie Messinger*  
863A209D1A13412...

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# EXECUTIVE SUMMARY

## Key Facts

- 147,000 fiber route miles
- Three 24x7 Enterprise Repair Centers (ERCs)
- Alliances with industry-leading vendors such as Mitel, Cisco, Avaya, Allworx, Fortinet and more
- Secure colocation featuring SSAE-16 SOC1 Type II standard compliance
- Diverse network access with fiber optic and fixed wireless options
- A highly available and scalable network that provides capacity to deploy the latest technology applications
- MPLS networking solutions, including VPN and VLAN services
- Managed Network Security solutions, including Managed Firewall
- Advanced managed services, including Managed LAN/WAN, Managed Router and Managed WiFi
- UC and collaboration solutions such as Unified Communications as a Service (UCaaS) and Contact Center as a Service (CCaaS)
- A full line of voice solutions including SIP, private VoIP, and more
- Fortune 500 company with \$6 billion in annual revenue
- TMC's 2015 UC Product of the Year
- 2015 and 2016 U.S. Carrier Ethernet Services Vertical Systems Group LEADERBOARD rankings
- Frost & Sullivan 2014 VoIP Access and SIP Trunking Services Growth Excellence Leadership Award
- GSA Contract Holder, available to federal, state and local agencies
- Registered vendor in the System for Award Management (SAM)
- Experienced in E-Rate and RHC programs

## Company Overview

Windstream is a FORTUNE 500 company that provides enterprise communications solutions to businesses nationwide. Our customized networking solutions keep your enterprise connected and enable your team to focus on what really matters, quickly adapting to the ever-changing landscape of tomorrow.

The Windstream Advantage starts with great service and local presence. We specialize in providing our enterprise customers with a local team of experts that are committed to creating and scaling your network solutions with your business needs. Our network solutions specialists will support you from strategy to implementation and beyond, so you can focus on innovating and improving your business.

Windstream provides unmatched technical expertise and industry-leading advanced network communications. We focus on creating smart solutions that deliver proven, long-lasting value. We specialize in customizing solutions to help boost efficiency within the State of Nebraska, as well as maximize your business potential. Our nationwide footprint and scale, along with our business services focus, enhance our already robust product portfolio and allow us to better serve organizations of all sizes—from small, local government offices to complex national and federal networks.

Your local, dedicated account team is your partner in implementing a smarter communications strategy that helps turn your big ideas into reality. We also have teams of certified engineers available to perform 24 x 7 x 365 monitoring of your services through our state-of-the-art Network Operations Centers (NOCs).

As an extension to our account teams, Windstream Online ([windstreamonline.com](http://windstreamonline.com)), an enhanced Web-based interface, provides immediate, secure access to all of the account information and tools you need—anytime, anywhere. This online tool is free to every Windstream customer, and gives you instant access to critical account information, as well as greater control over your communications capabilities.

To learn more about the Windstream Advantage, visit [windstreambusiness.com](http://windstreambusiness.com).





**State of Nebraska State Purchasing Bureau  
REQUEST FOR PROPOSAL FOR CONTRACTUAL SERVICES**

**RETURN TO:**  
State Purchasing Bureau  
1526 K Street, Suite 130  
Lincoln, NE 68508  
Phone: (402) 471-6500

<b>SOLICITATION NUMBER</b>	<b>RELEASE DATE</b>
RFP 5761 Z1	January 17, 2018
<b>OPENING DATE AND TIME</b>	<b>PROCUREMENT CONTACT</b>
February 15, 2018 2:00 p.m. Central Time	Michelle Thompson/Dianna Gilliland

**PLEASE READ CAREFULLY!**

**SCOPE OF SERVICE**

The State of Nebraska (State), Department of Administrative Services (DAS), Materiel Division, State Purchasing Bureau (SPB), is issuing this Request for Proposal (RFP) Number 5761 Z1 for the purpose of selecting a qualified Bidder to provide Network Nebraska. A more detailed description can be found in Section V. The resulting contract may not be an exclusive contract as the State reserves the right to contract for the same or similar services from other sources now or in the future.

The term of the contract will be date of award through until June 30, 2022. The Contract includes the option to renew for four (4) additional one (1) year periods upon mutual agreement of the Parties. The State reserves the right to extend the period of this contract beyond the termination date when mutually agreeable to the Parties.

ALL INFORMATION PERTINENT TO THIS REQUEST FOR PROPOSAL CAN BE FOUND ON THE INTERNET AT:  
<http://das.nebraska.gov/materiel/purchasing.html>.

**IMPORTANT NOTICE:** Pursuant to Neb. Rev. Stat. § 84-602.04, State contracts in effect as of January 1, 2014, and contracts entered into thereafter, must be posted to a public website. The resulting contract, the RFP, and the successful bidder's proposal or response will be posted to a public website managed by DAS, which can be found at <http://statecontracts.nebraska.gov>.

In addition and in furtherance of the State's public records Statute (Neb. Rev. Stat. § 84-712 et seq.), all proposals or responses received regarding this RFP will be posted to the State Purchasing Bureau public website.

These postings will include the entire proposal or response. Bidders must request that proprietary information be excluded from the posting. The bidder must identify the proprietary information, mark the proprietary information according to state law, and submit the proprietary information in a separate container or envelope marked conspicuously in black ink with the words "PROPRIETARY INFORMATION". The bidder must submit a detailed written document showing that the release of the proprietary information would give a business advantage to named business competitor(s) and explain how the named business competitor(s) will gain an actual business advantage by disclosure of information. The mere assertion that information is proprietary or that a speculative business advantage might be gained is not sufficient. (See Attorney General Opinion No. 92068, April 27, 1992) THE BIDDER MAY NOT ASSERT THAT THE ENTIRE PROPOSAL IS PROPRIETARY. COST PROPOSALS WILL NOT BE CONSIDERED PROPRIETARY AND ARE A PUBLIC RECORD IN THE STATE OF NEBRASKA. The State will then determine, in its discretion, if the interests served by nondisclosure outweighs any public purpose served by disclosure. (See Neb. Rev. Stat. § 84-712.05(3)) The Bidder will be notified of the agency's decision. Absent a State determination that information is proprietary, the State will consider all information a public record subject to release regardless of any assertion that the information is proprietary.

If the agency determines it is required to release proprietary information, the bidder will be informed. It will be the bidder's responsibility to defend the bidder's asserted interest in non-disclosure.

To facilitate such public postings, with the exception of proprietary information, the State of Nebraska reserves a royalty-free, nonexclusive, and irrevocable right to copy, reproduce, publish, post to a website, or otherwise use any contract, proposal, or response to this RFP for any purpose, and to authorize others to use the documents. Any individual or entity awarded a contract, or who submits a proposal or response to this RFP, specifically waives any copyright or other protection the contract, proposal, or response to the RFP may have; and, acknowledges that they have the ability and authority to enter into such waiver. This reservation and waiver is a prerequisite for submitting a proposal or response to this RFP, and award of a contract. Failure to agree to the reservation and waiver will result in the proposal or response to the RFP being found non-responsive and rejected.

Any entity awarded a contract or submitting a proposal or response to the RFP agrees not to sue, file a claim, or make a demand of any kind, and will indemnify and hold harmless the State and its employees, volunteers, agents, and its elected and appointed officials from and against any and all claims, liens, demands, damages, liability, actions, causes of action, losses, judgments, costs, and expenses of every nature, including investigation costs and expenses, settlement costs, and attorney fees and expenses, sustained or asserted against the State, arising out of, resulting from, or attributable to the posting of the contract or the proposals and responses to the RFP, awards, and other documents.

*Windstream has read and understands.*

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## GLOSSARY OF TERMS

**802.1ad:** Is an Ethernet networking standard informally known as IEEE 802.1QinQ and is an amendment to IEEE standard IEEE 802.1Q-1998. The technique is also known as provider bridging, Stacked VLANs or simply QinQ or Q-in-Q. The original 802.1Q specification allows a single VLAN header to be inserted into an Ethernet frame. QinQ allows multiple VLAN headers to be inserted into a single frame, an essential capability for implementing Metro Ethernet network topologies. Just as QinQ extends 802.1Q, QinQ itself is extended by other Metro Ethernet protocols.

**802.1p:** IEEE P802.1p is the name of a task group active during 1995–98 responsible for adding traffic class expediting and dynamic multicast filtering to the IEEE 802.1D standard. The QoS technique developed by the working group, also known as class of service (CoS), is a 3-bit field called the Priority Code Point (PCP) within an Ethernet frame header when using VLAN tagged frames as defined by IEEE 802.1Q.

**802.1Q:** Is the networking standard that supports Virtual LANs (VLANs) on an Ethernet network. The standard defines a system of VLAN tagging for Ethernet frames and the accompanying procedures to be used by bridges and switches in handling such frames. The standard also contains provisions for the quality of service prioritization scheme commonly known as IEEE 802.1p.

**Acceptance:** Acceptance of circuit, system, or service, as solely tested and determined by the State of Nebraska and/or authorized agent of the State of Nebraska, is when the circuit, system, or service is free of defect and reliably transporting data at, or in excess of, the ordered bandwidth or speed capacity. (See Section III, KK. Inspection and Approval)

**Acceptance Test Procedure:** Benchmarks and other performance criteria, developed by the State of Nebraska or other sources of testing standards, for measuring the effectiveness of products or services and the means used for testing such performance.

**Addendum:** Something to be added or deleted to an existing document; a supplement.

**After Receipt of Order (ARO):** After Receipt of Order

**Agency:** Any state agency, board, or commission other than the University of Nebraska, the Nebraska State colleges, the courts, the Legislature, or any other office or agency established by the Constitution of Nebraska.

**Agent/Representative:** A person authorized to act on behalf of another.

**Amend:** To alter or change by adding, subtracting, or substituting.

**Amendment:** A written correction or alteration to a document.

**Appropriation:** Legislative authorization to expend public funds for a specific purpose. Money set apart for a specific use.

**Award:** All purchases, leases, or contracts which are based on competitive proposals will be awarded according to the provisions in the RFP. The State reserves the right to reject any or all proposals, wholly or in part, or to award to multiple bidders in whole or in part. The State reserves the right to waive any deviations or errors that are not material, do not invalidate the legitimacy of the proposal, and do not improve the bidder's competitive position. All awards will be made in a manner deemed in the best interest of the State.

**BEAR--Billed Entity Applicant Reimbursement FCC Form 472:** The form filed by the applicant and approved by the service provider after the telecommunications services have been paid in full.

**Best and Final Offer (BAFO):** In a competitive bid, the final offer submitted which contains the bidder's (vendor's) most favorable terms for price.

**Bid/Proposal:** The offer submitted by a vendor in a response to a written solicitation.

**Bid Bond:** An insurance agreement, accompanied by a monetary commitment, by which a third party (the surety) accepts liability and guarantees that the vendor will not withdraw the bid.

**Bidder:** A vendor who submits an offer bid in response to a written solicitation.

**Business:** Any corporation, partnership, individual, sole proprietorship, joint-stock company, joint venture, or any other private legal entity.



**Business Day:** Any weekday, except State-recognized holidays.

**Calendar Day:** Every day shown on the calendar including Saturdays, Sundays, and State/Federal holidays.

**Cancellation:** To call off or revoke a purchase order without expectation of conducting or performing it at a later time.

**Central Processing Unit (CPU):** Any computer or computer system that is used by the State to store, process, or retrieve data or perform other functions using Operating Systems and applications software.

**Change Order:** Document that provides amendments to an executed purchase order or contract.

**Collusion:** An agreement or cooperation between two or more persons or entities to accomplish a fraudulent, deceitful, or unlawful purpose.

**Commodities:** Any equipment, material, supply or goods; anything movable or tangible that is provided or sold.

**Commodities Description:** Detailed descriptions of the items to be purchased; may include information necessary to obtain the desired quality, type, color, size, shape, or special characteristics necessary to perform the work intended to produce the desired results.

**Competition:** The effort or action of two or more commercial interests to obtain the same business from third parties.

**Confidential Information:** Unless otherwise defined below, "Confidential Information" shall also mean proprietary trade secrets, academic and scientific research work which is in progress and unpublished, and other information which if released would give advantage to business competitors and serve no public purpose (see Neb. Rev. Stat. §84-712.05(3)). In accordance with Nebraska Attorney General Opinions 92068 and 97033, proof that information is proprietary requires identification of specific, named competitor(s) who would be advantaged by release of the information and the specific advantage the competitor(s) would receive.

**Contract:** An agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law; the writing that sets forth such an agreement.

**Contract Administration:** The management of the contract which includes and is not limited to; contract signing, contract amendments and any necessary legal actions.

**Contract Award:** Occurs upon execution of the State document titled "Service Contract Award" by the proper authority.

**Contract Management:** The management of day to day activities at the agency which includes and is not limited to ensuring deliverables are received, specifications are met, handling meetings and making payments to the Contractor.

**Contract Period:** The duration of the contract.

**Contractor:** Any individual or entity having a contract to furnish commodities or services.

**Cooperative Purchasing:** The combining of requirements of two or more political entities to obtain advantages of volume purchases, reduction in administrative expenses or other public benefits.

**Copyright:** A property right in an original work of authorship fixed in any tangible medium of expression, giving the holder the exclusive right to reproduce, adapt and distribute the work.

**CoS:** The QoS technique developed by the working group, also known as class of service (CoS), is a 3-bit field called the Priority Code Point (PCP) within an Ethernet frame header when using VLAN tagged frames as defined by IEEE 802.1Q.

**CPE:** Customer-premises equipment or customer-provided equipment (CPE) is any terminal and associated equipment located at a subscriber's premises and connected with a carrier's telecommunication channel(s) at the demarcation point ("demarc").

**Critical Program Error:** Any Program Error, whether or not known to the State, which prohibits or significantly impairs use of the Licensed Software as set forth in the documentation and intended in the contract.

**Customer Service:** The process of ensuring customer satisfaction by providing assistance and advice on those products or services provided by the Contractor.

**Default:** The omission or failure to perform a contractual duty.

**Deviation:** Any proposed change(s) or alteration(s) to either the terms and conditions or deliverables within the scope of the written solicitation or contract.

**Education Entity:** Education entity, for the purposes of this RFP, is defined by N.R.S. 79-1201.01 (3) as a school district, a private, denominational, or parochial school, an educational service unit, a community college, a state college, the University of Nebraska, or a nonprofit private postsecondary educational institution.

**E-rate:** The Schools and Libraries Program of the Universal Service Fund, commonly known as "E-Rate," is administered by the Universal Service Administrative Company (USAC) under the direction of the Federal Communications Commission (FCC), and provides discounts to assist most schools and libraries in the United States to obtain affordable telecommunications and Internet access.

**ESU:** Educational Service Unit, one of 17 intermediate service agencies in Nebraska, serving K-12 school districts.

**Ethernet Frame:** A data packet on an Ethernet link is called an Ethernet frame. See also [http://en.wikipedia.org/wiki/Ethernet\\_frame](http://en.wikipedia.org/wiki/Ethernet_frame).

**Ethernet Hand-off:** A standard Ethernet handoff to the facility means there is no need for CSU/DSU and protocol conversion equipment. The connection to the customer is a copper or fiber connection that connects directly to the customer's Ethernet based equipment and supports Ethernet Frame transmission between the provider and the customer.

**Evaluation:** The process of examining an offer after opening to determine the vendor's responsibility, responsiveness to requirements, and to ascertain other characteristics of the offer that relate to determination of the successful award.

**Evaluation Committee:** Committee(s) appointed by the requesting agency that advises and assists the procuring office in the evaluation of bids/proposals (offers made in response to written solicitations).

**Extension:** Continuance of a contract for a specified duration upon the agreement of the parties beyond the original Contract Period. Not to be confused with "Renewal Period".

**Free on Board (F.O.B.) Destination:** The delivery charges are included in the quoted price and prepaid by the vendor. Vendor is responsible for all claims associated with damages during delivery of product.

**Free on Board (F.O.B.) Point of Origin:** The delivery charges are not included in the quoted price and are the responsibility of the agency. Agency is responsible for all claims associated with damages during delivery of product.

**Foreign Corporation:** A foreign corporation that was organized and chartered under the laws of another state, government, or country.

**Installation Date:** The date when the procedures described in "Installation by Contractor", and "Installation by State", as found in the RFP, or contract, are completed.

**Interested Party:** A person, acting in their personal capacity, or an entity entering into a contract or other agreement creating a legal interest therein.

**ITU-T:** Telecommunication Standardization Sector of the International Telecommunications Union

**ITU-T Y.156sam:** Ethernet Service Activation Test Methodology, a draft recommendation under study by the ITU-T. A draft recommendation tailored more toward service activation than the RFC 2544 benchmark testing methodology.

**Last mile:** The common colloquialism referring to the provider that connects the portion of the telecommunications network that physically reaches the end-user's / customer's premises.

**Late Bid/Proposal:** An offer received after the Opening Date and Time.

**Layer 2:** In the seven-layer OSI model of computer networking, the data link layer is layer 2. The data link layer provides the functional and procedural means to transfer data.

**Licensed Software Documentation:** The user manuals and any other materials in any form or medium customarily provided by the Contractor to the users of the Licensed Software which will provide the State with sufficient information to operate, diagnose, and maintain the Licensed Software properly, safely, and efficiently.

**Link Aggregation Control Protocol (LACP):** The vendor-independent standard Link Aggregation Control Protocol (LACP) for Ethernet defined in IEEE 802.1AX and IEEE 802.1aq or the previous IEEE 802.3ad.

**Mandatory/Must:** Required, compulsory, or obligatory.

**May:** Discretionary, permitted; used to express possibility.

**Module (see System):** A collection of routines and data structures that perform a specific function of software.

**Multiprotocol Label Switching (MPLS):** A mechanism in high-performance telecommunications networks that directs data from one network node to the next based on short path labels rather than long network addresses, avoiding complex lookups in a routing table.

**Must:** See Mandatory/ Must and Shall/Will/Must.

**National Institute for Governmental Purchasing (NIGP):** National Institute of Governmental Purchasing – Source used for assignment of universal commodity codes to goods and services.

**Nebraska Universal Service Fund (NUSF):** A surcharge of approximately 6.95% levied against intrastate telecommunications services as authorized by Neb. Rev. Stat. 86-1401 to 86-1410.

**Network Nebraska—Education:** The Nebraska statewide telecommunications network comprised of over 290 educational entities from K-12 and higher education, public and private.

**Open Market Purchase:** Authorization may be given to an agency to purchase items above direct purchase authority due to the unique nature, price, quantity, location of the using agency, or time limitations by the AS Materiel Division, State Purchasing Bureau.

**Opening Date and Time:** Specified date and time for the public opening of received, labeled, and sealed formal proposals.

**Operating System:** The control program in a computer that provides the interface to the computer hardware and peripheral devices, and the usage and allocation of memory resources, processor resources, input/output resources, and security resources.

**Outsourcing:** The contracting out of a business process which an organization may have previously performed internally or has a new need for, to an independent organization from which the process is purchased back.

**Packet:** A packet is a formatted unit of data carried by a communication network. It consists of two kinds of data: control information and user data (also known as payload). The control information provides data the network needs to deliver the user data, for example: source and destination addresses, error detection codes like checksums, and sequencing information.

**Payload:** Is the cargo of a data transmission. It is the part of the transmitted data which is the fundamental purpose of the transmission, to the exclusion of information sent with it (such as headers or metadata, sometimes referred to as overhead data) solely to facilitate delivery.

**Payroll & Financial Center (PFC):** Electronic procurement system of record.

**Performance Bond:** An insurance agreement, accompanied by a monetary commitment, by which a third party (the surety) accepts liability and guarantees that the Contractor fulfills any and all obligations under the contract.

**Platform:** A specific hardware and Operating System combination that is different from other hardware and Operating System combinations to the extent that a different version of the Licensed Software product is required to execute properly in the environment established by such hardware and Operating System combination.

**Point of Contact (POC):** The person designated to receive communications and to communicate.

**Pre-Bid/Pre-Proposal Conference:** A meeting scheduled for the purpose of clarifying a written solicitation and related expectations.

**Product:** Something that is distributed commercially for use or consumption and that is usually (1) tangible personal property, (2) the result of fabrication or processing, and (3) an item that has passed through a chain of commercial distribution before ultimate use or consumption.

**Program Error:** Code in Licensed Software which produces unintended results or actions, or which produces results or actions other than those described in the specifications. A program error includes, without limitation, any Critical Program Error.

**Program Set:** The group of programs and products, including the Licensed Software specified in the RFP, plus any additional programs and products licensed by the State under the contract for use by the State.

**Project:** The total scheme, program, or method worked out for the accomplishment of an objective, including all documentation, commodities, and services to be provided under the contract.

**Proposal:** See Bid/Proposal.

**Proprietary Information:** Proprietary information is defined as trade secrets, academic and scientific research work which is in progress and unpublished, and other information which if released would give advantage to business competitors and serves no public purpose (see Neb. Rev. Stat. § 84-712.05(3)). In accordance with Attorney General Opinions 92068 and 97033, proof that information is proprietary requires identification of specific named competitor(s) advantaged by release of the information and the demonstrated advantage the named competitor(s) would gain by the release of information.

**Protest/Grievance:** A complaint about a governmental action or decision related to a RFP or resultant contract, brought by a vendor who has timely submitted a bid response in connection with the award in question, to AS Materiel Division or another designated agency with the intention of achieving a remedial result.

**Public Proposal Opening:** The process of opening correctly submitted offers at the time and place specified in the written solicitation and in the presence of anyone who wished to attend.

**Q-in-Q Tunneling:** 802.1Q tunneling enables service providers to use a single VLAN to support customers who have multiple VLANs, while preserving customer VLAN IDs and keeping traffic in different customer VLANs segregated.

**Quality of Service (QoS):** Quality of service is the ability to provide different priority to different applications, users, or data flows, or to guarantee a certain level of performance to a data flow.

**RFC-2544:** IETF RFC defines Benchmarking Methodology for Network Interconnect Devices. See also <http://www.ietf.org/rfc/rfc2544>

**Recommended Hardware Configuration:** The data processing hardware (including all terminals, auxiliary storage, communication, and other peripheral devices) to the extent utilized by the State as recommended by the Contractor.

**Release Date:** The date of public release of the written solicitation to seek offers.

**Renewal Period:** Optional contract periods subsequent to the original Contract Period for a specified duration with previously agreed to terms and conditions. Not to be confused with Extension.

**Request for Information (RFI):** A general invitation to vendors requesting information for a potential future solicitation. The RFI is typically used as a research and information gathering tool for preparation of a solicitation.

**Request for Proposal (RFP):** A written solicitation utilized for obtaining competitive offers.

**Responsible Bidder:** A bidder who has the capability in all respects to perform fully and lawfully all requirements with integrity and reliability to assure good faith performance.

**Responsive Bidder:** A bidder who has submitted a bid which conforms to all requirements of the solicitation document.

**Service Provider Invoice (SPI) FCC Form 474:** The form filed by the service provider after the applicant has been billed for the non-discount portion of the cost of eligible services.

**Service Provider Identification Number (SPIN):** Assigned by the Universal Service Administrative Company and is unique to each telecommunications provider.

**Shall/Will/Must:** An order/command; mandatory.

**Should:** Expected; suggested, but not necessarily mandatory.

**Software License:** Legal instrument with or without printed material that governs the use or redistribution of licensed software.

**Sole Source – Commodity:** When an item is available from only one source due to the unique nature of the requirement, its supplier, or market conditions.

**Sole Source – Services:** A service of such a unique nature that the vendor selected is clearly and justifiably the only practical source to provide the service. Determination that the vendor selected is justifiably the sole source is based on either the uniqueness of the service or sole availability at the location required.

**Specifications:** The detailed statement, especially of the measurements, quality, materials, and functional characteristics, or other items to be provided under a contract.

**Statutory:** These clauses are controlled by state law and are not subject to negotiation.

**Subcontractor:** Individual or entity with whom the contractor enters a contract to perform a portion of the work awarded to the contractor.

**System (see Module):** Any collection or aggregation of two (2) or more Modules that is designed to function, or is represented by the Contractor as functioning or being capable of functioning, as an entity.

**Termination:** Occurs when either Party, pursuant to a power created by agreement or law, puts an end to the contract prior to the stated expiration date. All obligations which are still executory on both sides are discharged but any right based on prior breach or performance survives.

**Third Party:** Any person or entity, including but not limited to fiduciaries, shareholders, owners, officers, managers, employees, legally disinterested persons, and sub-contractors or agents, and their employees. It shall not include any entity or person who is an interested Party to the contract or agreement.

**Trade Secret:** Information, including, but not limited to, a drawing, formula, pattern, compilation, program, device, method, technique, code, or process that (a) derives independent economic value, actual or potential, from not being known to, and not being ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy (see Neb. Rev. Stat. §87-502(4)).

**Trademark:** A word, phrase, logo, or other graphic symbol used by a manufacturer or vendor to distinguish its product from those of others, registered with the U.S. Patent and Trademark Office.

**USF:** Federal Universal Service Fund. A variable surcharge ranging between 15% and 20% levied against interstate telecommunications services as authorized by the Federal Communications Commission in 1997.

**Upgrade:** Any change that improves or alters the basic function of a product or service.

**Vendor:** An individual or entity lawfully conducting business in the State of Nebraska, or licensed to do so, who seeks to provide goods or services under the terms of a written solicitation.

**Vendor Performance Report:** A report issued to the Contractor by State Purchasing Bureau when products or services delivered or performed fail to meet the terms of the purchase order, contract, and/or specifications, as reported to State Purchasing Bureau by the agency. The State Purchasing Bureau shall contact the Contractor regarding any such report. The vendor performance report will become a part of the permanent record for the Contractor. The State may require vendor to cure. Two such reports may be cause for immediate termination.

**Wide Area Network (WAN):** Unless otherwise specified, WAN refers to a high bandwidth (e.g. >10Mbps) wide area data network using IP communication and routing protocols for the purposes of interconnecting numerous Local Area Networks (LANs).

**Will:** See Shall/Will/Must.

**Work Day:** See Business Day.

*Windstream has read and understands the Glossary of Terms.*



## I. PROCUREMENT PROCEDURE

### A. GENERAL INFORMATION

The RFP is designed to solicit proposals from qualified Bidders who will be responsible for providing Network Nebraska at a competitive and reasonable cost.

Proposals shall conform to all instructions, conditions, and requirements included in the RFP. Prospective bidders are expected to carefully examine all documents, schedules, and requirements in this RFP, and respond to each requirement in the format prescribed. Proposals may be found non-responsive if they do not conform to the RFP.

*Windstream has read and understands.*

### B. PROCURING OFFICE AND COMMUNICATION WITH STATE STAFF AND EVALUATORS

Procurement responsibilities related to this RFP reside with the State Purchasing Bureau. The point of contact (POC) for the procurement is as follows:

Name: Michelle Thompson / Dianna Gilliland  
Agency: State Purchasing Bureau  
Address: 1526 K Street, Suite 130  
Lincoln, NE 68508  
Telephone: 402-471-6500

E-Mail: [as.materielpurchasing@nebraska.gov](mailto:as.materielpurchasing@nebraska.gov)

From the date the RFP is issued until the Intent to Award is issued, communication from the Bidder is limited to the POC listed above. After the Intent to Award is issued, the Bidder may communicate with individuals the State has designated as responsible for negotiating the contract on behalf of the State. No member of the State Government, employee of the State, or member of the Evaluation Committee is empowered to make binding statements regarding this RFP. The POC will issue any clarifications or opinions regarding this RFP in writing. Only the buyer can modify the RFP, answer questions, render opinions, and only the SPB or awarding agency can award a contract. Bidders shall not have any communication with, or attempt to communicate or influence any evaluator involved in this RFP.

The following exceptions to these restrictions are permitted:

1. Contact made pursuant to pre-existing contracts or obligations;
2. Contact required by the schedule of events or an event scheduled later by the RFP POC; and
3. Contact required for negotiation and execution of the final contract.

*The State reserves the right to reject a bidder's proposal, withdraw an Intent to Award, or terminate a contract if the State determines there has been a violation of these procurement procedures.*

*Windstream has read and understands.*

### C. SCHEDULE OF EVENTS

The State expects to adhere to the procurement schedule shown below, but all dates are approximate and subject to change.

*Windstream has read and understands.*

ACTIVITY		DATE/TIME
1.	Release RFP	January 17, 2018
2.	Last day to submit written questions	January 29, 2018
3.	State responds to written questions through RFP "Addendum" and/or "Amendment" to be posted to the Internet at: <a href="http://das.nebraska.gov/materiel/purchasing.html">http://das.nebraska.gov/materiel/purchasing.html</a>	February 2, 2018
4.	Proposal opening Location: State Purchasing Bureau 1526 K Street, Suite 130 Lincoln, NE 68508	February 15, 2018 2:00 PM Central Time
5.	Review for conformance to RFP requirements	February 15, 2018
6.	Evaluation period	February 16 - 22, 2018
7.	Post "Intent to Award" to Internet at: <a href="http://das.nebraska.gov/materiel/purchasing.html">http://das.nebraska.gov/materiel/purchasing.html</a>	February 23, 2018
8.	Contract finalization period	February 23, 2018 – March 2, 2018
9.	Contract award	March 2, 2018
10.	Contractor start date	March 5, 2018

**D. WRITTEN QUESTIONS AND ANSWERS**

Questions regarding the meaning or interpretation of any RFP provision must be submitted in writing to the State Purchasing Bureau and clearly marked "RFP Number 5761 Z1; Network Nebraska Questions". The POC is not obligated to respond to questions that are received late per the Schedule of Events.

Bidders should present, as questions, any assumptions upon which the Bidder's proposal is or might be developed. Proposals will be evaluated without consideration of any known or unknown assumptions of a bidder. The contract will not incorporate any known or unknown assumptions of a bidder.

It is preferred that questions be sent via e-mail to [as.materiel purchasing@nebraska.gov](mailto:as.materiel purchasing@nebraska.gov), but may be delivered by hand or by U.S. Mail. It is recommended that Bidders submit questions using the following format.

RFP Reference	Section	RFP Number	Page	Question

Written answers will be posted at <http://das.nebraska.gov/materiel/purchasing.html> per the Schedule of Events. *Windstream has read and understands.*

**E. PRICES**

All prices, costs, and terms and conditions outlined in the proposal shall remain fixed and valid commencing on the opening date of the proposal until an award is made or the Request for Proposal is cancelled. Contractor's price for the services provided, as shown in Appendix A, shall remain fixed for the duration of the contract and shall be invoiced along with the actual cost of applicable fees and taxes Contractor is obligated to pass-through to the State each month. Non-recurring charges (NRC) and Monthly recurring charges (MRC) shall be invoiced in accordance with the original cost sheet. No invoice shall exceed the price contained on the contractor's original cost sheet. If increases to applicable fees and taxes, Contractor is obligated to pass-through to the State will cause the price to exceed the price on the original cost sheet Contractor may request an increase in price to cover actual increases in fees and taxes Contractor is obligated to pass-through to the State that exceed the Contractor's price on the original cost sheet. The Contractor must make a showing demonstrating the price increase and that the price exceeds the Contractor prices on the original cost sheet. The State shall have the right to refuse the price increase. No price increase shall be charged or billed until the Contract is amended to reflect the price increase. The State will be given full proportionate benefit of any price decrease during the term of the contract. Contractor agrees to sign and execute the appropriate State document to validate pricing.

*Windstream takes exception to this requirement as written. The Windstream pricing for the Services proposed herein is valid for ninety (90) days from the date of submission. Thereafter Windstream reserves the right to re-visit its pricing to ensure meeting Windstream's profitability standards.*

*During the term of any agreement Windstream for the Services proposed in this Response, Windstream agrees that it will not increase Customer's monthly recurring charges for the Services being provided under the Agreement (or, in the case of long distance services, the per minute charge) by any amount greater than 5% per annual period. The foregoing right shall not apply to changes to, additions of and/or increases in T1 access, applicable fees, taxes and other government-permissible charges.*

*Windstream agrees that the terms, conditions and prices established under the contract resulting from this Request for Proposal, shall be equal to or better than those offered to other similarly situated customers, ordering substantially similar quantities of service under a substantially similar cost structure, under substantially similar terms and conditions. If during the terms of the contract, Windstream offers more favorable terms, conditions or prices to a similarly situated customer, Windstream agrees to notify the State.*

Contractor represents and warrants that all prices for services, now or subsequently specified, are as low as and no higher than prices which the Contractor has charged or intends to charge customers other than the State for the same or similar products and services of the same or equivalent quantity and quality for delivery or performance during the same periods of time. If, during the term of the contract, the Contractor shall reduce any and/or all prices charged to any customers other than the State for the same or similar products or services specified herein, the Contractor shall make an equal or equivalent reduction in corresponding prices for said specified products or services.

*Windstream agrees that the terms, conditions and prices established under the contract resulting from this Request for Proposal, shall be equal to or better than those offered to other similarly situated customers, ordering substantially similar quantities of service under a substantially similar cost structure, under substantially similar terms and conditions. If during the terms of the contract, Windstream offers more favorable terms, conditions or prices to a similarly situated customer, Windstream agrees to notify the State.*



Contractor also represents and warrants that all prices set forth in the contract and all prices in addition, which the Contractor may charge under the terms of the contract, do not and will not violate any existing federal, state, or municipal law or regulations concerning price discrimination and/or price fixing. Contractor agrees to hold the State harmless from any such violation. Prices quoted shall not be subject to increase throughout the contract period unless specifically allowed by these specifications.

*During the term of any agreement Windstream for the Services proposed in this Response, Windstream agrees that it will not increase the State's monthly recurring charges for the Services being provided under the Agreement (or, in the case of long distance services, the per minute charge) by any amount greater than 5% per annual period. The foregoing right shall not apply to changes to, additions of and/or increases in T1 access, applicable fees, taxes and other government-permissible charges.*

**F. SECRETARY OF STATE/TAX COMMISSIONER REGISTRATION REQUIREMENTS (Statutory)**

All bidders must be authorized to transact business in the State of Nebraska and comply with all Nebraska Secretary of State Registration requirements. The bidder who is the recipient of an Intent to Award will be required to certify that it has complied and produce a true and exact copy of its current (within ninety (90) calendar days of the intent to award) Certificate or Letter of Good Standing, or in the case of a sole proprietorship, provide written documentation of sole proprietorship and complete the United States Citizenship Attestation Form, available on the Department of Administrative Services website at <http://das.nebraska.gov/materiel/purchasing.html>. This must be accomplished prior to execution of the contract.

*Windstream has read and understands. Windstream has included a copy of our Certificate of Good Standing in Tab 05.*

**G. ETHICS IN PUBLIC CONTRACTING**

The State reserves the right to reject bids, withdraw an intent to award or award, or terminate a contract if a bidder commits or has committed ethical violations, which include, but are not limited to:

1. Offering or giving, directly or indirectly, a bribe, fee, commission, compensation, gift, gratuity, or anything of value to any person or entity in an attempt to influence the bidding process;
2. Utilize the services of lobbyists, attorneys, political activists, or consultants to influence or subvert the bidding process;
3. Being considered for, presently being, or becoming debarred, suspended, ineligible, or excluded from contracting with any state or federal entity;
4. Submitting a proposal on behalf of another Party or entity; and
5. Collude with any person or entity to influence the bidding process, submit sham proposals, preclude bidding, fix pricing or costs, create an unfair advantage, subvert the bid, or prejudice the State.

The Bidder shall include this clause in any subcontract entered into for the exclusive purpose of performing this contract.

Bidder shall have an affirmative duty to report any violations of this clause by the Bidder throughout the bidding process, and throughout the term of this contract for the successful Bidder and their subcontractors.

*Windstream has read and understands.*

**H. DEVIATIONS FROM THE REQUEST FOR PROPOSAL**

The requirements contained in the RFP become a part of the terms and conditions of the contract resulting from this RFP. Any deviations from the RFP in Sections II through VI must be clearly defined by the bidder in its proposal and, if accepted by the State, will become part of the contract. Any specifically defined deviations must not be in conflict with the basic nature of the RFP, requirements, or applicable state or federal laws or statutes. "Deviation", for the purposes of this RFP, means any proposed changes or alterations to either the contractual language or deliverables within the scope of this RFP. The State discourages deviations and reserves the right to reject proposed deviations.

*Windstream has read and understands. Please refer to Tab 04 Deviations in the RFP response.*

**I. SUBMISSION OF PROPOSALS**

Bidders should submit one proposal marked on the first page: "ORIGINAL". If multiple proposals are submitted, the State will retain one copy marked "ORIGINAL" and destroy the other copies. The Bidder is solely responsible for any variance between the copies submitted. Proposal responses should include the completed Form A, "Bidder Contact Sheet". Proposals must reference the RFP number and be sent to the specified address. Please note that the address label should appear as specified in Section I B. on the face of each container or bidder's bid response packet. If a recipient phone number is required for delivery purposes, 402-471-6500 should be used. The RFP number should be included in all correspondence.

Emphasis should be concentrated on conformance to the RFP instructions, responsiveness to requirements, completeness, and clarity of content. If the bidder's proposal is presented in such a fashion that makes evaluation difficult or overly time consuming the State reserves the right to reject the proposal as non-conforming.

By signing the "Request for Proposal for Contractual Services" form, the bidder guarantees compliance with the provisions stated in this RFP.

The State shall not incur any liability for any costs incurred by bidders in replying to this RFP, in the demonstrations and/or oral presentations, or in any other activity related to bidding on this RFP.

*Windstream has read and understands.*

**J. BID PREPARATION COSTS**

The State shall not incur any liability for any costs incurred by Bidders in replying to this RFP, including any activity related to bidding on this RFP.

*Windstream has read and understands.*

**K. FAILURE TO COMPLY WITH REQUEST FOR PROPOSAL**

Violation of the terms and conditions contained in this RFP or any resultant contract, at any time before or after the award, shall be grounds for action by the State which may include, but is not limited to, the following:

1. Rejection of a bidder's proposal;
2. Withdrawal of the Intent to Award;
3. Withdrawal of the Award;
4. Termination of the resulting contract;
5. Legal action; and
6. Suspension of the bidder from further bidding with the State for the period of time relative to the seriousness of the violation, such period to be within the sole discretion of the State.

*Windstream has read and understands.*

**L. BID CORRECTIONS**

A bidder may correct a mistake in a bid prior to the time of opening by giving written notice to the State of intent to withdraw the bid for modification or to withdraw the bid completely. Changes in a bid after opening are acceptable only if the change is made to correct a minor error that does not affect price, quantity, quality, delivery, or contractual conditions. In case of a mathematical error in extension of price, unit price shall govern.

*Windstream has read and understands.*

**M. LATE PROPOSALS**

Proposals received after the time and date of the proposal opening will be considered late proposals. Late proposals will be returned unopened, if requested by the bidder and at bidder's expense. The State is not responsible for proposals that are late or lost regardless of cause or fault.

*Windstream has read and understands.*

**N. PROPOSAL OPENING**

The opening of proposals will be public and the bidders will be announced. Proposals **WILL NOT** be available for viewing by those present at the proposal opening. Vendors may contact the State to schedule an appointment for viewing proposals after the Intent to Award has been posted to the website. Once proposals are opened, they become the property of the State of Nebraska and will not be returned.

*Windstream has read and understands.*

**O. REQUEST FOR PROPOSAL/PROPOSAL REQUIREMENTS**

The proposals will first be examined to determine if all requirements listed below have been addressed and whether further evaluation is warranted. Proposals not meeting the requirements may be rejected as non-responsive. The requirements are:

1. Original Request for Proposal for Contractual Services form signed using an indelible method;
2. Clarity and responsiveness of the proposal;
3. Completed Sections II through VI;
4. Completed State Cost Proposal Template (Appendix A).

*Windstream has read and understands.*



**P. EVALUATION OF PROPOSALS**

All proposals that are responsive to the RFP will be evaluated based on the following:

**1. Cost Proposal**

**Neb. Rev. Stat. §73-107 allows for a preference for a resident disabled veteran or business located in a designated enterprise zone.** When a state contract is to be awarded to the lowest responsible bidder, a resident disabled veteran or a business located in a designated enterprise zone under the Enterprise Zone Act shall be allowed a preference over any other resident or nonresident bidder, if all other factors are equal.

**Resident disabled veterans means any person (a) who resides in the State of Nebraska, who served in the United States Armed Forces, including any reserve component or the National Guard, who was discharged or otherwise separated with a characterization of honorable or general (under honorable conditions), and who possesses a disability rating letter issued by the United States Department of Veterans Affairs establishing a service-connected disability or a disability determination from the United States Department of Defense and (b)(i) who owns and controls a business or, in the case of a publicly owned business, more than fifty percent of the stock is owned by one or more persons described in subdivision (a) of this subsection and (ii) the management and daily business operations of the business are controlled by one or more persons described in subdivision(a) of this subsection. Any contract entered into without compliance with this section shall be null and void.**

Therefore, if a resident disabled veteran or business located in a designated enterprise zone submits a proposal in accordance with Neb. Rev. Stat. §73-107 and has so indicated on the RFP cover page under "Bidder must complete the following" requesting priority/preference to be considered in the award of this contract, the following will need to be submitted by the vendor within ten (10) business days of request:

1. Documentation from the United States Armed Forces confirming service;
2. Documentation of discharge or otherwise separated characterization of honorable or general (under honorable conditions);
3. Disability rating letter issued by the United States Department of Veterans Affairs establishing a service-connected disability or a disability determination from the United States Department of Defense; and
4. Documentation which shows ownership and control of a business or, in the case of a publicly owned business, more than fifty percent of the stock is owned by one or more persons described in subdivision (a) of this subsection; and the management and daily business operations of the business are controlled by one or more persons described in subdivision (a) of this subsection.

Failure to submit the requested documentation within ten (10) business days of notice will disqualify the bidder from consideration of the preference.

*Windstream has read and understands.*

**Q. BEST AND FINAL OFFER**

If best and final offers (BAFO) are requested by the State and submitted by the bidder, they will be evaluated (using the stated BAFO criteria), scored, and ranked by the Evaluation Committee. The State reserves the right to conduct more than one Best and Final Offer. The award will then be granted to the highest scoring bidder. However, a bidder should provide its best offer in its original proposal. Bidders should not expect that the State will request a best and final offer.

*Windstream has read and understands.*

**R. REFERENCE AND CREDIT CHECKS**

The State reserves the right to conduct and consider reference and credit checks. The State reserves the right to use third parties to conduct reference and credit checks. By submitting a proposal in response to this RFP, the bidder grants to the State the right to contact or arrange a visit in person with any or all of the bidder's clients. Reference and credit checks may be grounds to reject a proposal, withdraw an intent to award, or rescind the award of a contract.

*Windstream has read and understands.*

**S. AWARD**

The State reserves the right to evaluate proposals and award contracts in a manner utilizing criteria selected at the State's discretion and in the State's best interest. After evaluation of the proposals, or at any point in the RFP process, the State of Nebraska may take one or more of the following actions:

1. Amend the RFP;
2. Extend the time of or establish a new proposal opening time;
3. Waive deviations or errors in the State's RFP process and in bidder proposals that are not material, do not compromise the RFP process or a bidder's proposal, and do not improve a bidder's competitive position;
4. Accept or reject a portion of or all of a proposal;
5. Accept or reject all proposals;
6. Withdraw the RFP;
7. Elect to rebid the RFP;
8. Award single lines or multiple lines to one or more bidders; or,  
*Windstream has read and understands, however, Windstream's Services are priced based on a term and volume commitment from Customer in connection with the applicable Service. In the event that Customer reduces the quantity of items bid, or determines that less than the total amount of Services will be awarded to Windstream, then Windstream reserves the right to re-visit its pricing to ensure meeting Windstream's profitability standards.*
9. Award one or more all-inclusive contracts.

The State of Nebraska may consider, but is not limited to considering, one or more of the following award criteria:

1. Price;
2. Location;
3. Quality;
4. Delivery time;
5. Bidder qualifications and capabilities; and
6. State contract management requirements and/or costs.

The RFP does not commit the State to award a contract. Once intent to award decision has been determined, it will be posted to the Internet at:

<http://das.nebraska.gov/materiel/purchasing.html>

Grievance and protest procedure is available on the Internet at:

<http://das.nebraska.gov/materiel/purchasing.html>

Any protests must be filed by a bidder within ten (10) business days after the intent to award decision is posted to the Internet.

*Windstream has read and understands Section S. Award.*

**II. TERMS AND CONDITIONS**

Bidders should complete Sections II through VI as part of their proposal. Bidder is expected to read the Terms and Conditions and should initial either accept, reject, or reject and provide alternative language for each clause. The bidder should also provide an explanation of why the bidder rejected the clause or rejected the clause and provided alternate language. By signing the RFP, bidder is agreeing to be legally bound by all the accepted terms and conditions, and any proposed alternative terms and conditions submitted with the proposal. The State reserves the right to negotiate rejected or proposed alternative language. If the State and bidder fail to agree on the final Terms and Conditions, the State reserves the right to reject the proposal. The State of Nebraska is soliciting proposals in response to this RFP. The State of Nebraska reserves the right to reject proposals that attempt to substitute the bidder's commercial contracts and/or documents for this RFP.

The bidders should submit with their proposal any license, user agreement, service level agreement, or similar documents that the bidder wants incorporated in the Contract. The State will not consider incorporation of any document not submitted with the bidder's proposal as the document will not have been included in the evaluation process. These documents shall be subject to negotiation and will be incorporated as addendums if agreed to by the Parties.

If a conflict or ambiguity arises after the Addendum to Contract Award have been negotiated and agreed to, the Addendum to Contract Award shall be interpreted as follows:

1. If only one Party has a particular clause then that clause shall control;
2. If both Parties have a similar clause, but the clauses do not conflict, the clauses shall be read together;
3. If both Parties have a similar clause, but the clauses conflict, the State's clause shall control.

**A. GENERAL**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
		HM	<i>Windstream proposes the following in lieu of the State's order of precedence: the terms of the final, negotiated contract shall prevail in the event there is a conflict in terms with this RFP or Windstream's proposal.</i>

The contract resulting from this RFP shall incorporate the following documents:

1. Request for Proposal and Addenda;
2. Amendments to the RFP;
3. Questions and Answers;
4. Contractor's proposal (RFP and properly submitted documents);
5. The executed Contract and Addendum One to Contract, if applicable; and,
6. Amendments/Addendums to the Contract.

These documents constitute the entirety of the contract.

Unless otherwise specifically stated in a future contract amendment, in case of any conflict between the incorporated documents, the documents shall govern in the following order of preference with number one (1) receiving preference over all other documents and with each lower numbered document having preference over any higher numbered document: 1) Amendment to the executed Contract with the most recent dated amendment having the highest priority, 2) executed Contract and any attached Addenda, 3) Amendments to RFP and any Questions and Answers, 4) the original RFP document and any Addenda, and 5) the Contractor's submitted Proposal.

Any ambiguity or conflict in the contract discovered after its execution, not otherwise addressed herein, shall be resolved in accordance with the rules of contract interpretation as established in the State of Nebraska.

**B. NOTIFICATION**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
HM			

Contractor and State shall identify the contract manager who shall serve as the point of contact for the executed contract.

Communications regarding the executed contract shall be in writing and shall be deemed to have been given if delivered personally or mailed, by U.S. Mail, postage prepaid, return receipt requested, to the parties at their respective addresses set forth below, or at such other addresses as may be specified in writing by either of the parties. All notices, requests, or communications shall be deemed effective upon personal delivery or three (3) calendar days following deposit in the mail.

Vendor Contract Manager <i>Hollie Messinger</i>	Contract Manager
Vendor <i>Windstream Services, LLC</i>	OCIO
Vendor Street Address <i>1440 M Street</i>	501 S. 14 <sup>th</sup> Street
Vendor City, State, Zip <i>Lincoln, NE 68508-2591</i>	Lincoln, NE 68508

**C. GOVERNING LAW (Statutory)**

Notwithstanding any other provision of this contract, or any amendment or addendum(s) entered into contemporaneously or at a later time, the parties understand and agree that, (1) the State of Nebraska is a sovereign state and its authority to contract is therefore subject to limitation by the State's Constitution, statutes, common law, and regulation; (2) this contract will be interpreted and enforced under the laws of the State of Nebraska; (3) any action to enforce the provisions of this agreement must be brought in the State of Nebraska per state law; (4) the person signing this contract on behalf of the State of Nebraska does not have the authority to waive the State's sovereign immunity, statutes, common law, or regulations; (5) the indemnity, limitation of liability, remedy, and other similar provisions of the final contract, if any, are entered into subject to the State's Constitution, statutes, common law, regulations, and sovereign immunity; and, (6) all terms and conditions of the final contract, including but not limited to the clauses concerning third party use, licenses, warranties, limitations of liability, governing law and venue, usage verification, indemnity, liability, remedy or other similar provisions of the final contract are entered into specifically subject to the State's Constitution, statutes, common law, regulations, and sovereign immunity.

The Parties must comply with all applicable local, state and federal laws, ordinances, rules, orders, and regulations.

**D. BEGINNING OF WORK**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
HM			

The bidder shall not commence any billable work until a valid contract has been fully executed by the State and the successful Contractor. The Contractor will be notified in writing when work may begin.



**E. CHANGE ORDERS**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
HM			

The State and the Contractor, upon the written agreement, may make changes to the contract within the general scope of the RFP. Changes may involve specifications, the quantity of work, or such other items as the State may find necessary or desirable. Corrections of any deliverable, service, or work required pursuant to the contract shall not be deemed a change. The Contractor may not claim forfeiture of the contract by reasons of such changes.

The Contractor shall prepare a written description of the work required due to the change and an itemized cost sheet for the change. Changes in work and the amount of compensation to be paid to the Contractor shall be determined in accordance with applicable unit prices if any, a pro-rated value, or through negotiations. The State shall not incur a price increase for changes that should have been included in the Contractor's proposal, were foreseeable, or result from difficulties with or failure of the Contractor's proposal or performance.

No change shall be implemented by the Contractor until approved by the State, and the Contract is amended to reflect the change and associated costs, if any. If there is a dispute regarding the cost, but both parties agree that immediate implementation is necessary, the change may be implemented, and cost negotiations may continue with both Parties retaining all remedies under the contract and law.

**F. NOTICE OF POTENTIAL CONTRACTOR BREACH**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
		HM	<p><i>Windstream takes exception to the State's right to immediately terminate the Agreement for default without giving Windstream a reasonable time to cure. In the event Windstream breaches a material term or condition, or fails to perform any material obligation under the agreement, the State shall have the right to terminate the agreement in whole or in part if, after thirty (30) days notice of a default, Windstream fails to cure the default. In the event Windstream fails to cure, the State may terminate the agreement with no liability other than for accrued charges owed under the agreement up to the date of termination.</i></p> <p><i>Further, State's right to terminate the Agreement is limited as described in the Windstream Fiber Build Addendum, which has been included with this RFP response.</i></p>

If Contractor breaches the contract or anticipates breaching the contract, the Contractor shall immediately give written notice to the State. The notice shall explain the breach or potential breach, a proposed cure, and may include a request for a waiver of the breach if so desired. The State may, in its discretion, temporarily or permanently waive the breach. By granting a waiver, the State does not forfeit any rights or remedies to which the State is entitled by law or equity, or pursuant to the provisions of the contract. Failure to give immediate notice, however, may be grounds for denial of any request for a waiver of a breach.



**G. BREACH**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
		HM	<p><i>Windstream takes exception to the State's right to terminate the Agreement during the cure period or after Windstream has cured the default. The State's right to terminate for cause should be limited to situations in which Windstream has received the cure notice and failed to cure within the 30 days allowed. Additionally, under no circumstances will Windstream be liable for the cost of substitute or replacement services. Finally, non-payment by the State of amounts owed will be considered a default of the agreement, and the ten (10) day cure period outlined in Section 10 of Windstream Service Terms and Conditions will control.</i></p> <p><i>Further, State's right to terminate the Agreement is limited as described in the Windstream Fiber Build Addendum, which has been included with this RFP response.</i></p>

Either Party may terminate the contract, in whole or in part, if the other Party breaches its duty to perform its obligations under the contract in a timely and proper manner. Termination requires written notice of default and a thirty (30) calendar day (or longer at the non-breaching Party's discretion considering the gravity and nature of the default) cure period. Said notice shall be delivered by Certified Mail, Return Receipt Requested, or in person with proof of delivery. Allowing time to cure a failure or breach of contract does not waive the right to immediately terminate the contract for the same or different contract breach which may occur at a different time. In case of default of the Contractor, the State may contract the service from other sources and hold the Contractor responsible for any excess cost occasioned thereby.

The State's failure to make payment shall not be a breach, and the Contractor shall retain all available statutory remedies and protections.

**H. NON-WAIVER OF BREACH**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
HM			

The acceptance of late performance with or without objection or reservation by a Party shall not waive any rights of the Party nor constitute a waiver of the requirement of timely performance of any obligations remaining to be performed.

**I. SEVERABILITY**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
HM			

If any term or condition of the contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and conditions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the provision held to be invalid or illegal.

**J. INDEMNIFICATION**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
		HM	<p><i>Windstream has read and understands its obligation to indemnify State of Nebraska, but would like to clarify that such indemnification extends only to third party claims arising from Windstream's gross negligence or willful misconduct with respect to its obligations under the final contract between the parties.</i></p> <p><i>Windstream has read and understands its obligation to indemnify the State against infringement claims, but such obligation shall extend only to third party claims based on an allegation that the use of Windstream's services as provided to the State are directly infringing. Further, maximum liability for damages paid under this provision will not exceed the price paid for the affected services by the State. Finally, Notwithstanding the Intellectual Property section below, Windstream is in no way.</i></p>

**1. GENERAL**

The Contractor agrees to defend, indemnify, and hold harmless the State and its employees, volunteers, agents, and its elected and appointed officials ("the indemnified parties") from and against any and all third party claims, liens, demands, damages, liability, actions, causes of action, losses, judgments, costs, and expenses of every nature, including investigation costs and expenses, settlement costs, and attorney fees and expenses ("the claims"), sustained or asserted against the State for personal injury, death, or property loss or damage, arising out of, resulting from, or attributable to the willful misconduct, negligence, error, or omission of the Contractor, its employees, Subcontractors, consultants, representatives, and agents, resulting from this contract, except to the extent such Contractor liability is attenuated by any action of the State which directly and proximately contributed to the claims.

**2. INTELLECTUAL PROPERTY**

The Contractor agrees it will, at its sole cost and expense, defend, indemnify, and hold harmless the indemnified parties from and against any and all claims, to the extent such claims arise out of, result from, or are attributable to, the actual or alleged infringement or misappropriation of any patent, copyright, trade secret, trademark, or confidential information of any third party by the Contractor or its employees, Subcontractors, consultants, representatives, and agents; provided, however, the State gives the Contractor prompt notice in writing of the claim. The Contractor may not settle any infringement claim that will affect the State's use of the Licensed Software without the State's prior written consent, which consent may be withheld for any reason.

If a judgment or settlement is obtained or reasonably anticipated against the State's use of any intellectual property for which the Contractor has indemnified the State, the Contractor shall, at the Contractor's sole cost and expense, promptly modify the item or items which were determined to be infringing, acquire a license or licenses on the State's behalf to provide the necessary rights to the State to eliminate the infringement, or provide the State with a non-infringing substitute that provides the State the same functionality. At the State's election, the actual or anticipated judgment may be treated as a breach of warranty by the Contractor, and the State may receive the remedies provided under this RFP.

*Windstream has read and understands, however, with the understanding that any service(s) or work performed or developed under this contract is not "work made for hire" and does not apply to the services being contemplated herein. For the avoidance of doubt, the developing party shall retain complete ownership to any resulting intellectual property. If for some reason Windstream has not interpreted this section correctly, upon clarification from the District, Windstream would welcome the opportunity to address the District's requests.*



*Windstream will indemnify the District for any third party damages or liabilities (excluding consequential and exemplary damages) finally awarded against the District and will defend any third party claim, suit or proceeding against the District insofar as such claim, suit or proceeding is based on an allegation that the use of Windstream's Services as provided to the Customer by Windstream pursuant to this Agreement directly infringes a third party patent or patents held in the United States, and will pay those costs and damages (including settlement costs) finally awarded or agreed-upon, as applicable, as the result of any suit based on such claim provided (i) Windstream is promptly notified of such claim, suit or proceeding, (ii) the District cooperates with Windstream in the defense of any such claim, suit or proceeding, including providing, upon request from Windstream, all applicable evidence in the District's possession, custody or control, (iii) Windstream is given sole control of the defense thereof (including selection of outside counsel for defense of such claim) and all negotiations for its settlement or compromise, (iv) the District has paid all fees due to Windstream under this Agreement and continues to pay all such fees as such fees become due under this Agreement, and (v) if the District has a license under any patents that may be the subject of an infringement allegation hereunder, to the extent permitted by such license Windstream is allowed to use such patent license to assist in resolving any third party claim hereunder. Maximum liability for damages paid under this provision will not exceed the price paid for the affected services by the District. If such a claim occurs, or in the opinion of Windstream, is likely to occur, the District agrees to permit Windstream, at Windstream's sole option and expense to (i) modify or replace the accused system and services with a such that the provided system and services are free of any infringement, (ii) procure the right for the District to continue to use the system or services without a claim of infringement, or (iii) if neither of the foregoing alternatives is reasonably likely in Windstream's sole discretion, to remove the accused system and services and refund to the District a pro rata portion of the payments made by the District to reflect the actual use by the District of the system and services provided by Windstream. Notwithstanding the foregoing, Windstream has no liability for any claim, action suit or proceeding based upon a third party patent infringement claim resulting from (a) use of the system or services by the District or the District's end user in a manner not contemplated or prescribed by this Agreement, (b) the combination, operation or use of Windstream's Services by the District with any software, hardware or third party equipment not furnished by Windstream, or (c) any alteration or modification to the Services without Windstream's express written permission, where such claim would not have arisen but for such alteration or modification.*

**3. PERSONNEL**

The Contractor shall, at its expense, indemnify and hold harmless the indemnified parties from and against any claim with respect to withholding taxes, worker's compensation, employee benefits, or any other claim, demand, liability, damage, or loss of any nature relating to any of the personnel, including subcontractor's and their employees, provided by the Contractor.

**4. SELF-INSURANCE**

The State of Nebraska is self-insured for any loss and purchases excess insurance coverage pursuant to Neb. Rev. Stat. § 81-8,239.01 (Reissue 2008). If there is a presumed loss under the provisions of this agreement, Contractor may file a claim with the Office of Risk Management pursuant to Neb. Rev. Stat. §§ 81-8,829 – 81-8,306 for review by the State Claims Board. The State retains all rights and immunities under the State Miscellaneous (Section 81-8,294), Tort (Section 81-8,209), and Contract Claim Acts (Section 81-8,302), as outlined in Neb. Rev. Stat. § 81-8,209 et seq. and under any other provisions of law and accepts liability under this agreement to the extent provided by law.

- 5.** The Parties acknowledge that Attorney General for the State of Nebraska is required by statute to represent the legal interests of the State, and that any provision of this indemnify clause is subject to the statutory authority of the Attorney General.

**K. ATTORNEY'S FEES**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
	HM		

In the event of any litigation, appeal, or other legal action to enforce any provision of the contract, the Parties agree to pay all expenses of such action, as permitted by law and if order by the court, including attorney's fees and costs, if the other Party prevails.

**L. LIQUIDATED DAMAGES**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
		HM	<p><i>Windstream takes exception to references to payment of liquidated damages and withholding of payment in this section. Windstream will use commercially reasonable efforts to meet any agreed-upon installation timeframes and to perform cutover to the Windstream network from the State's existing carrier. However, Windstream's solution does not provide for liquidated damages or the right to withhold payment in the event it fails to meet such timeframes. In the event Windstream fails to meet an installation timeline, and such failure is not a result of the State's conduct or performance or a force majeure event, the State may terminate the agreement between the parties without early termination liability after providing Windstream thirty (30) days to cure such installation delay.</i></p> <p><i>Remedies for service issues are limited to those offered in Windstream's Service Level Agreement, included with this response.</i></p>

Failure to meet the dates for the deliverables per Section V.D. Project Requirements as agreed upon by the parties may result in an assessment of liquidated damages due the State of up to \$500.00 dollars per day, until the deliverables are approved. Contractor will be notified in writing when liquidated damages will commence.

If the Contractor fails to perform any substantial obligation under the contract, the State may withhold all monies due and payable to the Contractor, without penalty, until such failure is cured or otherwise adjudicated. Failure to meet the dates for the deliverables as agreed upon by the parties may result in an assessment of liquidated damages equal to the difference between newly contracted monthly costs and the cost of the circuit or service being replaced, if incurred, until the deliverables are approved.

The contract expectation is for a service that, at a minimum, will meet or exceed required specifications 99.955% of the month equivalent to a maximum of 3.6 total hours of downtime/service non-compliance per month. Any service not meeting contract specifications to include violation of QoS parameters will incur a contract performance penalty per the following formula:

For every hour and fraction of an hour of service violation exceeding the identified 99.955% uptime requirement, the customer will be refunded one day of service credit. Repeated violations of service performance agreements during any single calendar day will be considered a continuous event from the beginning of the original violation until the last violation. Violations on consecutive days will be considered continuous from the initial violation until the service has been restored. The service will be considered restored when no violation has occurred for 24 continuous hours (the 24-hour validation period is not considered part of the damages). Damages duration will round up to the next whole hour.



Example: Intermittent connectivity from 9:15am-2:20pm on the same day; Duration of the actual service violation would be 5 hours and 5 minutes. Violation assessment is rounded up to the next whole hour, so the downtime/service non-compliance duration would be considered as 6 total hours, if no previous downtime had been experienced for the service in the current month, or depending on the amount of cumulative violations experienced in the performance year that exceed the 99.955% uptime requirement. A yearly downtime allowance of 4 hours would be applied, thereby yielding a 2-hour penalty violation equivalent to 2 days of service credit due. The 4-hour downtime allowance can only be applied in one-hour whole increments with a total of 4 hours of remission during any given performance year.

**M. ASSIGNMENT, SALE, OR MERGER**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
		HM	<i>As a nationwide telecommunications services provider, it is imperative that Windstream have the ability to assign the contract without the prior written consent of the State to an affiliate or purchaser of all or substantially all of its assets. Windstream proposes the following: Neither party shall assign or transfer its rights and obligations under the agreement between the parties without the prior written consent of the other, which consent shall not be unreasonably withheld or delayed, except each party shall have the right to assign, convey or otherwise transfer its rights, title, interest and obligations under the contract, in whole or in part, to any entity controlled by, controlling or under common control of said party, or any entity into which said party may be merged or consolidated or which purchases all or substantially all of the assets of said party. Any attempted assignment in violation of this provision shall be void.</i>

Either Party may assign the contract upon mutual written agreement of the other Party. Such agreement shall not be unreasonably withheld.

The Contractor retains the right to enter into a sale, merger, acquisition, internal reorganization, or similar transaction involving Contractor's business. Contractor agrees to cooperate with the State in executing amendments to the contract to allow for the transaction. If a third party or entity is involved in the transaction, the Contractor will remain responsible for performance of the contract until such time as the person or entity involved in the transaction agrees in writing to be contractually bound by this contract and perform all obligations of the contract.

**N. CONTRACTING WITH OTHER NEBRASKA POLITICAL SUB-DIVISIONS**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
		HM	<i>Windstream is willing to agree to extend the provision of services under the resulting contract between Windstream and the State to any other agency. Each such agency must commit to its own term and volume commitment by way of signing a separate service agreement between Windstream and the agency. The Windstream Service Terms and Conditions provided as part of this Response shall apply to such agency, and will be attached by way of an addendum to said separate service agreement. Nothing contained in this Response shall be deemed to be a guarantee that Windstream can feasibly provide the service at such locations proposed by an agency or at the same prices provided herein. Determination of pricing and feasibility for servicing such agencies shall be made on a case by case basis.</i>

The Contractor may, but shall not be required to, allow agencies, as defined in Neb. Rev. Stat. §81-145, to use this contract. The terms and conditions, including price, of the contract may not be amended. The State shall not be contractually obligated or liable for any contract entered into pursuant to this clause. A listing of Nebraska political subdivisions may be found at the website of the Nebraska Auditor of Public Accounts.

**O. FORCE MAJEURE**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
		HM	<i>Windstream accepts this provision, except for the last sentence. Labor disputes impacting services shall be considered force majeure events.</i>

Neither Party shall be liable for any costs or damages, or for default resulting from its inability to perform any of its obligations under the contract due to a natural or manmade event outside the control and not the fault of the affected Party ("Force Majeure Event"). The Party so affected shall immediately make a written request for relief to the other Party, and shall have the burden of proof to justify the request. The other Party may grant the relief requested; relief may not be unreasonably withheld. Labor disputes with the impacted Party's own employees will not be considered a Force Majeure Event.

**P. CONFIDENTIALITY**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
HM			

All materials and information provided by the Parties or acquired by a Party on behalf of the other Party shall be regarded as confidential information. All materials and information provided or acquired shall be handled in accordance with federal and state law, and ethical standards. Should said confidentiality be breached by a Party, the Party shall notify the other Party immediately of said breach and take immediate corrective action.

It is incumbent upon the Parties to inform their officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a (i)(1), which is made applicable by 5 U.S.C. 552a (m)(1), provides that any officer or employee, who by virtue of his/her employment or official position has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.



**Q. EARLY TERMINATION**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
		HM	<p><i>Windstream takes exception to the State of Nebraska's right to terminate the Agreement without giving Windstream a reasonable time to cure the breach. In the event Windstream breaches a material term or condition, or fails to perform any material obligation under the Agreement, the State of Nebraska shall have the right to terminate the agreement in whole or in part if, after thirty (30) days' notice of a default, Windstream fails to cure the default. In the event Windstream fails to cure, the State of Nebraska may terminate the Agreement with no liability other than for accrued charges still owing under the Agreement. However, the State of Nebraska's sole remedy for a minor degradation of service is outlined in Windstream's Service Level Agreement, which is attached to this RFP response.</i></p> <p><i>Windstream's liability in the event of a breach is limited as provided in Section 16 of the Windstream Service Terms and Conditions, which is included with this RFP response. In no event will Windstream be liable for the cost of substitute service, and the State of Nebraska's does not have the right to reduce or withhold payment due for any reason, except in the event of a good faith dispute over charges owed, and only then to the extent of the disputed amount.</i></p> <p><i>Any termination without cause would be subject to the Cancellation Charges and/or Liquidated Damages set forth in Section 11 of the WIN Service Terms and Conditions included as part of this Response Tab 07.</i></p>

The contract may be terminated as follows:

1. The State and the Contractor, by mutual written agreement, may terminate the contract at any time.
2. The State, in its sole discretion, may terminate the contract for any reason upon thirty (30) calendar day's written notice to the Contractor. Such termination shall not relieve the Contractor of warranty or other service obligations incurred under the terms of the contract. In the event of termination the Contractor shall be entitled to payment, determined on a pro rata basis, for products or services satisfactorily performed or provided.
3. The State may terminate the contract immediately for the following reasons:
  - a. if directed to do so by statute;
  - b. Contractor has made an assignment for the benefit of creditors, has admitted in writing its inability to pay debts as they mature, or has ceased operating in the normal course of business;
  - c. a trustee or receiver of the Contractor or of any substantial part of the Contractor's assets has been appointed by a court;
  - d. fraud, misappropriation, embezzlement, malfeasance, misfeasance, or illegal conduct pertaining to performance under the contract by its Contractor, its employees, officers, directors, or shareholders;
  - e. an involuntary proceeding has been commenced by any Party against the Contractor under any one of the chapters of Title 11 of the United States Code and (i) the proceeding has been pending for at least sixty (60) calendar days; or (ii) the Contractor has consented, either expressly or by operation of law, to the entry of an order for relief; or (iii) the Contractor has been decreed or adjudged a debtor;
  - f. a voluntary petition has been filed by the Contractor under any of the chapters of Title 11 of the United States Code;
  - g. Contractor intentionally discloses confidential information;
  - h. Contractor has or announces it will discontinue support of the deliverable; and,
  - i. In the event funding is no longer available.

*Windstream takes exception to these additional grounds to immediately terminate, with the exception of (a) and (i), although in the case of (i), Section IV.G. of this RFP shall apply. All other grounds listed here will be considered defaults to which the thirty (30) day cure period outlined in Section II.G. will apply. In the case of (e) and (f), Windstream will allow the State to terminate for cause only if such filing – voluntary or involuntary – has not been withdrawn or dismissed within sixty (60) days*

**R. CONTRACT CLOSEOUT**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
HM			<p><i>Ramp Down Period. If after the initial Term of the Agreement, Customer provides notice to terminate the Agreement in accordance with its terms, and provided that Customer has met its Minimum Monthly Fee (MMF) obligations for the initial Term of the Agreement and Customer's account is in good standing, Windstream agrees that for a period of up to six (6) months while Customer is transitioning service to another vendor, Windstream will not hold Customer to any MMF commitment during this transition period, other than to pay for the monthly recurring charges for circuits and/or facilities in place and associated actual usage of the Services, plus applicable fees, taxes, assessments and surcharges. In all instances, Windstream will use commercially reasonable efforts to work with Customer to effect an orderly transition to another service provider.</i></p>

Upon contract closeout for any reason the Contractor shall within 30 days, unless stated otherwise herein:

1. Transfer all completed or partially completed deliverables to the State;
2. Transfer ownership and title to all completed or partially completed deliverables to the State;
3. Return to the State all information and data, unless the Contractor is permitted to keep the information or data by contract or rule of law. Contractor may retain one copy of any information or data as required to comply with applicable work product documentation standards or as are automatically retained in the course of Contractor's routine back up procedures;
4. Cooperate with any successor Contractor, person or entity in the assumption of any or all of the obligations of this contract;
5. Cooperate with any successor Contractor, person or entity with the transfer of information or data related to this contract;
6. Return or vacate any state owned real or personal property; and,
7. Return all data in a mutually acceptable format and manner.

Nothing in this Section should be construed to require the Contractor to surrender intellectual property, real or personal property, or information or data owned by the Contractor for which the State has no legal claim.



**III. CONTRACTOR DUTIES**

**A. INDEPENDENT CONTRACTOR / OBLIGATIONS**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative with RFP Response (Initial)	NOTES/COMMENTS:
		HM	<p><i>Windstream shall provide the State with a team of adequately experienced personnel with a commitment to provide the required support and services. Windstream cannot agree to obtain the State's consent prior to making internal personnel decisions; however, Windstream shall use commercially reasonable efforts to minimize any disruption to the State in the event an account change is required. If the State has a lawful objection to personnel assigned to their account, notification should be sent to the VP of account development through the State's dedicated Windstream contact, and Windstream agrees to then work in good faith with the State to resolve the issue.</i></p>

It is agreed that the Contractor is an independent contractor and that nothing contained herein is intended or should be construed as creating or establishing a relationship of employment, agency, or a partnership.

The Contractor is solely responsible for fulfilling the contract. The Contractor or the Contractor's representative shall be the sole point of contact regarding all contractual matters.

The Contractor shall secure, at its own expense, all personnel required to perform the services under the contract. The personnel the Contractor uses to fulfill the contract shall have no contractual or other legal relationship with the State; they shall not be considered employees of the State and shall not be entitled to any compensation, rights or benefits from the State, including but not limited to, tenure rights, medical and hospital care, sick and vacation leave, severance pay, or retirement benefits.

By-name personnel commitments made in the Contractor's proposal shall not be changed without the prior written approval of the State. Replacement of these personnel, if approved by the State, shall be with personnel of equal or greater ability and qualifications.

All personnel assigned by the Contractor to the contract shall be employees of the Contractor or a subcontractor, and shall be fully qualified to perform the work required herein. Personnel employed by the Contractor or a subcontractor to fulfill the terms of the contract shall remain under the sole direction and control of the Contractor or the subcontractor respectively.

With respect to its employees, the Contractor agrees to be solely responsible for the following:

1. Any and all pay, benefits, and employment taxes and/or other payroll withholding;
2. Any and all vehicles used by the Contractor's employees, including all insurance required by state law;
3. Damages incurred by Contractor's employees within the scope of their duties under the contract;
4. Maintaining Workers' Compensation and health insurance that complies with state and federal law and submitting any reports on such insurance to the extent required by governing law; and
5. Determining the hours to be worked and the duties to be performed by the Contractor's employees.
6. All claims on behalf of any person arising out of employment or alleged employment (including without limit claims of discrimination alleged against the Contractor, its officers, agents, or subcontractors or subcontractor's employees)

If the Contractor intends to utilize any subcontractor, the subcontractor's level of effort, tasks, and time allocation should be clearly defined in the bidder's proposal. The Contractor shall agree that it will not utilize any subcontractors not specifically included in its proposal in the performance of the contract without the prior written authorization of the State.

The State reserves the right to require the Contractor to reassign or remove from the project any Contractor or subcontractor employee.

Contractor shall insure that the terms and conditions contained in any contract with a subcontractor does not conflict with the terms and conditions of this contract.

The Contractor shall include a similar provision, for the protection of the State, in the contract with any Subcontractor engaged to perform work on this contract.

**B. EMPLOYEE WORK ELIGIBILITY STATUS**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
HM			

The Contractor is required and hereby agrees to use a federal immigration verification system to determine the work eligibility status of employees physically performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of an employee.

If the Contractor is an individual or sole proprietorship, the following applies:

1. The Contractor must complete the United States Citizenship Attestation Form, available on the Department of Administrative Services website at <http://das.nebraska.gov/materiel/purchasing.html>  
The completed United States Attestation Form should be submitted with the RFP response.
2. If the Contractor indicates on such attestation form that he or she is a qualified alien, the Contractor agrees to provide the US Citizenship and Immigration Services documentation required to verify the Contractor's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program.
3. The Contractor understands and agrees that lawful presence in the United States is required and the Contractor may be disqualified or the contract terminated if such lawful presence cannot be verified as required by Neb. Rev. Stat. §4-108.

**C. COMPLIANCE WITH CIVIL RIGHTS LAWS AND EQUAL OPPORTUNITY EMPLOYMENT / NONDISCRIMINATION (Statutory)**

The Contractor shall comply with all applicable local, state, and federal statutes and regulations regarding civil rights laws and equal opportunity employment. The Nebraska Fair Employment Practice Act prohibits Contractors of the State of Nebraska, and their Subcontractors, from discriminating against any employee or applicant for employment, with respect to hire, tenure, terms, conditions, compensation, or privileges of employment because of race, color, religion, sex, disability, marital status, or national origin (Neb. Rev. Stat. §48-1101 to 48-1125). The Contractor guarantees compliance with the Nebraska Fair Employment Practice Act, and breach of this provision shall be regarded as a material breach of contract. The Contractor shall insert a similar provision in all Subcontracts for services to be covered by any contract resulting from this RFP.

**D. COOPERATION WITH OTHER CONTRACTORS**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
HM			

Contractor may be required to work with or in close proximity to other contractors or individuals that may be working on same or different projects. The Contractor shall agree to cooperate with such other contractors or individuals, and shall not commit or permit any act which may interfere with the performance of work by any other contractor or individual. Contractor is not required to compromise Contractor's intellectual property or proprietary information unless expressly required to do so by this contract.

**E. PERMITS, REGULATIONS, LAWS**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
HM			

The contract price shall include the cost of all royalties, licenses, permits, and approvals, whether arising from patents, trademarks, copyrights or otherwise, that are in any way involved in the contract. The Contractor shall obtain and pay for all royalties, licenses, and permits, and approvals necessary for the execution of the contract. The Contractor must guarantee that it has the full legal right to the materials, supplies, equipment, software, and other items used to execute this contract.

**F. OWNERSHIP OF INFORMATION AND DATA / DELIVERABLES**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
HM			<i>Windstream has read and understands, however, with the understanding that any service(s) or work performed or developed under this contract is not "work made for hire" and does not apply to the services being contemplated herein. For the avoidance of doubt, the developing party shall retain complete ownership to any resulting intellectual property.</i>

The State shall have the unlimited right to publish, duplicate, use, and disclose all information and data developed or obtained by the Contractor on behalf of the State pursuant to this contract.

The State shall own and hold exclusive title to any deliverable developed as a result of this contract. Contractor shall have no ownership interest or title, and shall not patent, license, or copyright, duplicate, transfer, sell, or exchange, the design, specifications, concept, or deliverable.

**G. INSURANCE REQUIREMENTS**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
HM			

The Contractor shall throughout the term of the contract maintain insurance as specified herein and provide the State a current Certificate of Insurance/Acord Form (COI) verifying the coverage. The Contractor shall not commence work on the contract until the insurance is in place. If Contractor subcontracts any portion of the Contract the Contractor must, throughout the term of the contract, either:

1. Provide equivalent insurance for each subcontractor and provide a COI verifying the coverage for the subcontractor;
2. Require each subcontractor to have equivalent insurance and provide written notice to the State that the Contractor has verified that each subcontractor has the required coverage; or,
3. Provide the State with copies of each subcontractor's Certificate of Insurance evidencing the required coverage.

The Contractor shall not allow any Subcontractor to commence work until the Subcontractor has equivalent insurance. The failure of the State to require a COI, or the failure of the Contractor to provide a COI or require subcontractor insurance shall not limit, relieve, or decrease the liability of the Contractor hereunder.

In the event that any policy written on a claims-made basis terminates or is canceled during the term of the contract or within one (1) years of termination or expiration of the contract, the contractor shall obtain an extended discovery or reporting period, or a new insurance policy, providing coverage required by this contract for the term of the contract and one (1) years following termination or expiration of the contract.



If by the terms of any insurance a mandatory deductible is required, or if the Contractor elects to increase the mandatory deductible amount, the Contractor shall be responsible for payment of the amount of the deductible in the event of a paid claim.

Notwithstanding any other clause in this Contract, the State may recover up to the liability limits of the insurance policies required herein.

**1. WORKERS' COMPENSATION INSURANCE**

The Contractor shall take out and maintain during the life of this contract the statutory Workers' Compensation and Employer's Liability Insurance for all of the contractors' employees to be engaged in work on the project under this contract and, in case any such work is sublet, the Contractor shall require the Subcontractor similarly to provide Worker's Compensation and Employer's Liability Insurance for all of the Subcontractor's employees to be engaged in such work. This policy shall be written to meet the statutory requirements for the state in which the work is to be performed, including Occupational Disease. **The policy shall include a waiver of subrogation in favor of the State. The COI shall contain the mandatory COI subrogation waiver language found hereinafter.** The amounts of such insurance shall not be less than the limits stated hereinafter. For employees working in the State of Nebraska, the policy must be written by an entity authorized by the State of Nebraska Department of Insurance to write Workers' Compensation and Employer's Liability Insurance for Nebraska employees.

**2. COMMERCIAL GENERAL LIABILITY INSURANCE AND COMMERCIAL AUTOMOBILE LIABILITY INSURANCE**

The Contractor shall take out and maintain during the life of this contract such Commercial General Liability Insurance and Commercial Automobile Liability Insurance as shall protect Contractor and any Subcontractor performing work covered by this contract from claims for damages for bodily injury, including death, as well as from claims for property damage, which may arise from operations under this contract, whether such operation be by the Contractor or by any Subcontractor or by anyone directly or indirectly employed by either of them, and the amounts of such insurance shall not be less than limits stated hereinafter.

The Commercial General Liability Insurance shall be written on an **occurrence basis**, and provide Premises/Operations, Products/Completed Operations, Independent Contractors, Personal Injury, and Contractual Liability coverage. **The policy shall include the State, and others as required by the contract documents, as Additional Insured(s). This policy shall be primary, and any insurance or self-insurance carried by the State shall be considered secondary and non-contributory. The COI shall contain the mandatory COI liability waiver language found hereinafter.** The Commercial Automobile Liability Insurance shall be written to cover all Owned, Non-owned, and Hired vehicles.

<b>REQUIRED INSURANCE COVERAGE</b>	
<b>COMMERCIAL GENERAL LIABILITY</b>	
General Aggregate	\$2,000,000
Products/Completed Operations Aggregate	\$2,000,000
Personal/Advertising Injury	\$1,000,000 per occurrence
Bodily Injury/Property Damage	\$1,000,000 per occurrence
Medical Payments	\$10,000 any one person
Damage to Rented Premises (Fire)	\$300,000 each occurrence
Contractual	Included
XCU Liability (Explosion, Collapse, and Underground Damage)	Included
Independent Contractors	Included
Abuse & Molestation	Included
<i>If higher limits are required, the Umbrella/Excess Liability limits are allowed to satisfy the higher limit.</i>	
<b>WORKER'S COMPENSATION</b>	
Employers Liability Limits	\$500K/\$500K/\$500K
Statutory Limits- All States	Statutory - State of Nebraska
USL&H Endorsement	Statutory
Voluntary Compensation	Statutory
<b>COMMERCIAL AUTOMOBILE LIABILITY</b>	
Bodily Injury/Property Damage	\$1,000,000 combined single limit
Include All Owned, Hired & Non-Owned Automobile liability	Included
Motor Carrier Act Endorsement	Where Applicable
<b>UMBRELLA/EXCESS LIABILITY</b>	
Over Primary Insurance	\$5,000,000 per occurrence
<b>MANDATORY COI SUBROGATION WAIVER LANGUAGE</b>	
"Workers' Compensation policy shall include a waiver of subrogation in favor of the State of Nebraska."	
<b>MANDATORY COI LIABILITY WAIVER LANGUAGE</b>	
"Commercial General Liability & Commercial Automobile Liability policies shall name the State of Nebraska as an Additional Insured and the policies shall be primary and any insurance or self-insurance carried by the State shall be considered secondary and non-contributory as additionally insured."	

If the mandatory COI subrogation waiver language or mandatory COI liability waiver language on the COI states that the waiver is subject to, condition upon, or otherwise limit by the insurance policy, a copy of the relevant sections of the policy must be submitted with the COI so the State can review the limitations imposed by the insurance policy.

### 3. EVIDENCE OF COVERAGE

The Contractor shall furnish the Contract Manager, with a certificate of insurance coverage complying with the above requirements prior to beginning work at:

Office of the Chief Information Officer  
 Attn: Contract Manager  
 501 South 14<sup>th</sup> Street  
 Lincoln, NE 68508

These certificates or the cover sheet shall reference the RFP number, and the certificates shall include the name of the company, policy numbers, effective dates, dates of expiration, and amounts and types of coverage afforded. If the State is damaged by the failure of the Contractor to maintain such insurance, then the Contractor shall be responsible for all reasonable costs properly attributable thereto.

Reasonable notice of cancellation of any required insurance policy must be submitted to the contract manager as listed above when issued and a new coverage binder shall be submitted immediately to ensure no break in coverage.

**4. DEVIATIONS**

The insurance requirements are subject to limited negotiation. Negotiation typically includes, but is not necessarily limited to, the correct type of coverage, necessity for Workers' Compensation, and the type of automobile coverage carried by the Contractor.

**H. ANTITRUST**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
HM			

The Contractor hereby assigns to the State any and all claims for overcharges as to goods and/or services provided in connection with this contract resulting from antitrust violations which arise under antitrust laws of the United States and the antitrust laws of the State.

**I. CONFLICT OF INTEREST**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
HM			

By submitting a proposal, bidder certifies that there does not now exist a relationship between the bidder and any person or entity which is or gives the appearance of a conflict of interest related to this RFP or project.

The bidder certifies that it shall not take any action or acquire any interest, either directly or indirectly, which will conflict in any manner or degree with the performance of its services hereunder or which creates an actual or an appearance of conflict of interest.

The bidder certifies that it will not knowingly employ any individual known by bidder to have a conflict of interest.

The Parties shall not knowingly, for a period of two years after execution of the contract, recruit or employ any employee or agent of the other Party who has worked on the RFP or project, or who had any influence on decisions affecting the RFP or project.

**J. STATE PROPERTY**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
HM			

The Contractor shall be responsible for the proper care and custody of any State-owned property which is furnished for the Contractor's use during the performance of the contract. The Contractor shall reimburse the State for any loss or damage of such property; normal wear and tear is expected.

**K. SITE RULES AND REGULATIONS**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
HM			

The Contractor shall use its best efforts to ensure that its employees, agents, and Subcontractors comply with site rules and regulations while on State premises. If the Contractor must perform on-site work outside of the daily operational hours set forth by the State, it must make arrangements with the State to ensure access to the facility and the equipment has been arranged. No additional payment will be made by the State on the basis of lack of access, unless the State fails to provide access as agreed to in writing between the State and the Contractor.

**L. ADVERTISING**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
HM			

The Contractor agrees not to refer to the contract award in advertising in such a manner as to state or imply that the company or its services are endorsed or preferred by the State. Any publicity releases pertaining to the project shall not be issued without prior written approval from the State.

**M. NEBRASKA TECHNOLOGY ACCESS STANDARDS (Statutory)**

Contractor shall review the Nebraska Technology Access Standards, found at <http://nitc.nebraska.gov/standards/2-201.html> and ensure that products and/or services provided under the contract are in compliance or will comply with the applicable standards to the greatest degree possible. In the event such standards change during the Contractor's performance, the State may create an amendment to the contract to request the contract comply with the changed standard at a cost mutually acceptable to the parties.  
*Windstream has read and complies.*

**N. DISASTER RECOVERY/BACK UP PLAN**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
HM			

The Contractor shall have a disaster recovery and back-up plan, of which a copy should be provided upon request to the State, which includes, but is not limited to equipment, personnel, facilities, and transportation, in order to continue services as specified under the specifications in the contract in the event of a disaster.

**O. DRUG POLICY**

<b>Accept (Initial)</b>	<b>Reject (Initial)</b>	<b>Reject &amp; Provide Alternative within RFP Response (Initial)</b>	<b>NOTES/COMMENTS:</b>
HM			

Contractor certifies it maintains a drug free work place environment to ensure worker safety and workplace integrity. Contractor agrees to provide a copy of its drug free workplace policy at any time upon request by the State.



**IV. PAYMENT**

**A. PROHIBITION AGAINST ADVANCE PAYMENT (Statutory)**

Payments shall not be made until contractual deliverable(s) are received and accepted by the State.

**B. TAXES (Statutory)**

The State is not required to pay taxes and assumes no such liability as a result of this solicitation. Any property tax payable on the Contractor's equipment which may be installed in a state-owned facility is the responsibility of the Contractor.

**C. INVOICES**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
HM			<i>All quotes, rates and prices are exclusive of any and all taxes. Upon State of Nebraska's presentation of a proper tax exemption certificate as authorized or required by statute or regulation of the jurisdiction providing said tax exemption, Windstream will exempt State of Nebraska from the applicable sales tax to the extent warranted by the exemption certificate. Failure to timely provide said certificate will result in no exemption being available to State of Nebraska for any period prior to the date that State of Nebraska presents a valid certificate. Further, State of Nebraska is responsible for taxes not subject to the exemption, surcharges, fees, and assessments that apply to the sale and use of the services, including how those may change in the future and even if not identified in Windstream's pricing proposal.</i>

Invoices for payments must be submitted by the Contractor as described in Section V., N. Billing with sufficient detail to support payment. Invoices for the high speed transport service will be issued to the entity being served by such services. The terms and conditions included in the Contractor's invoice shall be deemed to be solely for the convenience of the parties. No terms or conditions of any such invoice shall be binding upon the State, and no action by the State, including without limitation the payment of any such invoice in whole or in part, shall be construed as binding or estopping the State with respect to any such term or condition, unless the invoice term or condition has been previously agreed to by the State as an amendment to the contract.

**D. INSPECTION AND APPROVAL**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
HM			

Final inspection and approval of all work required under the contract shall be performed by the designated State officials.

The State and/or its authorized representatives shall have the right to enter any premises where the Contractor or Subcontractor duties under the contract are being performed, and to inspect, monitor or otherwise evaluate the work being performed. All inspections and evaluations shall be at reasonable times and in a manner that will not unreasonably delay work.

**E. PAYMENT**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
HM			

State or Network Nebraska Participants will render payment to Contractor when the terms and conditions of the contract and specifications have been satisfactorily completed on the part of the Contractor as solely determined by the State. (Neb. Rev. Stat. Section 73-506(1)) Payment will be made by the responsible agency in compliance with the State of Nebraska Prompt Payment Act (See Neb. Rev. Stat. §81-2401 through 81-2408). The State may require the Contractor to accept payment by electronic means such as ACH deposit. In no event shall the State be responsible or liable to pay for any services provided by the Contractor prior to the Effective Date of the contract, and the Contractor hereby waives any claim or cause of action for any such services.

**F. LATE PAYMENT (Statutory)**

The Contractor may charge the responsible agency interest for late payment in compliance with the State of Nebraska Prompt Payment Act (See Neb. Rev. Stat. §81-2401 through 81-2408).

*Windstream has read and complies.*

**G. SUBJECT TO FUNDING / FUNDING OUT CLAUSE FOR LOSS OF APPROPRIATIONS**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
HM			

The State's obligation to pay amounts due on the Contract for a fiscal year following the current fiscal year is contingent upon legislative appropriation of funds. Should said funds not be appropriated, the State may terminate the contract with respect to those payments for the fiscal year(s) for which such funds are not appropriated. The State will give the Contractor written notice thirty (30) calendar days prior to the effective date of termination. All obligations of the State to make payments after the termination date will cease. The Contractor shall be entitled to receive just and equitable compensation for any authorized work which has been satisfactorily completed as of the termination date. In no event shall the Contractor be paid for a loss of anticipated profit.

H. RIGHT TO AUDIT (First Paragraph is Statutory)

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
HM			

The State shall have the right to audit the Contractor's performance of this contract upon a 30 days' written notice. Contractor shall utilize generally accepted accounting principles, and shall maintain the accounting records, and other records and information relevant to the contract (Information) to enable the State to audit the contract. The State may audit and the Contractor shall maintain, the Information during the term of the contract and for a period of five (5) years after the completion of this contract or until all issues or litigation are resolved, whichever is later. The Contractor shall make the Information available to the State at Contractor's place of business or a location acceptable to both Parties during normal business hours. If this is not practical or the Contractor so elects, the Contractor may provide electronic or paper copies of the Information. The State reserves the right to examine, make copies of, and take notes on any Information relevant to this contract, regardless of the form or the Information, how it is stored, or who possesses the Information. Under no circumstance will the Contractor be required to create or maintain documents not kept in the ordinary course of contractor's business operations, nor will contractor be required to disclose any information, including but not limited to product cost data, which is confidential or proprietary to contractor.

*Windstream has read and understands.*

The Parties shall pay their own costs of the audit unless the audit finds a previously undisclosed overpayment by the State. If a previously undisclosed overpayment exceeds one-half of one percent (.5%) of the total contract billings, or if fraud, material misrepresentations, or non-performance is discovered on the part of the Contractor, the Contractor shall reimburse the State for the total costs of the audit. Overpayments and audit costs owed to the State shall be paid within ninety days of written notice of the claim. The Contractor agrees to correct any material weaknesses or condition found as a result of the audit.

*Windstream understands and makes a qualified acceptance in that, while Windstream has no objection to independent audit of documentation related services provided by Windstream to enable verification of all invoices, charges and expenses paid by the State for such services, Windstream requires that any such audits (i) are subject to the State and/or the State's third party designated auditor executing a non-disclosure agreement provided by Windstream with respect to the use and disclosure of such documentation, (ii) may be conducted no more than once a year during Windstream's normal business hours, (iii) are preceded by written notice from the State at least thirty (30) days prior to the date of the proposed audit, and (iv) are paid for by the State. Windstream shall retain all audited records in accordance with the terms of Windstream's record retention policy.*

**PROJECT DESCRIPTION AND SCOPE OF WORK**

The bidder should provide the following information in response to this RFP.

The objective of this RFP is to update and expand the network that is currently in place to serve the eligible education entities of Network Nebraska as defined by Neb. Rev. Stat. 79-1201.01(3). Network Nebraska is defined in Neb. Rev. Stat. 86-5,100 (LB1208, 2006). Network Nebraska shall consist of contractual agreements with providers to meet the demand of state agencies, local governments, and educational entities. Such network shall provide access to a reliable and affordable infrastructure capable of carrying a spectrum of services and applications, including distance education across the state. Only E-rate eligible entities will apply for E-rate discounts.

The State of Nebraska bids these services on behalf of numerous E-rate eligible education entities across the State. Each entity must be allowed a reasonable duration to hold a public meeting of its administrative board to approve its purchase from the resulting state contract(s) and to file its E-rate Form 471 prior to the national 2018 E-rate deadline and each succeeding year to be established by the USAC. Once Intents to Contract have been announced by the State, each contractor must work expeditiously toward a signed contract to allow enough time for the local approval process. Failure to reach a signed contract with the State prior to Friday, March 2, 2018, may risk negation of purchases for the July 1, 2018 through June 30, 2019 performance year.

**I. E-RATE**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
HM			

The originating FCC Form 470 number for this RFP is 180014842.

Each Bidder must have a Service Provider's Form 498 I.D. # (formerly SPIN) from the Universal Service Administrative Company and be eligible to participate in the Universal Service Fund discount program for telecommunications services provided to the E-rate eligible entities. Bidder agrees to provide any discounts, including any accrued credits, for which the entity is eligible under the Universal Service Fund for school telecommunications services. Bidder will, at its expense, prepare and file all carrier documents and reports required for the eligible entities to receive the benefit of such discounts and credits. The Bidder's Service Provider's Form 498 I.D. # (formerly SPIN) issued to bidder by the Universal Service Administrative Company must be included in the responding bid.

As required by federal law, providers of eligible services must comply with the Lowest Corresponding Price (LCP) rule:

1. **47 CFR § 54.500(f)**  
Lowest corresponding price is the lowest price that a service provider charges to non-residential customers who are similarly situated to a particular school, library, or library consortium for similar services. ("Similarly situated" means the "geographic service area" in which a service provider is seeking to serve customers with any of its E-rate services.)
2. **47 CFR § 54.511(b)**  
Providers of eligible services shall not charge schools, school districts, libraries, library consortia, or consortia including any of these entities a price above the lowest corresponding price for supported services, unless the Federal Communications Commission, with respect to interstate services or the state commission with respect to intrastate services, finds that the lowest corresponding price is not compensatory.

The Billed Entity Applicant Reimbursement (BEAR) FCC Form 472 is filed by the applicant and approved by the service provider after the applicant has paid for services in full. The Service Provider Invoice (SPI) FCC Form 474 is filed by the service provider after the applicant has been billed for the non-discount portion of the cost of eligible services. Note: Applicants can choose their method of invoicing; service providers cannot force applicants to use a particular method.

As required by USAC policy, the contractor must retain documents from the bidding process through ten (10) years past the last date of service. Documents may be retained in electronic format or paper. The document list includes, but is not limited to, copies of bids, signed contracts, proof of service delivery, invoices, documentation of any service down time, and any other document retention required by the FCC.



The bidder should provide the following information in response to this Request for Proposal and must provide prior to contract award.

Service Provider's Form 498 I.D. # (formerly SPIN): 143030766

#### INDIVIDUAL SITES AGGREGATING AT THE FOLLOWING NETWORK NEBRASKA CORE LOCATIONS

This RFP is for Ethernet connectivity from Network Nebraska participant locations to one or more of the listed core aggregate locations (below). An award will be made for each participant location to a single core aggregation location based on lowest cost.

1. Omaha–Peter Kiewit Institute, 1110 S. 67<sup>th</sup> Street
2. Omaha-Nebraska Data Center, 1623 Farnam Street
3. Lincoln-Nebraska Hall, 901 N. 17<sup>th</sup> Street
4. Grand Island-College Park, 3180 W. Hwy 34
5. Scottsbluff-Panhandle Research Center, 4502 Avenue I

#### IMPORTANT NOTES:

- a. All services listed above will be offered to Schools and Libraries and therefore must meet E-rate guidelines for eligible services, products, service providers and contracts.
- b. All State agencies, the University of Nebraska, political subdivisions and other “eligible participants” will be allowed to purchase off this contract.
- c. There is no guarantee that any or all the institutions listed will purchase any or all of the services requested in this RFP.
- d. Network Nebraska has five (5) major network node locations that are used as “core” aggregation points:
  - i. Peter Kiewit Institute  
University of Nebraska – Omaha  
1110 South 67th Street, Room 166  
Omaha, Nebraska 68182-0694
  - ii. NDC Carrier “Hotel”/NCC Co-location Centers, LLC.  
1623 Farnam Street, Suite 300A  
Omaha, NE 68102
  - iii. University of Nebraska Data Center  
Room 230 Nebraska Hall  
University of Nebraska-Lincoln  
901 North 17th Street  
Lincoln, Nebraska 68588-0521
  - iv. College Park  
3180 W Hwy 34. Room 208.5  
Grand Island, NE 68801-7279
  - v. Panhandle Research and Extension Center  
4502 Avenue I  
Scottsbluff, NE 69361-4939



**J. PROJECT OVERVIEW**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
HM			

The objective of this RFP is to identify Contractor(s) who will design, develop, and implement high-speed data connectivity that will meet the current and future telecommunications needs of eligible participants over the term of the contract. Each bidder will provide cost-effective, scalable and flexible high speed data transport services that can connect eligible entities listed in Appendix A to Network Nebraska. The bidder may bid on one or more of the eligible entities listed in Appendix A. Each site/service will be reviewed individually. When bidding Appendix A locations, the Bidder must bid all costs to provide connectivity from the entity listed to at least one of the Network Nebraska aggregation points listed in the Appendix A.

For Appendix A, the Bidder will include transport from the identified location with connectivity through the carriers' cloud and ending at one of the identified aggregation locations. Connectivity back to the aggregation location must have the capacity to support all eligible entities bid transmitting at full capacity at any given time. A one (1) Gigabit Ethernet interface physical hand-off is required as a minimum for the connection at the identified aggregation locations. The cost for connectivity back to the aggregation location MUST be figured into the MRC (monthly recurring charge) for the individual sites being bid. The State of Nebraska will not accept separate costs for the aggregation ports that connect all of the eligible entities to Network Nebraska. All co-location data center cross-connect and fiber path costs needed to provide the physical interface hand-over to Network Nebraska equipment will be the responsibility of the bidder. A co-location space will be provided at the aggregation locations for the Contractor. Eligible entities may include colleges, universities, state government, political subdivisions and K-12 institutions. The network design must accommodate the full implementation of Network Nebraska connections including a statewide, multi-purpose backbone.

All proposals must meet the technical requirements as stated in the RFP. The State requires the Bidder to bid a multi-purpose transport connection to interconnect the listed institutions along with the corresponding services that considers present, as well as future, state-of-the-art technologies.

**K. PROJECT ENVIRONMENT**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
HM			

The current project environment consists of a multi-provider, layer-2 high-speed Ethernet network. Multiple provider clouds connect to the various eligible entities. Providers hand off eligible entities to Network Nebraska at one of the identified core locations and the Network Nebraska MPLS backbone interconnects Nebraska educational entities and provides transport to at least two Internet egress points.

**L. PROJECT REQUIREMENTS**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
		HM	<i>Windstream cannot agree to pay liquidated damages as outlined in this provision. Please refer to Windstream's response to Section II.L. of this RFP.</i>

The K-12 schools and educational service units that require this service must be converted during the month of July 2018, or if ordered in Year 2, 3, or 4, the month of July for each succeeding year. The circuits should be installed and tested by the first Friday in August 2018 and each succeeding year, however neither the State nor the participating eligible entities can incur charges on these circuits until after July 1 of the implementation year due to E-rate. The cutover to the customer must be complete by the first Friday in August 2018 and each succeeding year or incur liquidated damages (see Section II, L. Liquidated Damages). Existing service must remain active until the final cutover (see Section V, E. Transition Requirement). The State of Nebraska is cognizant of a growing demand for bandwidth. The State is interested in identifying contractor(s) who will meet the current and future telecommunications needs of eligible participants over the term of the contract. The contractor(s) will provide a cost-effective, scalable, and flexible transport service that will be able to meet the demands of the network participants and it is expected the services would meet any future needs of other eligible participants as deemed appropriate. Bidders shall identify services that are a normal part of their offering without additional fees.

**M. TRANSITION REQUIREMENT**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
HM			

Upon award of the contract to a new vendor, the Contractor shall continue providing any part or all of the services in accordance with the terms and conditions, requirements and specifications of the contract for a period not to exceed 90 calendar days after the expiration or termination of the contract for a price not to exceed those prices set forth in the contract.

**N. TECHNOLOGY REFRESH**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
		HM	<i>Windstream acknowledges the State's substantial interest in state-of-the-art technologies that offer improved performance and more efficient ways to meet the State's telecommunications requirements. Windstream and the State hereby agree that, any time after the first twelve (12) months of the Term, the State shall have the option of converting Services to another Windstream product or technology, provided that the State agrees to enter into a new Agreement for a new Term equal to or greater than the original Term. This provision shall not include a change involving disconnection of current Ethernet-based circuits, but such circuits may be re-provisioned for use for conversion to a new technology with Windstream.</i>

The State and the Contractor will work in partnership to ensure the services provided under this contract will be continuously refreshed as technologies evolve and user needs grow. The Chief Information Officer, in conjunction with, or on behalf of, all other participants, will assume the primary role in seeking and proposing new technologies and enhancements. This technology refreshment clause will be a required condition of the contract.

The State and the Contractor may conduct an annual review of the contract to review service offerings and pricing. These reviews may result in expanding the services offered by the Contractor to include new pricing elements or

pricing modifications associated with improved economies of scale and/or technological innovations. Changes in the industry related to regulation and/or pricing mechanisms may also result in modification of rates identified in the services offered by the Contractor. These reviews will commence at the request of the State.

**O. SCOPE OF WORK**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
HM			

The Contractor shall design, develop and implement a high-speed, IP-based, layer-2, Ethernet, wide area network to interconnect eligible entities as requested. The network interface to the customer's CPE must physically be Ethernet with the capability to provide multiple virtual Ethernet interfaces via 802.1Q VLAN tagging.

The eligible entities' network connections must be bid according to the bandwidth ranges and to the acceptable aggregation sites as stipulated in Appendix A. The conversion will be performed over the summer of 2018 and each succeeding year and must be as transparent as possible with completion by the first Friday in August 2018 and each succeeding year.

For Appendix A, each connection that is bid must be connected from the site address identified to the aggregation site address. The core aggregation site connectivity MUST have the capacity to support all eligible entities connectivity to the core site transmitting at full purchased capacity over a single 1 Gigabit Ethernet interface or over a single 10 Gigabit Ethernet interface; multiple interfaces are allowed only as a redundant path for the primary connectivity. The new connectivity capacity can be aggregated at an existing "core" site interface as long as overall capacity of the core interface is not exceeded due to the introduction of the additional remote site capacity. The State will not allow a separate cost for this "aggregation connection", that cost must be included as part of the individual site or sites being bid.

Appendix A includes site choices that are "grayed out". The State will only accept bids for the bandwidths cited between the locations and the core aggregation sites that are not "grayed out". The Bidder can choose to give a price to bring the eligible entity back to any one or more of the eligible core destination locations except locations that are "grayed out" within the Appendix. For locations where multiple speeds have been requested, the State will add all bandwidths bid to arrive at a total overall site cost that will be the basis for a lowest cost award.

All bids for a single service location to multiple aggregation points will be compared against each other. Each service location will only have one award and the State will award the lowest cost bid from that service location to one of the identified locations that meets the technical requirements as stated in the RFP. If a bidder bids identical pricing for a particular site to two or more core locations, and is awarded the site, the Network Nebraska engineers will select one of the core locations for the circuit.

The support of end-to-end customer VLANs (C-VLANs) is REQUIRED. Support can be provided either by using the IEEE 802.1ad provider bridging standard (also referred to as QinQ tunneling), or by directly bridging the customer VLANs from end-to-end, without C-VLAN modification and without provider interaction. For example; as a customer VLAN tagged packet travels from a customer to the service provider, a customer-specific 802.1Q tag is added by the provider to each packet. This additional tag is used to segregate traffic into service-provider-defined service VLANs (S-VLANs). The original customer 802.1Q tag of the packet remains and is transmitted transparently, passing through the service provider's network. The Service Provider VLAN (S-VLAN) tag is added on egress for incoming packets, optionally including untagged packets. As the packet leaves the S-VLAN in the downstream direction, the service provider 802.1Q tag is removed, leaving the original customer tag on the packet.

Eligible entities that select this service will purchase their own network equipment and video equipment. The Contractor will need to work closely with these eligible entities (school districts, educational service units; etc.) to ensure that the appropriate network equipment and video equipment delivery is coordinated and ready for installation at the time the network conversion takes place.

This connectivity will transmit Internet, distance learning, and data transport between the eligible entities of Network Nebraska.

Appendix A additionally identifies the potential Network Nebraska Locations where transport can be handed off for each location bid.

**P. TECHNICAL REQUIREMENTS**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
HM			

The bidder must provide a network design in which:

1. Layer 2 (802.1q/802.1p) VLAN and QoS tags must be allowed through the provided network connection and must remain unchanged by the provider.
2. Ethernet frames containing a 1500-byte payload (for a total minimum supported Ethernet frame size of 1542 bytes), must be allowed and flow as a single complete frame without any fragmentation by the provider's equipment. Reference: [http://en.wikipedia.org/wiki/Ethernet\\_frame](http://en.wikipedia.org/wiki/Ethernet_frame)
3. Layer 2 performance must be adequate to support jitter and latency sensitive applications (i.e. video over IP).
4. The network interface to the customer's CPE must be an Ethernet-based handover connection. The connection must support either 802.1q tagged frames or must support 802.1ad provider bridging. Network Nebraska WILL NOT coordinate customer VLAN tags with the provider; the provider must either tunnel the customer VLAN tags through the provider network or must leave the customer VLAN tags unchanged from end-to-end.
5. Allow participating institutions to manage their own IP address space and routing.
6. Performance metrics on contracted circuits must be provided to Network Nebraska staff within 24 hours of request.
7. Network Nebraska must be notified within 24 hours of performing QoS changes, network monitoring changes or any other network changes that may have a positive or negative effect on performance as outlined in the RFP.
8. The provided connection must be tested to prove performance before it will be considered complete and usable. Testing according to ITU-T Y.156sam or RFC-2544 for performance, frame-loss and latency is preferred but detailed performance, frame-loss, latency and QOS test disclosure is also acceptable. Testing must validate the minimum frame size specified is supported.
9. Every connection's receive AND transmit capacity must meet or exceed the bandwidth amount that is bid. Testing must validate that capacity meets the amount purchased before the connection will be considered complete and usable. If proof of end-to-end circuit capacity and testing is not provided, circuit acceptance will be delayed until networking personnel can verify that the circuit meets requirements.

**Q. PROJECT PLANNING AND MANAGEMENT**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
HM			

The State of Nebraska acknowledges that project management and implementation procedures will require alignment and adjustment of work processes for the Contractor's organizations, the educational entities, and the State. The alignment will be part of the contract finalization; however the bidder will respond to this RFP assuming the following responsibilities.



**1. STATE OF NEBRASKA AND EDUCATIONAL ENTITY MANAGEMENT STAFF**

The State of Nebraska and educational entity management staff will:

- a. Provide overall project direction and management.
- b. Review and approve all project plans and deliverables.
- c. Ensure that technical assistance and support are provided during the Contractor's implementation phases and ongoing upgrade design of this project.
- d. Establish project management guidelines by meeting with the Contractor's project management team as needed.
- e. Review and approve all project specific documentation standards and requirements for the various types of reports, technical/procedural documentation, and management materials that will be produced during the project.
- f. Coordinate other resources as needed to support the implementation process.
- g. Provide on-site assistance, as needed during the implementation phases of the project.
- h. Assist the Contractor in identifying eligible participants in the network as well as establishing guidelines with the Contractor for ordering, moving, adding or changing services.

**2. CONTRACTOR**

The Contractor will:

- a. Coordinate and administer the requirements of the network service(s) that are proposed.
- b. Maintain toll free lines for voice and facsimile from the State to operational facilities for order entry and after hours help desk. Installation and maintenance may be subcontracted to one or more third parties to adequately cover the locations of the core transport backbone sites and to provide for rapid response in the event of a service disruption. The Contractor will provide information regarding intent to maintain its facilities after project implementation has been completed.
- c. Maintain toll free voice lines for after-hours helpdesk support for the duration of the contract. This point of contact will serve as the single point of contact for all services and equipment provided by the contract, including services and equipment subcontracted to another vendor.
- d. Provide upon request, technical information, graphs, charts, maps, photographs, block diagrams, operating manuals, and other information that will clearly show that the services offered are in full compliance with the minimum requirements of this RFP. In the event that the documentation furnished is at variance with the requirements of this RFP, the Contractor will explain in detail, with full engineering support data, the reasons why the proposed services meet the RFP requirements and should not be considered an exception.
- e. Provide upon request, detailed network diagrams and drawings that clearly illustrate the network configuration and the functional relationships, as they are associated with the proposed services. These network diagrams will be available to the State electronically in a format agreed upon by the Contractor and the State to allow for import into various computer programs.
- f. Provide upon request, basic technical specifications for each item of equipment included in the proposal. The information to be provided will be in the form of published specification sheets or other illustrative literature.

If the Contractor is working with other "last mile" telecommunication providers to create an end to end solution, the Contractor must provide the State with technical contacts for the "last mile" provider.

If the bidder intends to Subcontract any part of its performance hereunder, the bidder must provide:

- i. name, address, and telephone number of the Subcontractor(s);
- ii. specific tasks for each Subcontractor(s);
- iii. percentage of performance hours intended for each Subcontract; and
- iv. total percentage of Subcontractor(s) performance hours.

**R. SERVICE LEVEL GUARANTEES**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
HM			

This network must support production applications that require a high degree of reliability and must operate with little or no service disruptions for twenty-four (24) hours a day, seven (7) days a week. Contractor(s) must provide solutions with the necessary redundancy, backup systems, and/or other disaster avoidance and recovery capabilities to support these needs. Contractor(s) must have the necessary staff for the installation and maintenance of their network responsibilities and necessary staff to assist the State in its installation and maintenance of critical network services. Upon request, the contractor will provide an explanation of any redundancy that is available as part of the site/service that will assure the required availability of the services. The following performance specifications are required service level guarantees. The Contractor will conform to these service level agreements, which are to include details concerning restoration procedures and goals, escalation procedures, and non-conformance penalties

**S. SPECIFICATIONS**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
HM			

When planned network maintenance activities are conducted by the contractor which entails the risk of interrupting or diminishing service to Network Nebraska or its participants, the Network Nebraska Operation Center(s) must be notified at least three (3) business days in advance of the maintenance planned. Additionally, the contractor must agree to work with the Network Nebraska to find an alternate date and time of maintenance, if the proposed time would be particularly detrimental to Network Nebraska business needs. Mutually agreed upon maintenance activities are not considered a service violation and will not incur a service penalty.

The contractor must have in inventory the necessary spare equipment capable of restoring service in the event of contractor equipment failure. Maintenance contracts specifying next-day replacement or longer will not be considered an acceptable substitute for carrying inventory of appropriate replacement equipment.

The contractor must operate its own Network Operations Center(s) and provide a centralized trouble reporting and maintenance system that is staffed 24 hours a day, seven days a week. The contractor shall provide sufficient staff for peak and critical hours. The contractor shall provide Network Nebraska with a local and toll-free number for trouble reporting.

The contractor must respond to trouble reports within one (1) hour of notification. The Contractor must also provide an escalation procedure and contact list to be used for unresolved issues, including names, titles and phone numbers of contact persons in the escalation chain. Major service-affecting problems that are not resolved within two (2) hours of time after the notification of trouble shall constitute a prolonged outage and must be escalated.

Access to performance service metrics is required, with a preference toward live metrics

**T. IMPLEMENTATION PLAN**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
<i>HM</i>			<i>Please refer to Tab 05 Sample Outline in the RFP response.</i>

The Bidder should submit with their proposal response, and must provide prior to award, an implementation plan for the deployment of the services, that reflect the services to be included in the associated contract. The plan must clearly represent the constraints of time, scope and cost. At a minimum the implementation plan must include the project approach, scope of work, work breakdown structure (WBS), schedule, milestones, deliverables, risk assessment, mitigation strategies, resource planning and communication plans.

The Contractor will adhere to the implementation plan for deployment of services submitted as a requirement of this RFP.

**U. DEPLOYMENT STATUS REPORTS**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
<i>HM</i>			

The Contractor's designated project manager will provide weekly reports of the status of any deployment schedules to the State's designated project manager. Deployment status reports will provide weekly information related to the adherence to the deployment schedule identified in Section V. D. Project Requirements, including identification of issues affecting the deployment schedule, and recommended resolution(s) to any identified barriers to network deployment.

**V. BILLING**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
<i>HM</i>			

The State will provide detailed billing instructions for each order as placed. In some cases the billed entity will be a consolidated billing to the State in an electronic format. For E-rate eligible entities, the Contractor may be instructed to bill each entity directly to ensure that appropriate E-rate processing can be accomplished. The Contractor must comply with all applicable E-rate requirements. The State may request a copy or summary of billings to other entities. Billings for the Individual Sites High Speed WAN must comply with the following specific requirements:

1. Eligible participants must file contract orders for equipment or services under this section that specifies the number and location of sites.
2. The billing to all eligible participants in a region for services under this section must reflect a cost per Individual location.

**W. CERTIFICATION**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
HM			

The State requires that the Bidder be certificated or permitted by, or registered with, the Public Service Commission (PSC) to provide the services outlined in this Section of this RFP (Neb.Rev.Stat. 81-1120.19).

**X. COST SHEET INSTRUCTIONS**

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
HM			

Proposals will address the impact of normal growth, as well as planned and unplanned network expansion or service enhancement. All prices shall be proposed as an individual location/school cost on a recurring or non-recurring basis. **All bidder costs must be reflected in either the monthly recurring or non-recurring charges, or taxes and fees column as listed in the Appendix A. No additional charges will be accepted.** The State shall not be required to purchase any specific service or minimum quantities of network services. The quantities provided are for the sole purpose of assisting the Bidders in preparation of their proposals and for the State to consider the feasibility of the proposed network solutions. The State shall not be responsible for any cost that is not identified in the Bidder's cost proposal. The State will not consider bids that offer discounts based upon the number of network locations that join the network.

Please display costs in the format provided in the Appendix A. The bid prices listed must include the cost of doing business as indicated below. Provide a cost number in the appropriate cell.

1. **NETWORK EQUIPMENT AND HARDWARE COSTS**  
Network equipment and hardware (non-CPE) will be part of and included in the itemized circuit costs. Circuit costs will be bundled costs and must include all necessary components needed to utilize the circuit at the bandwidth bid.
2. **INSTALLATION COSTS**  
If non-recurring installation/set-up charges are applicable, these rates shall be delineated in the cost portion of the proposal. This cost for the circuit installation shall include all one-time costs associated with termination to the demarcation point from the network side and/or fees associated with interconnection to local exchange carriers.
  - a. All fees that would be incurred for a fully functioning end-to-end connection, whether recurring or non-recurring, must be included in the cost. All cross-connect, and facilities related charges that would be incurred to physically connect the circuit to Network Nebraska equipment on both ends must be included in the cost.
3. **SOFTWARE, WARRANTY, AND MAINTENANCE COSTS**  
The Bidder will include warranty and maintenance of the provided circuits in the service rates.
4. **QUANTITY**  
The State has the option of purchasing any quantity of services in any increment proposed. The State reserves the right to purchase any quantity of service. There will be no minimum or maximum quantities imposed as a result of any contract. All State agencies, the University of Nebraska, political subdivisions and other "eligible participants" will be allowed to purchase off this contract.



**5. PROPOSAL COST TABULATION**

The proposal cost will be tabulated with an intent to award made based on the monthly recurring costs multiplied by the applicable length of service in months (48), not to include extensions, plus the one-time non-recurring costs.

SAMPLE—Bidder 'A' will be compared to other bidders on School X based on overall cost of \$133,473.60 for 48 months.

Entity	Bandwidth	Bidder 'A' NRC	Bidder 'A' MRC	Bidder 'A' Monthly Taxes/Fees	Bidder 'A' 48-month Cost
School X	100Mbps	\$0	\$500	\$34.75	\$25,668.00
School X	200Mbps	\$0	\$600	\$41.70	\$30,801.60
School X	300Mbps	\$0	\$700	\$48.65	\$35,935.20
School X	400Mbps	\$0	\$800	\$55.60	\$41,068.80
Total					\$133,473.60

## V. COST PROPOSAL REQUIREMENTS

This section describes the requirements to be addressed by bidders in preparing the State's Cost Sheet. The bidder must use the State's Cost Sheet. The bidder should submit the State's Cost Sheet in accordance with Section I Submission of Proposal.

**THE STATE'S COST SHEET AND ANY OTHER COST DOCUMENT SUBMITTED WITH THE PROPOSAL SHALL NOT BE CONSIDERED CONFIDENTIAL OR PROPRIETARY AND IS CONSIDERED A PUBLIC RECORD IN THE STATE OF NEBRASKA AND WILL BE POSTED TO A PUBLIC WEBSITE.**

### A. COST SHEET

The bidder must include details in the State's Cost Sheet supporting any and all costs.

The State reserves the right to review all aspects of cost for reasonableness and to request clarification of any proposal where the cost component shows significant and unsupported deviation from industry standards or in areas where detailed pricing is required.

### B. PRICES

Prices quoted shall be net, including transportation and delivery charges fully prepaid by the bidder, F.O.B. destination named in the RFP. No additional charges will be allowed for packing, packages, or partial delivery costs. When an arithmetic error has been made in the extended total, the unit price will govern.

*Please refer to Tab 03 Appendix A Cost sheet in the RFP response.*

**Form A**  
**Bidder Contact Sheet**  
**Request for Proposal Number 5761 Z1**

Form A should be completed and submitted with each response to this RFP. This is intended to provide the State with information on the bidder's name and address, and the specific person(s) who are responsible for preparation of the bidder's response.

Preparation of Response Contact Information	
Bidder Name:	<i>Windstream Services, LLC, on behalf of itself and its Affiliates</i>
Bidder Address:	<i>1440 M Street Lincoln NE 68508-2591</i>
Contact Person & Title:	<i>Hollie Messinger Senior Account Executive</i>
E-mail Address:	<a href="mailto:hollie.messinger@windstream.com"><i>hollie.messinger@windstream.com</i></a>
Telephone Number (Office):	<i>402.437.7241</i>
Telephone Number (Cellular):	<i>402.437.7241</i>
Fax Number:	<i>402.436.3977</i>

Each bidder should also designate a specific contact person who will be responsible for responding to the State if any clarifications of the bidder's response should become necessary. This will also be the person who the State contacts to set up a presentation/demonstration, if required.

Communication with the State Contact Information	
Bidder Name:	<i>Windstream Services, LLC</i>
Bidder Address:	<i>1440 M Street, 6th Floor Lincoln, NE 68508</i>
Contact Person & Title:	<i>Dan Carsentsen</i>
E-mail Address:	<a href="mailto:daniel.carsentsen@windstream.com"><i>daniel.carsentsen@windstream.com</i></a>
Telephone Number (Office):	<i>402-437-7233</i>
Telephone Number (Cellular):	<i>402-730-8680</i>
Fax Number:	<i>402-436-3977</i>

**REQUEST FOR PROPOSAL FOR CONTRACTUAL SERVICES FORM**

**BIDDER MUST COMPLETE THE FOLLOWING**

By signing this Request for Proposal for Contractual Services form, the bidder guarantees compliance with the procedures stated in this Request for Proposal, and agrees to the terms and conditions unless otherwise indicated in writing and certifies that bidder maintains a drug free work place.

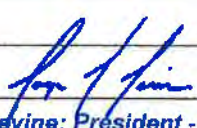
Per Nebraska's Transparency in Government Procurement Act, Neb. Rev Stat § 73-603 DAS is required to collect statistical information regarding the number of contracts awarded to Nebraska Contractors. This information is for statistical purposes only and will not be considered for contract award purposes.

X NEBRASKA CONTRACTOR AFFIDAVIT: Bidder hereby attests that bidder is a Nebraska Contractor. "Nebraska Contractor" shall mean any bidder who has maintained a bona fide place of business and at least one employee within this state for at least the six (6) months immediately preceding the posting date of this RFP.

N/A I hereby certify that I am a Resident disabled veteran or business located in a designated enterprise zone in accordance with Neb. Rev. Stat. § 73-107 and wish to have preference, if applicable, considered in the award of this contract.

N/A I hereby certify that I am a blind person licensed by the Commission for the Blind & Visually Impaired in accordance with Neb. Rev. Stat. §71-8611 and wish to have preference considered in the award of this contract.

**FORM MUST BE SIGNED USING AN INDELIBLE METHOD (NOT ELECTRONICALLY)**

FIRM:	<i>Windstream Services, LLC, on behalf of itself and its Affiliates</i>
COMPLETE ADDRESS:	<i>4001 Rodney Parham, Rd., Little Rock, AR 72212</i>
TELEPHONE NUMBER:	<i>501.748.7000</i>
FAX NUMBER:	<i>501.748.5590</i>
DATE:	<i>2/13/18</i>
SIGNATURE:	
TYPED NAME & TITLE OF SIGNER:	<i>Layne Levine; President - Cloud &amp; Connectivity</i>





FIRM NAME: Windstream

APPENDIX A

Contract #	USAC Billed Entity Number	EDU	BILLED ENTITY NAME FIBER SITE NAME	SEEKING	Non-recurring Cost - Grand Island College Park, 3180 W. Hwy 94	Monthly Recurring Cost-- Grand Island-College Park, 3180 W. Hwy 94	Monthly Taxes and Fees-- Grand Island-College Park, 3180 W. Hwy 94	Total 48-month Cost-- Grand Island College Park, 3180 W. Hwy 94	Non-recurring Cost - Lincoln-Nebraska Hall, 901 N. 17th	Monthly Recurring Cost--Lincoln- Nebraska Hall, 901 N. 17th	Monthly Taxes and Fees-- Lincoln- Nebraska Hall, 901 N. 17th	Total 48-month Cost-- Lincoln-Nebraska Hall, 901 N. 17th	Non-recurring Cost - Omaha-Peter Kiewit Institute, 1110 S. 67th	Monthly Recurring Cost-- Omaha- Peter Kiewit Institute, 1110 S. 67th	Monthly Taxes and Fees-- Omaha- Peter Kiewit Institute, 1110 S. 67th	Total 48-month Cost-- Omaha-Peter Kiewit Institute, 1110 S. 67th	Non-recurring Cost - Omaha-NDC, 1623 Farnam	Monthly Recurring Cost-- Omaha- NDC, 1623 Farnam	Monthly Taxes and Fees-- Omaha- NDC, 1623 Farnam	Total 48-month Cost--Omaha- NDC, 1623 Farnam	Non-recurring Cost - Scottsbluff- Panhandle Research Center, 4502 Ave I	Monthly Resurring Cost-- Scottsbluff- Panhandle Research Center, 4502 Ave I	Monthly Taxes and Fees-- Scottsbluff- Panhandle Research Center, 4502 Ave I	Total 48-month Cost--Scottsbluff- Panhandle Research Center, 4502 Ave I		
1	138477	7	K-12 CONNECTIONS TO NETWORK NEBRASKA COLUMBUS MIDDLE SCHOOL ROOM A134 2200 26TH STREET COLUMBUS, NE 68601 (402) 563-7000 X11517; Leonard Kwapioski PLATTE COUNTY	1 Gbps 2 Gbps 3 Gbps 4 Gbps 5 Gbps 6 Gbps 7 Gbps 8 Gbps 9 Gbps 10 Gbps																						
2	78431	3	CREIGHTON PREP HIGH SCHOOL 7400 WESTERN AVENUE OMAHA, NE 68134 (402) 510-4914; Jonathan Krainak DOUGLAS COUNTY	NEW SERVICE 1 Gbps 2 Gbps 3 Gbps 4 Gbps 5 Gbps 6 Gbps 7 Gbps 8 Gbps 9 Gbps 10 Gbps																						
3	16064135 17015831	8	ORCHARD MIDDLE SCHOOL 425 EAST 4TH STREET ORCHARD, NE 68764 (402) 893-2065; Dale Martin ANTELOPE COUNTY	50 Mbps 60 Mbps 70 Mbps 80 Mbps 90 Mbps 100 Mbps 150 Mbps 200 Mbps 250 Mbps 300 Mbps																						
4	138321	3	RONN WITT SUPPORT SERVICE CENTER 13737 INDUSTRIAL ROAD OMAHA, NE 68137 (402) 510-3903; John Fabry (402) 510-7619; Malcolm Chal DOUGLAS COUNTY	NEW SERVICE 3 Gbps 4 Gbps 5 Gbps 6 Gbps 7 Gbps 8 Gbps 9 Gbps 10 Gbps 11 Gbps 12 Gbps 13 Gbps 14 Gbps 15 Gbps																						
5	138271	3	PAPILLION LA VISTA ADMIN BUILDING 410 S WASHINGTON STREET, STE 101 PAPILLION, NE 68046 (402) 537-6200; Lucas Bingham SARPY COUNTY	NEW SERVICE 1 Gbps 2 Gbps 3 Gbps 4 Gbps 5 Gbps 6 Gbps 7 Gbps 8 Gbps 9 Gbps 10 Gbps																						
6	138802	10	ANSELMO-MERNA HIGH SCHOOL HWY 3 & EWING MERNA, NE 68859-0062 (308) 643-2224 - TINA LARSON CUSTER	100 Mbps 200 Mbps 300 Mbps 400 Mbps 500 Mbps 600 Mbps 700 Mbps 800 Mbps 900 Mbps 1 Gbps																						
7	138728	10	ANSLEY HIGH SCHOOL 1124 CAMERON ST ANSLEY, NE 68814-0370 (308) 935-1121; DAN SICH CUSTER	100 Mbps 200 Mbps 300 Mbps 400 Mbps 500 Mbps 600 Mbps 700 Mbps 800 Mbps 900 Mbps 1 Gbps																						
8	138729	10	ARCADIA HIGH SCHOOL 320 W OWENS ST ARCADIA, NE 68815-0248 (308) 789-6522 - DEB HARB VALLEY	100 Mbps 200 Mbps 300 Mbps 400 Mbps 500 Mbps 600 Mbps 700 Mbps 800 Mbps 900 Mbps 1 Gbps																						
9	138737	10	BROKEN BOW HIGH SCHOOL 323 N 7TH AVE BROKEN BOW, NE 68822-1718 (308) 872-6821; JANA KAEUN CUSTER	100 Mbps 200 Mbps 300 Mbps 400 Mbps 500 Mbps 600 Mbps																						

\*IF THE BIDDER CHOSES TO INCLUDE TAXES AND FEES IN THE NRC AND MRC, THE TAXES AND FEES COLUMN SHOULD REMAIN BLANK.



APPENDIX A

FIRM NAME:

Windstream

Table with columns: Bid #, USAC Billed Entity Number, ECU, BILLED ENTITY NAME, SEEKING, and various cost categories (Non-recurring, Monthly Recurring, Monthly Taxes and Fees, Total 48-month). Rows include school districts like BURWELL PUBLIC SCHOOLS, LOUP COUNTY PUBLIC SCHOOLS, and SARGENT PUBLIC SCHOOLS.

\*IF THE BIDDER CHOOSES TO INCLUDE TAXES AND FEES IN THE NRC AND MRC, THE TAXES AND FEES COLUMN SHOULD REMAIN BLANK.



APPENDIX A

FIRM NAME: Windstream

Chart #	USAC Billed Entity Number	EDU	BILLED ENTITY NAME FIBER SITE NAME	SEEKING	Non-recurring Cost - Grand Island-College Park, 3180 W. Hwy 34	Monthly Recurring Cost - Grand Island-College Park, 3180 W. Hwy 34	Monthly Taxes and Fees - Grand Island-College Park, 3180 W. Hwy 34	Total 48-month Cost - Grand Island-College Park, 3180 W. Hwy 34	Non-recurring Cost - Lincoln-Nebraska Hall, 901 N. 17th	Monthly Recurring Cost - Lincoln-Nebraska Hall, 901 N. 17th	Monthly Taxes and Fees - Lincoln-Nebraska Hall, 901 N. 17th	Total 48-month Cost - Lincoln-Nebraska Hall, 901 N. 17th	Non-recurring Cost - Omaha-Peter Kiewit Institute, 1110 S. 67th	Monthly Recurring Cost - Omaha-Peter Kiewit Institute, 1110 S. 67th	Monthly Taxes and Fees - Omaha-Peter Kiewit Institute, 1110 S. 67th	Total 48-month Cost - Omaha-Peter Kiewit Institute, 1110 S. 67th	Non-recurring Cost - Omaha-NDC, 1623 Farnam	Monthly Recurring Cost - Omaha-NDC, 1623 Farnam	Monthly Taxes and Fees - Omaha-NDC, 1623 Farnam	Total 48-month Cost - Omaha-NDC, 1623 Farnam	Non-recurring Cost - Scottsbluff-Panhandle Research Center, 4502 Ave I	Monthly Recurring Cost - Scottsbluff-Panhandle Research Center, 4502 Ave I	Monthly Taxes and Fees - Scottsbluff-Panhandle Research Center, 4502 Ave I	Total 48-month Cost - Scottsbluff-Panhandle Research Center, 4502 Ave I		
19			FRED D. BROWN EDUCATION CENTER, ROOM 203-6 303 N 52ND STREET LINCOLN, NE 68504 (402)826-6781; Mike Carpenter LANCASTER COUNTY	100 Mbps 200 Mbps 300 Mbps 400 Mbps 500 Mbps 600 Mbps 700 Mbps 800 Mbps 900 Mbps 1,000 Mbps				\$ 1,120.00 \$ 1,120.00 \$ 1,120.00 \$ 1,120.00 \$ 1,120.00 \$ 1,120.00 \$ 1,120.00 \$ 1,120.00 \$ 1,120.00 \$ 1,120.00			\$ 53,760.00 \$ 53,760.00 \$ 53,760.00 \$ 53,760.00 \$ 53,760.00 \$ 53,760.00 \$ 53,760.00 \$ 53,760.00 \$ 53,760.00 \$ 53,760.00															
20			OMAHA CAMPUS 4020 S 147TH STREET, STE 100 OMAHA, NE 68137 (402)826-6781; Mike Carpenter DOUGLAS COUNTY	50 Mbps 100 Mbps 150 Mbps 200 Mbps 250 Mbps 300 Mbps 350 Mbps 400 Mbps 450 Mbps 500 Mbps													\$ 918.00 \$ 918.00 \$ 918.00 \$ 918.00 \$ 918.00 \$ 918.00 \$ 918.00 \$ 918.00 \$ 918.00 \$ 918.00					\$ 44,064.00 \$ 44,064.00 \$ 44,064.00 \$ 44,064.00 \$ 44,064.00 \$ 44,064.00 \$ 44,064.00 \$ 44,064.00 \$ 44,064.00 \$ 44,064.00				
21			SEMINARY OFFICE 7880 W DENTON ROAD DENTON, NE 68339 14021570-2707; Fr. Joseph Lee LANCASTER COUNTY	NEW SERVICE 100 Mbps 200 Mbps 300 Mbps 400 Mbps 500 Mbps 600 Mbps 700 Mbps 800 Mbps 900 Mbps 1,000 Mbps				\$ - \$ - \$ - \$ - \$ - \$ - \$ - \$ - \$ - \$ -	\$ 2,286.00 \$ 2,286.00 \$ 2,286.00 \$ 2,286.00 \$ 2,286.00 \$ 2,286.00 \$ 2,286.00 \$ 2,286.00 \$ 2,286.00 \$ 2,286.00			\$ 109,728.00 \$ 109,728.00 \$ 109,728.00 \$ 109,728.00 \$ 109,728.00 \$ 109,728.00 \$ 109,728.00 \$ 109,728.00 \$ 109,728.00 \$ 109,728.00														
22			SOUTHMAINT COMMUNITY CENTER FALLS CITY LEARNING CENTER 116 W 19TH STREET FALLS CITY, NE 68335-2011 (402)761-8418; Cory Scott RICHARDSON COUNTY	NEW SERVICE 50 Mbps 60 Mbps 70 Mbps 80 Mbps 90 Mbps 100 Mbps 150 Mbps 200 Mbps 250 Mbps 300 Mbps				\$ - \$ - \$ - \$ - \$ - \$ - \$ - \$ - \$ - \$ -				\$ - \$ - \$ - \$ - \$ - \$ - \$ - \$ - \$ - \$ -														
23			HEBRON LEARNING CENTER 610 JEFFERSON AVENUE HEBRON, NE 68370-1942 (402)761-8418; Cory Scott THAYER COUNTY	NEW SERVICE 50 Mbps 60 Mbps 70 Mbps 80 Mbps 90 Mbps 100 Mbps 150 Mbps 200 Mbps 250 Mbps 300 Mbps				\$ - \$ - \$ - \$ - \$ - \$ - \$ - \$ - \$ - \$ -	\$ 391.00 \$ 391.00 \$ 391.00 \$ 391.00 \$ 391.00 \$ 391.00 \$ 391.00 \$ 391.00 \$ 391.00 \$ 391.00			\$ 18,768.00 \$ 18,768.00 \$ 18,768.00 \$ 18,768.00 \$ 18,768.00 \$ 18,768.00 \$ 18,768.00 \$ 18,768.00 \$ 18,768.00 \$ 18,768.00														
24			NEBRASKA CITY LEARNING CENTER 819 CENTRAL AVENUE NEBRASKA CITY, NE 68410-2408 (402)761-8418; Cory Scott OTDOR COUNTY	NEW SERVICE 50 Mbps 60 Mbps 70 Mbps 80 Mbps 90 Mbps 100 Mbps 150 Mbps 200 Mbps 250 Mbps 300 Mbps				\$ - \$ - \$ - \$ - \$ - \$ - \$ - \$ - \$ - \$ -	\$ 460.00 \$ 460.00 \$ 460.00 \$ 460.00 \$ 460.00 \$ 460.00 \$ 460.00 \$ 460.00 \$ 460.00 \$ 460.00			\$ 22,080.00 \$ 22,080.00 \$ 22,080.00 \$ 22,080.00 \$ 22,080.00 \$ 22,080.00 \$ 22,080.00 \$ 22,080.00 \$ 22,080.00 \$ 22,080.00														
25			PLATTSMOUTH LEARNING CENTER 537 MAIN STREET PLATTSMOUTH, NE 68048-1963 (402)761-8418; Cory Scott CASS COUNTY	NEW SERVICE 50 Mbps 60 Mbps 70 Mbps 80 Mbps 90 Mbps 100 Mbps 150 Mbps 200 Mbps 250 Mbps 300 Mbps				\$ - \$ - \$ - \$ - \$ - \$ - \$ - \$ - \$ - \$ -				\$ - \$ - \$ - \$ - \$ - \$ - \$ - \$ - \$ - \$ -	\$ 810.00 \$ 810.00 \$ 810.00 \$ 810.00 \$ 810.00 \$ 810.00 \$ 810.00 \$ 810.00 \$ 810.00 \$ 810.00				\$ 38,880.00 \$ 38,880.00 \$ 38,880.00 \$ 38,880.00 \$ 38,880.00 \$ 38,880.00 \$ 38,880.00 \$ 38,880.00 \$ 38,880.00 \$ 38,880.00									
26			WAHOO LEARNING CENTER 538 N BROADWAY WAHOO, NE 68066-1210 (402)761-8418; Cory Scott SAUNDERS COUNTY	NEW SERVICE 50 Mbps 60 Mbps 70 Mbps 80 Mbps 90 Mbps 100 Mbps 150 Mbps 200 Mbps 250 Mbps 300 Mbps				\$ - \$ - \$ - \$ - \$ - \$ - \$ - \$ - \$ - \$ -	\$ 295.00 \$ 295.00 \$ 295.00 \$ 295.00 \$ 295.00 \$ 295.00 \$ 295.00 \$ 295.00 \$ 295.00 \$ 295.00			\$ 14,160.00 \$ 14,160.00 \$ 14,160.00 \$ 14,160.00 \$ 14,160.00 \$ 14,160.00 \$ 14,160.00 \$ 14,160.00 \$ 14,160.00 \$ 14,160.00														
27			YORK LEARNING CENTER 3130 HOLEN AVENUE YORK, NE 68467-4809 (402)761-8418; Cory Scott YORK COUNTY	NEW SERVICE 50 Mbps 60 Mbps 70 Mbps 80 Mbps 90 Mbps 100 Mbps 150 Mbps 200 Mbps 250 Mbps 300 Mbps				\$ - \$ - \$ - \$ - \$ - \$ - \$ - \$ - \$ - \$ -	\$ 475.00 \$ 475.00 \$ 475.00 \$ 475.00 \$ 475.00 \$ 475.00 \$ 475.00 \$ 475.00 \$ 475.00 \$ 475.00			\$ 22,800.00 \$ 22,800.00 \$ 22,800.00 \$ 22,800.00 \$ 22,800.00 \$ 22,800.00 \$ 22,800.00 \$ 22,800.00 \$ 22,800.00 \$ 22,800.00														
28			NEBRASKA GAME & PARKS COMMISSION--WILDCAT HILLS NATURE CENTER 210615 HWY 71 GERING, NE 69341-0065 (308)436-3777; Gary Shoemaker/Candace Downer SCOTTS BLUFF COUNTY	NEW SERVICE 10 Mbps 20 Mbps 30 Mbps 40 Mbps 50 Mbps				\$ - \$ - \$ - \$ - \$ -				\$ - \$ - \$ - \$ - \$ -														

\*IF THE BIDDER CHOOSES TO INCLUDE TAXES AND FEES IN THE NRC AND MRC, THE TAXES AND FEES COLUMN SHOULD REMAIN BLANK.



APPENDIX A

FIRM NAME: Windstream

Circuit #	USAC Billed Entity Number	EDU	BILLED ENTITY NAME FIBER SITE NAME	SEEKING	Non-recurring Cost - Grand Island-College Park, 8180 W. Hwy 34	Monthly Recurring Cost - Grand Island-College Park, 3180 W. Hwy 34	Monthly Taxes and Fees* - Grand Island-College Park, 3180 W. Hwy 34	Total 48-month Cost - Grand Island-College Park, 3180 W. Hwy 34	Non-recurring Cost - Lincoln-Nebraska Hall, 901 N. 17th	Monthly Recurring Cost - Lincoln-Nebraska Hall, 901 N. 17th	Monthly Taxes and Fees* - Lincoln-Nebraska Hall, 901 N. 17th	Total 48-month Cost - Lincoln-Nebraska Hall, 901 N. 17th	Non-recurring Cost - Omaha-Peter Kiewit Institute, 1110 S. 67th	Monthly Recurring Cost - Omaha-Peter Kiewit Institute, 1110 S. 67th	Monthly Taxes and Fees* - Omaha-Peter Kiewit Institute, 1110 S. 67th	Total 48-month Cost - Omaha-Peter Kiewit Institute, 1110 S. 67th	Non-recurring Cost - Omaha-NDC, 1623 Farnam	Monthly Recurring Cost - Omaha-NDC, 1623 Farnam	Monthly Taxes and Fees* - Omaha-NDC, 1623 Farnam	Total 48-month Cost - Omaha-NDC, 1623 Farnam	Non-recurring Cost - Scottsbluff-Panhandle Research Center, 4502 Ave I	Monthly Recurring Cost - Scottsbluff-Panhandle Research Center, 4502 Ave I	Monthly Taxes and Fees* - Scottsbluff-Panhandle Research Center, 4502 Ave I	Total 48-month Cost - Scottsbluff-Panhandle Research Center, 4502 Ave I
					\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
				60 Mbps				\$ -				\$ -				\$ -				\$ -			\$ -	
				70 Mbps				\$ -				\$ -				\$ -				\$ -			\$ -	
				80 Mbps				\$ -				\$ -				\$ -				\$ -			\$ -	
				90 Mbps				\$ -				\$ -				\$ -				\$ -			\$ -	
				100 Mbps				\$ -				\$ -				\$ -				\$ -			\$ -	
				150 Mbps				\$ -				\$ -				\$ -				\$ -			\$ -	
				200 Mbps				\$ -				\$ -				\$ -				\$ -			\$ -	
				250 Mbps				\$ -				\$ -				\$ -				\$ -			\$ -	
29			OFFICE OF THE CHIEF INFORMATION OFFICER DATA CENTER 501 S 14TH STREET LINCOLN, NE 68505 (402)471-2047; Jim Sheets LANCASTER COUNTY	NEW SERVICE																				
				1 Gbps				\$ 725.00				\$ 34,800.00												
				2 Gbps				\$ 1,161.00				\$ 55,728.00												
				3 Gbps				\$ 1,172.00				\$ 56,256.00												
				4 Gbps				\$ 1,198.00				\$ 57,504.00												
				5 Gbps				\$ 1,248.00				\$ 59,904.00												
				6 Gbps				\$ 1,273.00				\$ 61,104.00												
				7 Gbps				\$ 1,299.00				\$ 62,352.00												
				8 Gbps				\$ 1,320.00				\$ 63,360.00												
				9 Gbps				\$ 1,356.00				\$ 65,088.00												
				10 Gbps				\$ 1,393.00				\$ 66,864.00												

\*IF THE BIDDER CHOOSES TO INCLUDE TAXES AND FEES IN THE NRC AND MRC, THE TAXES AND FEES COLUMN SHOULD REMAIN BLANK.



## I. PROCUREMENT PROCEDURE Pg. 11

### A. PRICES

All prices, costs, and terms and conditions outlined in the proposal shall remain fixed and valid commencing on the opening date of the proposal until an award is made or the Request for Proposal is cancelled. Contractor's price for the services provided, as shown in Appendix A, shall remain fixed for the duration of the contract and shall be invoiced along with the actual cost of applicable fees and taxes Contractor is obligated to pass-through to the State each month. Non-recurring charges (NRC) and Monthly recurring charges (MRC) shall be invoiced in accordance with the original cost sheet. No invoice shall exceed the price contained on the contractor's original cost sheet. If increases to applicable fees and taxes, Contractor is obligated to pass-through to the State will cause the price to exceed the price on the original cost sheet Contractor may request an increase in price to cover actual increases in fees and taxes Contractor is obligated to pass-through to the State that exceed the Contractor's price on the original cost sheet. The Contractor must make a showing demonstrating the price increase and that the price exceeds the Contractor prices on the original cost sheet. The State shall have the right to refuse the price increase. No price increase shall be charged or billed until the Contract is amended to reflect the price increase. The State will be given full proportionate benefit of any price decrease during the term of the contract. Contractor agrees to sign and execute the appropriate State document to validate pricing.

*Windstream takes exception to this requirement as written. The Windstream pricing for the Services proposed herein is valid for ninety (90) days from the date of submission. Thereafter Windstream reserves the right to re-visit its pricing to ensure meeting Windstream's profitability standards.*

*During the term of any agreement Windstream for the Services proposed in this Response, Windstream agrees that it will not increase Customer's monthly recurring charges for the Services being provided under the Agreement (or, in the case of long distance services, the per minute charge) by any amount greater than 5% per annual period. The foregoing right shall not apply to changes to, additions of and/or increases in T1 access, applicable fees, taxes and other government-permissible charges.*

*Windstream agrees that the terms, conditions and prices established under the contract resulting from this Request for Proposal, shall be equal to or better than those offered to other similarly situated customers, ordering substantially similar quantities of service under a substantially similar cost structure, under substantially similar terms and conditions. If during the terms of the contract, Windstream offers more favorable terms, conditions or prices to a similarly situated customer, Windstream agrees to notify the State.*

Contractor represents and warrants that all prices for services, now or subsequently specified, are as low as and no higher than prices which the Contractor has charged or intends to charge customers other than the State for the same or similar products and services of the same or equivalent quantity and quality for delivery or performance during the same periods of time. If, during the term of the contract, the Contractor shall reduce any and/or all prices charged to any customers other than the State for the same or similar products or services specified herein, the Contractor shall make an equal or equivalent reduction in corresponding prices for said specified products or services.

*Windstream agrees that the terms, conditions and prices established under the contract resulting from this Request for Proposal, shall be equal to or better than those offered to other similarly situated customers, ordering substantially similar quantities of service under a substantially similar cost structure, under substantially similar terms and conditions. If during the terms of the contract, Windstream offers more favorable terms, conditions or prices to a similarly situated customer, Windstream agrees to notify the State.*

# DEVIATIONS

Contractor also represents and warrants that all prices set forth in the contract and all prices in addition, which the Contractor may charge under the terms of the contract, do not and will not violate any existing federal, state, or municipal law or regulations concerning price discrimination and/or price fixing. Contractor agrees to hold the State harmless from any such violation. Prices quoted shall not be subject to increase throughout the contract period unless specifically allowed by these specifications.

*During the term of any agreement Windstream for the Services proposed in this Response, Windstream agrees that it will not increase the State's monthly recurring charges for the Services being provided under the Agreement (or, in the case of long distance services, the per minute charge) by any amount greater than 5% per annual period. The foregoing right shall not apply to changes to, additions of and/or increases in T1 access, applicable fees, taxes and other government-permissible charges.*

## S. AWARD Pg. 15

8. Award single lines or multiple lines to one or more bidders; or, *Windstream has read and understands; however, Windstream's Services are priced based on a term and volume commitment from Customer in connection with the applicable Service. In the event that Customer reduces the quantity of items bid, or determines that less than the total amount of Services will be awarded to Windstream, then Windstream reserves the right to re-visit its pricing to ensure meeting Windstream's profitability standards.*

## II. TERMS AND CONDITIONS

### A. GENERAL Pg. 16

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
		HM	<i>Windstream proposes the following in lieu of the State's order of precedence: the terms of the final, negotiated contract shall prevail in the event there is a conflict in terms with this RFP or Windstream's proposal.</i>

### F. NOTICE OF POTENTIAL CONTRACTOR BREACH Pg. 18

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
		HM	<i>Windstream takes exception to the State's right to immediately terminate the Agreement for default without giving Windstream a reasonable time to cure. In the event Windstream breaches a material term or condition, or fails to perform any material obligation under the agreement, the State shall have the right to terminate the agreement in whole or in part if, after thirty (30) days notice of a default, Windstream fails to cure the default. In the event Windstream fails to cure, the State may terminate the agreement with no liability other than for accrued charges owed under the agreement up to the date of termination.</i>  <i>"Further, State's right to terminate the Agreement is limited as described in the Windstream Fiber Build Addendum, which has been included with this RFP response."</i>



# DEVIATIONS

## G. BREACH Pg. 19

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
		HM	<p><i>Windstream takes exception to the State's right to terminate the Agreement during the cure period or after Windstream has cured the default. The State's right to terminate for cause should be limited to situations in which Windstream has received the cure notice and failed to cure within the 30 days allowed. Additionally, under no circumstances will Windstream be liable for the cost of substitute or replacement services. Finally, non-payment by the State of amounts owed will be considered a default of the agreement, and the ten (10) day cure period outlined in Section 10 of Windstream Service Terms and Conditions will control.</i></p> <p><i>"Further, State's right to terminate the Agreement is limited as described in the Windstream Fiber Build Addendum, which has been included with this RFP response."</i></p>

## J. INDEMNIFICATION Pg. 20

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
		HM	<p><i>Windstream has read and understands its obligation to indemnify State of Nebraska, but would like to clarify that such indemnification extends only to third party claims arising from Windstream's gross negligence or willful misconduct with respect to its obligations under the final contract between the parties.</i></p> <p><i>Windstream has read and understands its obligation to indemnify the State against infringement claims, but such obligation shall extend only to third party claims based on an allegation that the use of Windstream's services as provided to the State are directly infringing. Further, maximum liability for damages paid under this provision will not exceed the price paid for the affected services by the State. Finally, Notwithstanding the Intellectual Property section below, Windstream is in no way</i></p>

# DEVIATIONS

## 2. INTELLECTUAL PROPERTY

The Contractor agrees it will, at its sole cost and expense, defend, indemnify, and hold harmless the indemnified parties from and against any and all claims, to the extent such claims arise out of, result from, or are attributable to, the actual or alleged infringement or misappropriation of any patent, copyright, trade secret, trademark, or confidential information of any third party by the Contractor or its employees, Subcontractors, consultants, representatives, and agents; provided, however, the State gives the Contractor prompt notice in writing of the claim. The Contractor may not settle any infringement claim that will affect the State's use of the Licensed Software without the State's prior written consent, which consent may be withheld for any reason.

If a judgment or settlement is obtained or reasonably anticipated against the State's use of any intellectual property for which the Contractor has indemnified the State, the Contractor shall, at the Contractor's sole cost and expense, promptly modify the item or items which were determined to be infringing, acquire a license or licenses on the State's behalf to provide the necessary rights to the State to eliminate the infringement, or provide the State with a non-infringing substitute that provides the State the same functionality. At the State's election, the actual or anticipated judgment may be treated as a breach of warranty by the Contractor, and the State may receive the remedies provided under this RFP.

*Windstream has read and understands, however, with the understanding that any service(s) or work performed or developed under this contract is not "work made for hire" and does not apply to the services being contemplated herein. For the avoidance of doubt, the developing party shall retain complete ownership to any resulting intellectual property. If for some reason Windstream has not interpreted this section correctly, upon clarification from the District, Windstream would welcome the opportunity to address the District's requests.*

*Windstream will indemnify the District for any third party damages or liabilities (excluding consequential and exemplary damages) finally awarded against the District and will defend any third party claim, suit or proceeding against the District insofar as such claim, suit or proceeding is based on an allegation that the use of Windstream's Services as provided to the Customer by Windstream pursuant to this Agreement directly infringes a third party patent or patents held in the United States, and will pay those costs and damages (including settlement costs) finally awarded or agreed-upon, as applicable, as the result of any suit based on such claim provided (i) Windstream is promptly notified of such claim, suit or proceeding, (ii) the District cooperates with Windstream in the defense of any such claim, suit or proceeding, including providing, upon request from Windstream, all applicable evidence in the District's possession, custody or control, (iii) Windstream is given sole control of the defense thereof (including selection of outside counsel for defense of such claim) and all negotiations for its settlement or compromise, (iv) the District has paid all fees due to Windstream under this Agreement and continues to pay all such fees as such fees become due under this Agreement, and (v) if the District has a license under any patents that may be the subject of an infringement allegation hereunder, to the extent permitted by such license Windstream is allowed to use such patent license to assist in resolving any third party claim hereunder. Maximum liability for damages paid under this provision will not exceed the price paid for the affected services by the District. If such a claim occurs, or in the opinion of Windstream, is likely to occur, the District agrees to permit Windstream, at Windstream's sole option and expense to (i) modify or replace the accused system and services with a such that the provided system and services are free of any infringement, (ii) procure the right for the District to continue to use the system or services without a claim of infringement, or (iii) if neither of the foregoing alternatives is reasonably likely in Windstream's sole discretion, to remove the accused system and services and refund to the District a pro rata portion of the payments made by the District to reflect the actual use by the District of the system and services provided by Windstream. Notwithstanding the foregoing, Windstream has no liability for any claim, action suit or proceeding based upon a third party patent infringement claim resulting from (a) use of the system or services by the District or the District's end user in a manner not contemplated or prescribed by this Agreement, (b) the combination, operation or use of Windstream's Services by the District with any software, hardware or third party equipment not furnished by Windstream, or (c) any alteration or modification to the Services without Windstream's express written permission, where such claim would not have arisen but for such alteration or modification.*

# DEVIATIONS

## L. LIQUIDATED DAMAGES Pg. 22

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
		HM	<p><i>Windstream takes exception to references to payment of liquidated damages and withholding of payment in this section. Windstream will use commercially reasonable efforts to meet any agreed-upon installation timeframes and to perform cutover to the Windstream network from the State's existing carrier. However, Windstream's solution does not provide for liquidated damages or the right to withhold payment in the event it fails to meet such timeframes. In the event Windstream fails to meet an installation timeline, and such failure is not a result of the State's conduct or performance or a force majeure event, the State may terminate the agreement between the parties without early termination liability after providing Windstream thirty (30) days to cure such installation delay.</i></p> <p><i>Remedies for service issues are limited to those offered in Windstream's Service Level Agreement, included with this response.</i></p>

## M. ASSIGNMENT, SALE, OR MERGER Pg. 23

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
		HM	<p><i>As a nationwide telecommunications services provider, it is imperative that Windstream have the ability to assign the contract without the prior written consent of the State to an affiliate or purchaser of all or substantially all of its assets. Windstream proposes the following: Neither party shall assign or transfer its rights and obligations under the agreement between the parties without the prior written consent of the other, which consent shall not be unreasonably withheld or delayed, except each party shall have the right to assign, convey or otherwise transfer its rights, title, interest and obligations under the contract, in whole or in part, to any entity controlled by, controlling or under common control of said party, or any entity into which said party may be merged or consolidated or which purchases all or substantially all of the assets of said party. Any attempted assignment in violation of this provision shall be void.</i></p>

# DEVIATIONS

## M. CONTRACTING WITH OTHER NEBRASKA POLITICAL SUB-DIVISIONS

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
		HM	<i>Windstream is willing to agree to extend the provision of services under the resulting contract between Windstream and the State to any other agency. Each such agency must commit to its own term and volume commitment by way of signing a separate service agreement between Windstream and the agency. The Windstream Service Terms and Conditions provided as part of this Response shall apply to such agency, and will be attached by way of an addendum to said separate service agreement. Nothing contained in this Response shall be deemed to be a guarantee that Windstream can feasibly provide the service at such locations proposed by an agency or at the same prices provided herein. Determination of pricing and feasibility for servicing such agencies shall be made on a case by case basis.</i>

## O. FORCE MAJEURE Pg. 24

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
		HM	<i>Windstream accepts this provision, except for the last sentence. Litigations impacting services shall be considered force majeure events.</i>



# DEVIATIONS

## Q. EARLY TERMINATION Pg. 25

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
		HM	<p><i>Windstream takes exception to the State of Nebraska's right to terminate the Agreement without giving Windstream a reasonable time to cure the breach. In the event Windstream breaches a material term or condition, or fails to perform any material obligation under the Agreement, the State of Nebraska shall have the right to terminate the agreement in whole or in part if, after thirty (30) days' notice of a default, Windstream fails to cure the default. In the event Windstream fails to cure, the State of Nebraska may terminate the Agreement with no liability other than for accrued charges still owing under the Agreement. However, the State of Nebraska's sole remedy for a minor degradation of service is outlined in Windstream's Service Level Agreement, which is attached to this RFP response.</i></p> <p><i>Windstream's liability in the event of a breach is limited as provided in Section 16 of the Windstream Service Terms and Conditions, which is included with this RFP response. In no event will Windstream be liable for the cost of substitute service, and the State of Nebraska's does not have the right to reduce or withhold payment due for any reason, except in the event of a good faith dispute over charges owed, and only then to the extent of the disputed amount.</i></p> <p><i>Any termination without cause would be subject to the Cancellation Charges and/or Liquidated Damages set forth in Section 11 of the WIN Service Terms and Conditions included as part of this Response Tab 07.</i></p>

The contract may be terminated as follows:

1. The State and the Contractor, by mutual written agreement, may terminate the contract at any time.
2. The State, in its sole discretion, may terminate the contract for any reason upon thirty (30) calendar day's written notice to the Contractor. Such termination shall not relieve the Contractor of warranty or other service obligations incurred under the terms of the contract. In the event of termination the Contractor shall be entitled to payment, determined on a pro rata basis, for products or services satisfactorily performed or provided.
3. The State may terminate the contract immediately for the following reasons:
  - a. if directed to do so by statute;
  - b. Contractor has made an assignment for the benefit of creditors, has admitted in writing its inability to pay debts as they mature, or has ceased operating in the normal course of business;
  - c. a trustee or receiver of the Contractor or of any substantial part of the Contractor's assets has been appointed by a court;
  - d. fraud, misappropriation, embezzlement, malfeasance, misfeasance, or illegal conduct pertaining to performance under the contract by its Contractor, its employees, officers, directors, or shareholders;
  - e. an involuntary proceeding has been commenced by any Party against the Contractor under any one of the chapters of Title 11 of the United States Code and (i) the proceeding has been pending for at least sixty (60) calendar days; or (ii) the Contractor has consented, either expressly or by operation of law, to the entry of an order for relief; or (iii) the Contractor has been decreed or adjudged a debtor;
  - f. a voluntary petition has been filed by the Contractor under any of the chapters of Title 11 of the United States Code;

# DEVIATIONS

- g. Contractor intentionally discloses confidential information;
  - h. Contractor has or announces it will discontinue support of the deliverable; and,
  - i. In the event funding is no longer available.
- Windstream takes exception to these additional grounds to immediately terminate, with the exception of (a) and (i), although in the case of (i), Section IV.G. of this RFP shall apply. All other grounds listed here will be considered defaults to which the thirty (30) day cure period outlined in Section II.G. will apply. In the case of (e) and (f), Windstream will allow the State to terminate for cause only if such filing – voluntary or involuntary – has not been withdrawn or dismissed within sixty (60) days*

## R. CONTRACT CLOSEOUT Pg. 26

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
HM			<i>Ramp Down Period. If after the initial Term of the Agreement, Customer provides notice to terminate the Agreement in accordance with its terms, and provided that Customer has met its Minimum Monthly Fee (MMF) obligations for the initial Term of the Agreement and Customer's account is in good standing, Windstream agrees that for a period of up to six (6) months while Customer is transitioning service to another vendor, Windstream will not hold Customer to any MMF commitment during this transition period, other than to pay for the monthly recurring charges for circuits and/or facilities in place and associated actual usage of the Services, plus applicable fees, taxes, assessments and surcharges. In all instances, Windstream will use commercially reasonable efforts to work with Customer to effect an orderly transition to another service provider.</i>

## II. CONTRACTOR DUTIES Pg. 27

### A. INDEPENDENT CONTRACTOR / OBLIGATIONS

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
		HM	<i>Windstream shall provide the State with a team of adequately experienced personnel with a commitment to provide the required support and services. Windstream cannot agree to obtain the State's consent prior to making internal personnel decisions; however, Windstream shall use commercially reasonable efforts to minimize any disruption to the State in the event an account change is required. If the State has a lawful objection to personnel assigned to their account, notification should be sent to the VP of account development through the State's dedicated Windstream contact, and Windstream agrees to then work in good faith with the State to resolve the issue.</i>

# DEVIATIONS

## F. OWNERSHIP OF INFORMATION AND DATA / DELIVERABLES Pg. 29

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
HM			<i>Windstream has read and understands, however, with the understanding that any service(s) or work performed or developed under this contract is not "work made for hire" and does not apply to the services being contemplated herein. For the avoidance of doubt, the developing party shall retain complete ownership to any resulting intellectual property.</i>

## IV. PAYMENT C. INVOICES Pg. 35

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
HM			<i>All quotes, rates and prices are exclusive of any and all taxes. Upon State of Nebraska's presentation of a proper tax exemption certificate as authorized or required by statute or regulation of the jurisdiction providing said tax exemption, Windstream will exempt State of Nebraska from the applicable sales tax to the extent warranted by the exemption certificate. Failure to timely provide said certificate will result in no exemption being available to State of Nebraska for any period prior to the date that State of Nebraska presents a valid certificate. Further, State of Nebraska is responsible for taxes not subject to the exemption, surcharges, fees, and assessments that apply to the sale and use of the services, including how those may change in the future and even if not identified in Windstream's pricing proposal.</i>

# DEVIATIONS

## H. RIGHT TO AUDIT (First Paragraph is Statutory) Pg. 37

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
HM			

The State shall have the right to audit the Contractor's performance of this contract upon a 30 days' written notice. Contractor shall utilize generally accepted accounting principles, and shall maintain the accounting records, and other records and information relevant to the contract (Information) to enable the State to audit the contract. The State may audit and the Contractor shall maintain, the Information during the term of the contract and for a period of five (5) years after the completion of this contract or until all issues or litigation are resolved, whichever is later. The Contractor shall make the Information available to the State at Contractor's place of business or a location acceptable to both Parties during normal business hours. If this is not practical or the Contractor so elects, the Contractor may provide electronic or paper copies of the Information. The State reserves the right to examine, make copies of, and take notes on any Information relevant to this contract, regardless of the form or the Information, how it is stored, or who possesses the Information. Under no circumstance will the Contractor be required to create or maintain documents not kept in the ordinary course of contractor's business operations, nor will contractor be required to disclose any information, including but not limited to product cost data, which is confidential or proprietary to contractor. *Windstream has read and understands.*

The Parties shall pay their own costs of the audit unless the audit finds a previously undisclosed overpayment by the State. If a previously undisclosed overpayment exceeds one-half of one percent (.5%) of the total contract billings, or if fraud, material misrepresentations, or non-performance is discovered on the part of the Contractor, the Contractor shall reimburse the State for the total costs of the audit. Overpayments and audit costs owed to the State shall be paid within ninety days of written notice of the claim. The Contractor agrees to correct any material weaknesses or condition found as a result of the audit.

*Windstream understands and makes a qualified acceptance in that, while Windstream has no objection to independent audit of documentation related services provided by Windstream to enable verification of all invoices, charges and expenses paid by the State for such services, Windstream requires that any such audits (i) are subject to the State and/or the State's third party designated auditor executing a non-disclosure agreement provided by Windstream with respect to the use and disclosure of such documentation, (ii) may be conducted no more than once a year during Windstream's normal business hours, (iii) are preceded by written notice from the State at least thirty (30) days prior to the date of the proposed audit, and (iv) are paid for by the State. Windstream shall retain all audited records in accordance with the terms of Windstream's record retention policy.*

## L. PROJECT REQUIREMENTS Pg. 41

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
		HM	<i>Windstream cannot agree to pay liquidated damages as outlined in this provision. Please refer to Windstream's response to Section II.L. of this RFP.</i>



# DEVIATIONS

## N. TECHNOLOGY REFRESH Pg. 41

Accept (Initial)	Reject (Initial)	Reject & Provide Alternative within RFP Response (Initial)	NOTES/COMMENTS:
		HM	<p><i>Windstream acknowledges the State's substantial interest in state-of-the-art technologies that offer improved performance and more efficient ways to meet the State's telecommunications requirements. Windstream and the State hereby agree that, any time after the first twelve (12) months of the Term, the State shall have the option of converting Services to another Windstream product or technology, provided that the State agrees to enter into a new Agreement for a new Term equal to or greater than the original Term. This provision shall not include a change involving disconnection of current Ethernet-based circuits, but such circuits may be re-provisioned for use for conversion to a new technology with Windstream.</i></p>





# STATE OF NEBRASKA

United States of America, } ss.  
State of Nebraska }

Secretary of State  
State Capitol  
Lincoln, Nebraska

I, John A. Gale, Secretary of State of the  
State of Nebraska, do hereby certify that

## WINDSTREAM SERVICES, LLC

**a Delaware limited liability company is authorized to transact business in  
Nebraska;**

**all fees, taxes, and penalties due under the Nebraska Uniform Limited  
Liability Company Act or other law to the Secretary of State have been paid;**

**the Company's most recent biennial report required by section 21-125 has  
been filed by the Secretary of State;**

**the Secretary of State has not revoked the Company's Certificate of Authority  
and has not filed a notice of cancellation.**

*This certificate is not to be construed as an endorsement,  
recommendation, or notice of approval of the entity's financial  
condition or business activities and practices.*

In Testimony Whereof,

I have hereunto set my hand and  
affixed the Great Seal of the  
State of Nebraska on this date of

**February 17, 2017**



*John A. Gale*  
Secretary of State





## State of Nebraska

### Windstream Elite Support Contact and Escalation List

Sales			
<i>Overall Solution design and proposal of services. Complex move/add/change orders. Maintains ownership of Customer relationship.</i>			
<b>Primary Contact:</b>  <b>Dan Carstensen</b> Hollie Messinger	<b>402.437.7233</b> 402.437.7241		daniel.carstensen@windstream.com hollie.messinger@windstream.com
<b>Sales Escalations:</b>  Kip Kellogg - Sales Director Aaron Hepburn - VP Customer Advocacy Michael Flannery - SVP	o: 319.790.6627 o: 636.812.3053 o: 585.530.2844	c: 319.530.3438 c: 636.485.3415 c:	kiplin.kellogg@windstream.com aaron.hepburn@windstream.com michael.flannery@windstream.com
Repair		Hours of Operation – 24/7	
<i>Resolves service impacting issues. Troubleshoots/repairs outages on services post-installation. Dispatches field Operations as needed.</i>			
<b>Primary Contact:</b>  <b>Elite Repair NOC (LP)</b>	<b>877.423.8941</b>		EliteSupport@windstream.com
<b>Escalations:</b>  Incident Management Desk	866.328.8019		For all escalation requests, all levels
<b>Leadership Team:</b> Peter Kolson - Manager Eamon McGuinness - Manager William Blair III - Manager Khoa Nguyen - Manager Joe Guarino - Manager Scott Dunham - Staff Manager Jason White - Director Jennifer M. Johnson - VP	864.672.7205 585.413.2060 864.331.7604 704.319.1149 704.319.1141 704.319.1930 704.319.1467 813-769-6406	Peter.Kolson@windstream.com Eamon.Mcguinness@windstream.com William.Blair.III@windstream.com Khoa.Nguyen@windstream.com Joseph.Guarino@windstream.com Scott.Dunham@windstream.com Jason.X.White@windstream.com Jennifer.M.Johnson@windstream.com	
Customer Care			
<i>Simple move/add/change orders, billing inquiries, &amp; projects. Interfaces with internal Windstream departments as customer's advocate.</i>			
<b>Primary Contacts:</b>  <b>Deb Kula</b> Carmen Moore (Back up)	<b>877.224.5143</b> 877.224.5142		Debra.Kula@windstream.com Carmen.A.Moore@windstream.com
<b>Customer Service Escalations:</b>  Jared Thomas - Manager Elizabeth Orth - VP	o: 501.748.0374 o:	c: 501.860.8504 c: 404.668.2373	Jared.Thomas@windstream.com Elizabeth.Orth@windstream.com
Service Delivery			
<i>Manages the delivery of service from Sales proposal closed to installation and input into the billing system.</i>			
<b>Primary Contact:</b>  <b>TBD - assignment pending</b>			

## ETHERNET IMPLEMENTATION OUTLINE/TIMELINE

*\*\* This document does not consider permits, special construction, pending facilities or other unforeseen issues. This is a general timeline to follow for basic Ethernet orders.*

1. **Completion of Sales Process – Contract Signature**
2. **Post Sale Phase.....<= 7 Days from Signature (broken down below)**
  - a. Sales Rep completes all required order paperwork.....<= 3 Days from Signature
    - i. Conduct Internal Order Review.....<= 4 Days from Signature
      1. Sales representative defines sale
      2. Confirm Dmarc
      3. Include LOA, CSR, Accurate contact information (Onsite, Vendor, Partner)
      4. Engineering staff (Sales Engineer) reviews and approves technical aspects
      5. Ensure PM is included on all communication regarding an order post signature
    - ii. Engineering staff coordinates with customer/voice vendor if necessary
      1. Appropriate numbers to be ported
      2. New numbers
      3. Technical Features and services defined
3. **Project Management.....<= 7-12 Days from Signature**
  - a. Quick review of order with Partner (*This should be worked in parallel with Order Entry Phase as order is submitted.*)
    - i. Partner and Windstream
    - ii. Set proper install expectations
    - iii. Reengage Sales to discuss temp solutions if necessary
    - iv. Identify action items
4. **Order Entry Phase.....<= 12 Days from Signature**
  - a. Order entered and processed by Windstream back office
  - b. Order is released to Service Delivery for processing
  - c. PC Assignment
5. **Provisioning Phase.....<= 90 Days from Signature (broken down below)**
  - a. Processing Phase.....<= 20 Days from Signature
    - i. Complete Windstream network design
    - ii. Send loop orders to the appropriate LEC (when applicable)
  - b. LEC Acceptance Phase.....<= 50 Days from Signature
    - i. Receive customer site requirement/BIC Letter/Room Ready Dates (if Applicable)
    - ii. Receiving other critical dates
    - iii. Receive Firm Order Commitment (FOC) dates from LECs
    - iv. Schedule Port Dates, PTD, Actual Activation as soon as the Circuit FOC is received
  - c. Delivery Phase.....<= 90 Days from Signature
    - i. IP address assignments issued
    - ii. Delivered loops are Tested and Accepted by Windstream engineering
    - iii. Schedule Precut calls as needed
    - iv. Solidify phone number PORT dates (FOC) are received according to agreed schedule
6. **Execution Phase.....<= 90-120 Days from Signature**
  - a. Confirm/execute migration plan according to agreed schedule for:
    - i. Data services (Internet access, MPLS VPN, etc.)
    - ii. Voice services (LNP, feature activation, etc)
    - iii. Other services (DNS, email, BGP, 4G etc.)
  - b. Send calendar invites (noting bridge and pin information based on platform conventions)
  - c. Test services upon implementation



## Windstream DDoS Mitigation Service

The severity of a DDoS attack is completely dependent on how long it goes unnoticed, and how quickly action is taken to mitigate the threat and avoid costly downtime. Our DDoS Mitigation Service is a fully-managed service to monitor, detect, validate and mitigate attacks—including third party networks—before an outage or related damage happens.

### **Comprehensive monitoring and rapid response to eliminate costly downtime and threats**

If a DDoS attack is detected and validated, you are notified within 15 minutes and mitigation then begins within 15 minutes, based on attack identification and mitigation SLAs. This ensures there is little-to-no downtime. And because it is integrated into the network, the entire process can happen without your involvement to reduce the mitigation response time to minutes and near real time.

### **Ensures business continuity and resiliency**

The 24/7 solution serves as a critical part of a comprehensive continuity program, safeguarding businesses from the cost and damage resulting from network outages and downtime, including potential damage to your reputation and brand.

### **Essential part of a complete security strategy**

Ransomware, malware and security breaches get a lot of press, but the potential damage from a DDoS attack can be substantial. No security strategy is complete without this type of protection.

## The Windstream DDoS Mitigation Service advantage

### **Predictable and affordable pricing**

The cost-effective monthly fee covers both monitoring AND mitigation, regardless of number or scale of attacks. This makes the service extremely cost effective.

### **Part of a complete offering from a security services leader**

Our DDoS Mitigation service is part of a complete range of Windstream security services, giving you a single trusted source to ensure protection and compliance throughout your enterprise.

### **Seamless access with network agnostic protection**

Our fully-managed service protects both Windstream and third party networks for complete coverage.

## WHY IS IT NECESSARY FOR YOUR BUSINESS?

### **Every enterprise is at risk**

The threat extends across regions, industries and business sizes. And any network downtime can materially impact your business's performance and expose it to data exfiltration by hackers.

### **The threat exists whether or not you've been attacked before**

All networks are susceptible to an attack, and attacks are steadily increasing. It's imperative to preemptively protect yourself from the risks of a DDoS attack, and it is an essential element of an overall security strategy to protect against intrusion and ensure compliance.

### **Small price to pay for confidence**

We offer an SLA backed response to detected attacks at an affordable price—part of a complete offering from a leader in network and security services.

\*Arbor Networks

### About Windstream Enterprise

Windstream solves today's complex networking and communication challenges with deep expertise, collaborative approach, and a portfolio of products optimized for the cloud. Our solutions allow customers throughout North America to optimize performance, enhance experiences and protect against technical threats.

to learn more, visit our [DDoS Mitigation Service](#), contact your account manager or call 1-877-387-1900.





# Professional services framework

## Advisory/ consulting services

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### Network LAN/WAN

- Analyze performance
- Network design
- Configuration/remediation

### Security

- Attack & penetration testing
- Security program assessment
- Social engineering
- Code review

### Compliance

- PCI DSS & HIPAA requirements

## Field services

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- Infrastructure builds
- Internal & external plant (cabling/conduit installation)
- Custom network installations
- Onsite configuration (CPE) & device installation
- Equipment staging
- Ongoing infrastructure support (including depot and repair)

## Project enablement

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- Engagement management
- Project coordination
- Engineering augmentation



## WINDSTREAM SERVICE TERMS AND CONDITIONS

together with any proposal/order, service schedule(s), and any document incorporated by reference herein, these terms ("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 proposal ("Effective Date") and will continue for the term set forth in the proposal from the last date that Services are installed (the "Term"). Upon expiration of the Term, this Agreement will automatically renew for successive one-year terms (each, a "Renewal Term"). 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 a proposal 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 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.
- 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 "settlement 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. 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 refuse to perform any installation or repair work and may, when necessary, 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.** 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.
- 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. **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.** Either party may terminate this Agreement by providing at least thirty (30) 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 thirty (30) 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 affects WIN's network or other customers, (c) use the Services fraudulently or unlawfully; (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 three (3) months of MRCs except that if WIN's costs to other providers are greater than this amount, Customer shall also reimburse WIN for such additional costs. 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 EXCEPT THAT 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 ANY CREDITS OFFERED BY WIN FOR OUTAGES PURSUANT TO WIN'S THEN-EFFECTIVE CREDIT POLICY. 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, 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 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 <http://www.windstream.com/Legal-Notices/>; (III) FOR INTERNET, THE "ACCEPTABLE USE POLICY" POSTED AT <http://www2.windstream.net/customersupport/usersguide/accept/accept.html> AND THE "PRIVACY POLICY" POSTED AT <http://www.windstream.com/privacy.aspx>; (IV) 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; AND (V) THIRD PARTY SOFTWARE TERMS, IF APPLICABLE. 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 click-through agreements for applicable Services, the Tariffs and the FCC or state Service Publications, and then the Acceptable Use and Privacy policies.

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. WIN also may 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 proposal or to WIN at WIN, Attn: Correspondence Division, 301 N. Main St., Greenville, SC 29601, [windstream.business.support@windstream.com](mailto:windstream.business.support@windstream.com) or at such other address provided to the other party. Customer disconnection requests must be initiated by accessing the online portal at [www.windstreamonline.com](http://www.windstreamonline.com), or by calling 1-800-600-5050. 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 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.

**For Managed CPE Firewall Services only:**

**Authorization to Perform Testing.** Customer grants WIN the authority to access Customer's networks and computer systems solely for the purpose of providing the Managed CPE Firewall Service ("Firewall"). Customer agrees to notify WIN and obtain any third party service provider's ("Host") consent to provide the Firewall on Host's computer systems, which includes acknowledgement of the risks and acceptance of the conditions set forth herein and to facilitate any necessary communications and exchanges of information between WIN and Host in connection with the Firewall. Customer agrees to indemnify, defend and hold WIN and its suppliers harmless from and against any and all claims, losses, liabilities and damages, including reasonable attorney's fees that arise out of Customer's failure to comply with this Section and from any and all third party claims that arise out of the testing and evaluation of the security risks, exposures, and vulnerabilities of the IP Addresses that Customer provides. Customer acknowledges that the Firewall entails certain risks including the following possible negative impacts: (i) excessive log file disk space may be consumed due to the excessive number of log messages generated by the Firewall; (ii) performance and throughput of networks and associated routers and firewalls may be temporarily degraded; (iii) degradation of bandwidth; and (iv) Customer computer systems may hang or crash resulting in temporary system unavailability and/or loss of data.

**For Managed Network Security Cloud Firewall only:**

WIN agrees that it will maintain all applicable PCI-DSS requirements to the extent WIN handles, has access to, or otherwise stores, processes, or transmits Customer's cardholder data or sensitive authentication data, or manages Customer's cardholder data environment on behalf of Customer.

**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 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.

**For Distributed Denial of Service ("DDoS") Mitigation Service only:**

WIN agrees to investigate "high" service alerts, as that term is defined in the DDoS Service Level Agreement; to confirm a DDoS attack has occurred. WIN will then either: (i) close out the alert if WIN determines it to be a false positive, or (ii) escalate to Customer to verify an attack is occurring. Once the attack has been verified, Customer's inbound traffic will be redirected to Windstream's scrubbing centers for inspection and mitigation. WIN will mitigate active attacks for a period of twenty-four (24) hours, and will continue to monitor for an additional twenty-four (24) hours if the attack persists. Customer will be notified once the attack has ceased and the mitigation ended.

Customer agrees to: (i) reasonably cooperate with WIN to confirm "high" service alerts and assist in attack mitigation efforts; (ii) ensure information for all authorized points of contact remains current; and (iii) notify WIN of any network security architecture changes (i.e. unscheduled back-ups, increased event traffic) that could generate false alerts at least twenty-four (24) hours before such change.







**USAC ADDENDUM TO WINDSTREAM SERVICE TERMS AND CONDITIONS**  
**FOR E-RATE PROGRAM APPLICANTS**

This Addendum is entered between Windstream (“WIN”) and \_\_\_\_\_ (“Customer”), and amends the Windstream Service Terms and Conditions (“Agreement”) entered between WIN and Customer (“Parties”).

Because the Customer is a USAC E-Rate Program applicant, the Agreement is amended as follows:

1. Please indicate Customer’s Billed Entity Number (“BEN”):

**BEN:** \_\_\_\_\_

2. A new section, **Installation Before Funding Decision**, is added to the Agreement:

WIN recognizes that Customer’s ability to satisfy its obligations under this Agreement is dependent upon the receipt of funding from USAC, and the Parties have agreed to enter into this Agreement prior to receiving a funding decision. If Customer desires for WIN to proceed with installation of Services, or construction if applicable, prior to receipt of a funding decision, Customer must indicate its request below. Absent an affirmative response from Customer, WIN will not start installation or construction until after Customer and WIN receive a funding decision. Customer understands and agrees that if it chooses to have WIN proceed with installation or construction prior to receipt of a funding decision, and Customer does not receive funding, Customer shall be subject to the full termination liability as described in the **Effect of Termination** section of the Agreement in the event it terminates this Agreement.

**Customer requests that WIN proceed with installation or construction prior to receipt of a funding decision.**

\_\_\_ **YES**      \_\_\_ **NO**

3. A new section, **Funding Denial**, is added to the Agreement:

In the event USAC funding is denied after first having been approved, and WIN has then installed the Services, Customer shall be obligated to pay 100% of the charges for the Services; however, if such funding is denied wholly and directly due to WIN’s actions or inactions, Customer may continue to pay the discounted rate for the remainder of the applicable funding year. Prior to the end of that funding year, the Parties will renegotiate pricing and Customer will have the option to either continue under the Agreement with the renegotiated pricing or re-bid the Services and re-apply for funding with USAC. WIN reserves the right to terminate for non-payment in accordance with Section 10 of the Agreement if Customer fails to pay the full amount owed for the Services for any reason, including but not limited to non-appropriation, or denial, of USAC funding or funding from other sources, such as state universal service fund programs.

The Agreement noted above and this Addendum constitutes the Parties' entire agreement. To the extent there is a conflict between this Addendum and the Agreement, this Addendum controls.

This Addendum may be executed in several counterparts, and all counterparts so executed shall constitute one binding agreement on the Parties hereto and each executed counterpart shall be deemed an original. Facsimile signatures shall be accepted as valid and binding for all purposes.

WIN and Customer each aver that the signatories to this Addendum below have authority to sign this Addendum.

Handwritten modifications to this Addendum are not binding on either WIN or Customer.

**Customer**

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

Name:

Title:

Date:

**Windstream**

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

Name:

Title:

Date:





## **FIBER BUILD ADDENDUM TO WINDSTREAM SERVICE TERMS AND CONDITIONS**

This Addendum is entered between the Windstream (“WIN”) and \_\_\_\_\_ (“Customer”), and amends the Windstream Service Terms and Conditions (“Agreement”) entered between WIN and Customer (“Parties”).

Because the Services contemplated by the Agreement require construction efforts, the Agreement is amended as follows:

- 1) The following language is added to the end of Section 10, Termination:

Notwithstanding the foregoing, Customer agrees that it may not terminate the Agreement for late delivery without incurring termination liability pursuant to the “Termination Liability” section, unless the following conditions are met: (i) WIN misses the requested service date by more than One Hundred Eighty (180) days (the “Additional Construction Period”); (ii) Customer provides written notice to WIN within five (5) days following the end of the Additional Construction Period; and (iii) Customer provides written notice prior to a subsequent delivery of Service by WIN. If the Customer does not provide notice of termination pursuant to the foregoing conditions and Services are not available at the end of the five (5) day period following the Additional Construction Period, then WIN will have an additional One Hundred Eighty (180) day period to provide the Service, during which Customer may not terminate without incurring the Termination Liability. Notwithstanding any provision of this Agreement to the contrary, Customer may not terminate if any of the causes or reasons for WIN’s failure to deliver within One Hundred Eighty (180) days of the requested service date are beyond WIN’s reasonable control, which shall include: (i) act of God, fire, flood; (ii) fibers cuts, equipment failure, shortages or unavailability or other delay by a third party supplying services, equipment, fiber, network or rights thereto to WIN; (iii) government codes, ordinances, laws, rules, regulations or restrictions; (iv) strikes, lockouts or other labor disputes or unrest; (v) the process of securing permits; (vi) make ready construction; and, (vii) processes controlled by third parties relating to make ready construction such as engineering, surveying, moving lines and cables on poles, securing pole or conduit rights, and obtaining easements, franchises, use of rights of way, or similar permissions, authorizations or rights from unaffiliated third parties; and (viii) any other cause beyond the reasonable control of WIN. In these instances WIN’s obligations shall be excused and extended for and during the period of any such delay.



- 2) Section 11, Effect of Termination, is deleted in its entirety and is replaced with the following new Section 11, Termination Liability:

It is understood and agreed that if, before, on or after the service commencement date, Customer terminates any Service due to any reason other than material breach by WIN or if WIN terminates any Service for Customer's material breach or failure to pay sums due hereunder, Customer will pay WIN within ten (10) days of the effective date of termination: (i) for all Services previously rendered with respect to such Service; and (ii) an amount equal to the monthly fee for such Service multiplied by the number of months remaining in the applicable Proposal Term with respect to such Service. Such amounts constitute liquidated damages, not a penalty.

- 3) A new Section 17, Grant of License ("License"), is added:

Customer grants to WIN for the term of the Agreement the right to use and maintain such space as is necessary to provide the Services inside each Customer location (the "Licensed Space"). No fees or charges shall be imposed on WIN for the Licensed Space. As a part of this License, Customer shall provide WIN such rack space, power, back-up power, HVAC, 24/7 access and ingress/egress rights to the Licensed Space, and easement/building entrance rights from WIN's network from the public rights of way as are reasonably necessary to provide the Services per WIN's specifications.

The Agreement noted above and this Addendum constitutes the Parties' entire agreement. To the extent there is a conflict between this Addendum and the Agreement, this Addendum controls.

This Addendum may be executed in several counterparts, and all counterparts so executed shall constitute one binding agreement on the Parties hereto and each executed counterpart shall be deemed an original. Facsimile signatures shall be accepted as valid and binding for all purposes.

WIN and Customer each aver that the signatories to this Addendum below have authority to sign this Addendum.

Hand-written modifications to this Addendum are not binding on either WIN or Customer.

**Customer**

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

Name:

Title:

**WIN**

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

Name:

Title:



## Windstream's Internet Acceptable Use Policy

### Introduction

Windstream Communications, Inc. and its affiliates and subsidiaries ("Windstream," "we," or "us") appreciate the opportunity to provide you with a connection to the Internet. This Acceptable Use Policy, together with the terms and conditions for your Internet service, provide guidelines for your conduct on the Internet as a Windstream residential or business customer.

By using Windstream's Internet services, you agree to comply with this Acceptable Use Policy and to remain responsible for all activity originating from your account. We reserve the right to modify this Acceptable Use Policy from time to time, effective when posted to [www.Windstream.com](http://www.Windstream.com) and/or [www.Windstream.net](http://www.Windstream.net). Your use of the Internet services after changes to the Acceptable Use Policy are posted shall constitute acceptance of any changed or additional terms.

### Scope

This Acceptable Use Policy applies to Windstream's data services that provide (or include) access to the Internet, including but not limited to dialup, Broadband DSL, dedicated, data center services, managed security, and cloud firewall services, or that are provided over the Internet or wireless data networks (collectively "Internet services").

For ease of reference, this policy addresses the following topics:

- Section 1: Prohibited Activities
- Section 2: Consequences for Activities in Violation of this Policy
- Section 3: Privacy
- Section 4: Account Usage
- Section 5: Copyright Complaints

### Section 1: Prohibited Activities

**General Prohibitions:** It shall be a violation of this Acceptable Use Policy to use our Internet service in any way that is unlawful, harmful to or interferes with use of our network or systems, or the network of any other provider, violates the policies of any network accessed through our Internet service, interferes with the use and enjoyment of services received by others, infringes intellectual property rights, results in the publication of threatening material, or constitutes Spam/E-mail/Usenet abuse, a security risk or a violation of privacy.

If you have any questions regarding this Acceptable Use Policy, or wish to report a suspected violation of this policy, you may contact [abuse@windstream.net](mailto:abuse@windstream.net).

**Intellectual Property Rights:** Windstream's Internet services shall not be used to host, publish, submit/receive, upload/download, post, use, copy or otherwise reproduce, transmit, re-transmit, distribute or store any content/material or to engage in any activity that infringes, misappropriates or otherwise violates the intellectual property rights or privacy or publicity rights of Windstream or any individual, group or entity, including but not limited to rights protected by any intellectual property right.

**Child Pornography:** Windstream's Internet services shall not be used to host, publish, submit/receive, upload/download, post, use, copy or otherwise reproduce, transmit, re-transmit, distribute or store child pornography. Suspected violations of this prohibition may be reported to Windstream at the following e-mail address: [cp-abuse@windstream.net](mailto:cp-abuse@windstream.net). If Windstream receives a complaint of child pornography regarding your use of Windstream's Internet services and child pornography is apparent in the complaint, we will terminate your Internet service immediately. Further, we will report the complaint, any images received with the complaint, your subscriber information, including your screen name or user identification, your location, your IP address, and the date, time and time zone that the images were transmitted to the National Center for Missing and Exploited Children and to any applicable law enforcement agency.

**E-mail and Related Services:** Spam/E-mail or Usenet abuse is prohibited using Windstream's Internet services. Examples of Spam/E-mail or Usenet abuse include, but are not limited to the following activities:

- Sending a harassing e-mail, whether through content, frequency or size
- Sending the same (or substantially similar) unsolicited e-mail message to an excessive number of recipients
- Sending multiple unwanted e-mail messages to the same address, or sending any e-mail that provokes a complaint to Windstream from the recipient
- Continuing to send e-mail to a specific address after the recipient or Windstream has requested you to stop
- Falsifying your e-mail or IP address, or any other identification information
- Using e-mail to originate chain e-mails or originate or forward pyramid-type schemes
- Using a mail server to relay or intercept e-mail without the express permission of the owner
- Placing your web site address, which you have hosted through Windstream, on unsolicited commercial messages
- Sending e-mails, files or other transmissions that exceed contracted for capacity or that create the potential for disruption of Windstream's network or of the networks with which Windstream interconnects, by virtue of quantity, size or otherwise
- Sending unsolicited mass or commercial e-mail ("spamming") for any purpose whatsoever. Mass or commercial e-mail may be sent only to recipients who have expressly requested receipt of such e-mails, by the sending of an e-mail request to the person performing the mass or commercial mailings. This exchanging of requests, acknowledgements, and final confirmations (commonly referred to as a "double opt-in" process) must be adhered to in its entirety for any mass or commercial e-mail to be considered "solicited." If you send mass or commercial e-mail, you must maintain complete and accurate records of all e-mail subscription requests, specifically including the e-mail and associated headers sent by you. Subscriptions that do not have a specific recipient-generated e-mail request associated with them are invalid, and are strictly prohibited. A violation of the CAN-SPAM Act will be considered a violation of this policy.
- Newsgroup spamming or cross-posting the same (or a substantially similar) article to multiple Newsgroups; Many Newsgroups prohibit posting of commercial advertisements or solicitations. Usenet policy prevents off-topic posting of articles. You are required to comply with both Newsgroup(s) and Usenet's policies. We reserve the right to restrict access to any Newsgroups.
- Using an Internet Relay Chat ("IRC") bot, or violating any policy of an IRC server, including use of IRC-based telephony and video conferencing. It is your responsibility to determine the acceptable use policies for any IRC server to which you connect. We reserve the right to restrict access to IRC services.

**Hacking and Attacks:** Hacking or attacking is prohibited using Windstream's Internet services. Hacking is any unauthorized attempt to monitor access or modify computer system information or interference with normal system operations, whether this involves Windstream equipment or any computer system or network that is accessed through our service. Attacking is any interference with Internet service to any user, host or network, including mail bombing, ping flooding, broadcast attempts or any attempt to overload a system to interrupt service. Examples of hacking and attacking include, but are not limited to the following:

- Satan or port scans, full, half, FIN or stealth (packet sniffing)
- SubSeven port probes
- BO scans or attacks
- Mail host relaying, mail proxying, or hi-jacking
- Telnet, FTP, Rcommands, etc. to internal systems
- Attempts to access privileged or private TCP or UDP ports
- Multiple and frequent finger attempts
- User ID/Password cracking or guessing schemes
- Virus, worms and Trojan horse attacks
- Smurf, teardrop and land attacks
- Participation in botnets, including but not limited to, spam e-mail messages, viruses, computer/server attacks, or committing other kinds of crime and fraud

**Network Management:** To preserve the integrity of our network, we implement reasonable network management practices to ensure that all customers have an enjoyable experience using the Internet. Windstream's Internet services shall not be used in a manner that is excessive or unreasonable with respect to frequency, duration or bandwidth consumption when compared to the predominant usage patterns of other customers on a similar service plan or in your geographic area. As technology and customer



usage change, Windstream reserves the right to adjust its determination of excessive or unreasonable use. Windstream reserves the right to terminate service that it determines is excessive or unreasonable or to implement charges for excessive or unreasonable usage in its sole discretion. In the event Windstream determines, in its sole discretion, a customer's usage is excessive or unreasonable, Windstream will make reasonable efforts to provide customer with notice prior to taking any action regarding customer's service.

## **Section 2: Consequences for Activities in Violation of this Policy**

**Suspension and Termination:** Windstream has the right, in its sole discretion, with or without notice, to suspend or terminate your account when you engage in any conduct that violates Windstream's Terms and Conditions (which includes this policy, your written contract with Windstream, if applicable, or any other Windstream policy applicable to the service) at <http://www.windstream.com/terms.aspx>. We will make reasonable efforts to contact you if you are in jeopardy of suspension or termination; however, to protect our network and our customers, we reserve the right to block you first and subsequently contact you. We also reserve the right to cancel e-mail messages and/or restrict the size of e-mail distribution lists.

**Charges:** You agree to be responsible and pay for any activities that result in damages and/or administrative costs to us or our customers. These damages include, but are not limited to the following: system shut downs, retaliatory attacks or data flooding, and loss of peering arrangements. Damages may be as follows:

- Legal fees, subject to a minimum fee of \$500
- Activation fee or further deposits to reconnect suspended services
- Simultaneous login (Dial-up services); \$1.00 per hour. One-hour minimum charge; time exceeding the first hour will be rounded up to the next hour. Each simultaneous login will be treated as a separate instance of billing.
- Unsolicited bulk e-mail (spam clean-up): You will be charged \$300 + \$5 per message sent + \$100 per complaint received by Windstream.
- Windstream reserves the right to modify its rates any time and will provide notice through this policy.

## **Section 3: Privacy**

Any information transmitted through the Internet, including information about you, can be intercepted by unwanted third parties. There is no guarantee that you or Windstream can prevent this. We provide certain security measures to reduce the risk that information about you is intercepted by others.

In an effort to protect your privacy, we:

- use security techniques designated to prevent unauthorized access of information about you.
- will honor your requests to remove your name from e-mail solicitation lists.
- do not collect personally identifiable information about you unless you provide it to us.
- do not sell the names and addresses of our customers, or visitors to our sites, to others without providing information of that disclosure when the personally identifiable information is collected.
- do not provide customer information to other companies with which we do business without an understanding that they will respect your privacy.

For more information about Windstream's privacy policies, please see Windstream's Privacy Statement at [www.windstream.com](http://www.windstream.com) or [www.windstream.net](http://www.windstream.net).

## **Internet Security**

Windstream can help you safeguard your family online. Windstream has partnered with industry leading experts to offer a robust collection of tools and services regarding Internet security. For more information, visit [www.windstream.com/security](http://www.windstream.com/security).

## **Section 4: Account Usage**

### **Usage**

Your Windstream Internet account may only be used according to your service plan. If your account is not a dedicated account, then it may not be used to provide dedicated services such as e-mail, gaming, or streaming audio or video servers. Dedicated

accounts may include, but are not limited to Static DSL, Ethernet Internet and Dedicated Internet services. We have several dedicated service solutions for you to consider if you desire continuous access to the Internet. We may end an Internet session following periods of inactivity to minimize the burden on the network. The use of automated intervention, such as software or hardware devices, for the purpose of maintaining a connection to the service is strictly prohibited.

Personal web space is limited to 10 megabytes per Internet account. Personal web space shall be used for non-commercial use only. Windstream reserves the right to restrict access to sites that are being used for commercial use. Commercial web space size is dependent on the web-hosting package purchased by the customer. If a personal page receives an inordinately large number of hits, the owner of said page will have the option of moving the page to our commercial section or remove the page from their home directory.

### **Passwords**

You are solely responsible for maintaining the confidentiality of your account I.D. and passwords. Subscribers should not provide their login and password for use by others outside of their immediate business or household. You must notify us immediately if your account I.D. and/or password have been lost, stolen, or otherwise compromised. Simultaneous use of our service by multiple users with a single login and password is not allowed. Reselling or sharing, in whole or in part, access to your Internet account or Internet connectivity without our expressed written consent is prohibited.

### **Internet Software**

Windstream is not a software licensor, and the license agreement for your Internet software is not a part of your service agreement with us. This means that your software license agreement may either remain in effect or terminate independently from your Internet service.

We are not responsible for technical support or the integrity of any files or software that you obtain from any other source. It is your responsibility to determine whether any software that you intend to use, including any program that you intend to download from the Internet, is compatible with your computer and can be installed correctly and safely. We strongly recommend that you review the documentation accompanying any software before you attempt to install it.

### **Section 5: Copyright Complaints**

The Digital Millennium Copyright Act of 1998 ("DMCA") provides recourse for owners of copyrighted material who believe their rights under U.S. copyright law have been infringed on the Internet or other telecommunications networks.

As a provider of transitory digital communications, Windstream's activities are typically protected by a safe harbor provision of the DMCA (see 17 U.S.C. 512 (a)). Windstream is therefore not obligated to respond to a copyright owner (or the owner's agent) nor does Windstream have a duty to remove or disable access to material transmitted, routed or connected to the Windstream network(s) that is initiated and/or directed by an individual user.

If you believe that Windstream has infringed your copyrighted work in a way that does not fall within the applicable DMCA safe harbor provision, please provide notice to our Designated Copyright Agent at the address below. The notice must include the following information as required by the DMCA (see 17 U.S.C. 512 (c)(3)). In addition, the notice should include the basis for your belief that Windstream is not merely providing transitory digital communications under 17 U.S.C. 512 (a) of the DMCA:

- A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed;
- Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a singled notification, a representative list of such works at that site;
- Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit the service provided to locate the material;
- Information reasonably sufficient to permit the service provider to contact the complaining party, such as address, telephone number, and, if available, an electronic mail address at which the complaining party may be contacted;
- A statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law;

A statement that the information in the notification is accurate and under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.  
The Designated Copyright Agent for Windstream may be reached as follows:

Windstream Communications, Inc.  
11101 Anderson Drive  
Little Rock, AR 72212  
Attention: Designated Copyright Agent  
By fax: 501-748-7325  
By e-mail: [abuse@windstream.net](mailto:abuse@windstream.net)

If a copyright infringement notice has been wrongly filed against you as a result of mistake or a misidentification of the material, you may file a counter notification with our Designated Copyright Agent at the address noted above. The counter notification must provide the following information:

- Physical or electronic signature of the subscriber;
- Identification of the material that has been removed or to which access has been disabled and the location at which the material appeared before it was removed or access to it was disabled;
- A statement under penalty of perjury that the subscriber has a good faith belief that the material was removed or disabled as a result of mistake or misidentification;
- The subscriber's name, address, telephone number and e-mail address, and a statement that the subscriber consents to the jurisdiction of the Federal District Court for the judicial district in which the address is located, or if the subscriber's address is outside of the United States, for any judicial district in which the service provider may be found, and that the subscriber will accept service of process from the person who provided notification or an agent of such person.





Updated: February 2012

## Privacy Statement

This Privacy Statement describes how Windstream and its affiliates collect information from or about you, either as a customer or visitor to any Windstream website, when you order services from us, how we use the information we collect, and the choices customers have concerning the collection and use of such information. The goal of this Statement is to ensure that your Windstream experience is secure so that you may use our products and services with complete confidence. Please review this Statement carefully.

This Statement addresses:

- A. Personal Information Collected**
- B. Use of Personally Identifiable Information**
- C. Customer Proprietary Network Information (CPNI)**
- D. Value-Added Services**
- E. Information Disclosed to Third Parties**
- F. On-line Information**
- G. Security Measures**
- H. Children**
- I. Links**
- J. Google GMail**
- K. Statement Updates**
- L. Security Breaches**
- M. Contact Us**
- N. Definitions**
- O. Internet Information**
- P. Safe Harbor Principles**

### **A. Personal Information Collected**

Windstream limits the information collected about you to what is needed for conducting business, including the offering of products and services that might be of interest to you. You may choose to provide "personally identifiable information" (PII) to Windstream in a number of ways either in person, telephonically or via our websites. Examples of how you may share PII with us include: ordering a service or equipment from us, sending us e-mail, responding to Windstream surveys, entering Windstream-sponsored contests or sweepstakes, registering to receive news or public information or applying for a job. We may also obtain PII from third parties (for example, credit agencies) with your permission.

Examples of PII are:

- Name (including company name for business customers)
- E-mail address
- Credit card number or financial/bank account number or information, including routing numbers
- Passwords or personal identification codes (PINs)
- Date of birth
- Social Security number
- Driver's license number or government issued identification number
- Company contact information for business customers

The following information is not PII:

- Mailing address, unless unlisted or restricted at your request
- Telephone number, unless unlisted or restricted at your request
- IP Address allowing you to use our internet service
- PII included in aggregate data compiled by Windstream

Windstream may compile or aggregate PII from numerous customers or Web visitors to collect data about groups of customers or potential customers or categories of service. Windstream does not consider this "aggregate" information as PII because the aggregate information does not contain the PII of any individual customer or Web visitor.

## **B. Use of Personally Identifiable Information**

Windstream uses PII to provide products and services to meet customers' needs, including new products or services. Windstream may share PII with any Windstream-affiliated company, and these companies are subject to the terms of this Statement.

Windstream retains PII only as long as is necessary for Windstream to comply with business, tax and legal requirements. This retention period could be the entire time you are our customer depending on the type of PII.

### **Windstream does not:**

- Collect PII from you unless you provide it to us in person, telephonically or electronically by visiting our websites, including information you provide in order to use our services.
- Sell the names and addresses of Windstream Web visitors to unaffiliated suppliers, without your prior approval.
- Allow third parties to change your service provider or otherwise access your account information, at your request, without complying with our security policies, including our Customer Account Protection Plan that protects your account from changes not authorized by you.

## **C. Customer Proprietary Network Information (CPNI)**

CPNI is information that relates to the quantity, technical configuration, type, destination, location and amount of use of the telecommunications services purchased by you from Windstream. CPNI is available to Windstream solely through its relationship with you and information contained in your bill for telecommunication services. CPNI does not include information that is typically classified as PII, such as your name or e-mail address and does not include compiled or aggregated PII. U.S. federal law requires Windstream to protect the confidentiality of CPNI. Unless you opt-out from the use of CPNI, Windstream may use CPNI to market service offerings to you to which you do not already subscribe. To opt-out, just [contact us](#). Windstream may, without prior approval from you, use CPNI to provide or market service offerings to you, if the service offerings are within the same categories of service to which you already subscribe, regardless of your CPNI selection.

If you order Windstream services from a Windstream dealer, Windstream's dealers are prohibited from accessing or using your CPNI unless you sign a consent form authorizing Windstream to release your CPNI to the dealers. Dealers are required by Windstream to take all necessary measures to protect the confidentiality of your CPNI. As part of the dealers' agreements with Windstream, dealers agree that, upon termination of your Windstream services, the dealers will promptly return all of your CPNI to Windstream and will not retain any CPNI in any form.

## **D. Value-Added Services**

Because we appreciate the trust you have placed in us, we continually look for ways to enhance your customer experience. From time to time, we may notify you about a Windstream product or service using the information you have provided to us either in person, telephonically or electronically by visiting our websites, including information you provide to use our services. We strive to limit our offers to those we think you would benefit from and appreciate receiving. We want every contact you have with us to be a positive experience. If you prefer not to receive these Windstream value-added services, offers and opportunities, just [contact us](#).

Windstream complies with all applicable laws and regulations regarding "Do Not Call" Lists. Generally, Windstream is allowed to contact its customers, even if the customers are registered with federal or state Do Not Call Lists, because of our relationship with you. Windstream will, of course, honor any request to remove your name from our telephone, mail or e-mail solicitation lists and will delete your information from existing files within a reasonable time period. Just [contact us](#).

## **E. Information Disclosed to Third Parties**

Windstream does not sell PII of its customers. In limited circumstances, Windstream may provide PII to third parties:

- To assist us in developing, promoting, establishing, maintaining, and/or providing Windstream-related products and services to you, including joint marketing efforts or promotions, but PII may not be used by the third parties for any other purpose;
- To assist us in establishing accounts, billing, collecting payment (i.e. credit bureaus and collection agencies), enforcing the Terms and Conditions or the Acceptable Use Policy of our Windstream services where permitted by law, and protecting or enforcing our rights or property, or the services of our other customers, from fraudulent, abusive, or unlawful use by you of our services;
- To comply, when required by law, with court or administrative orders, civil or criminal subpoenas, warrants from law enforcement agencies, federal or state regulatory requirements, mandatory governmental audits, E911 reporting requirements, grand jury investigations, civil or criminal governmental investigations, or reporting required by the National Center for Missing and Exploited Children, designated by federal law as a reporting mechanism for child pornography; and
- To appropriate law enforcement, 911 centers, or emergency services when Windstream, in good faith, believes the disclosure is necessary to protect a person, Windstream property, or the public from an immediate threat of serious harm.

## **F. On-line Information**

In addition to PII identified in Section A of this Statement, we, or our third party partners, may collect non-personal information automatically when you enter Windstream websites, such as domain name, browser, your computer operating system, information about the Web page from which you linked to the site, and time spent on different pages within the site. We or our partners may use this information to evaluate and improve the site, and may share the information with third parties on an aggregated basis to enhance our products and services offered. This on-line information is typically collected via **cookies** or **web beacons** (see **Section N** for definitions). Like virtually all other web sites that you visit, we use cookies to deliver Web content specific to your interests and to control access to your personal shopping cart after your initial entry. The cookie permits the server to recall information from your previous shopping trip, should you decide to think about your purchase. A cookie is not used to access or otherwise compromise the data on your hard drive. With most browsers, you can choose to change your browser settings to disable cookies. Please be aware that cookies may be required to complete certain functions on Windstream websites and other websites you may link to from Windstream websites, including making purchases or payments on your Windstream account.

## **G. Security Measures**

Windstream uses security techniques designed to protect your information from unauthorized access, including firewalls and access control procedures. We have security measures in place to protect against the loss, misuse and alteration of information under our control. For example, when you place an order on a Windstream Website, the information you submit is encrypted using the Secure Sockets Layer (SSL) protocol.

Windstream employees are bound non-disclosure agreements that prevent them from disclosing any PII or CPNI. Further, Windstream's Working with Integrity Guidelines state that Windstream employees must abide by all state and federal laws and regulations in the performance of their job duties.

Our policies also limit access to PII to only those employees, contractors, agents, or representatives that require the information to perform their jobs or assist Windstream with providing products and services to you.

## **H. Children**

Children under the age of majority should consult with their parents or guardian before furnishing any data to us. Parents should consider using one of a number of available parental control tools that provide a child-friendly, on-line environment and can prevent children from disclosing PII without parental consent. If a child has provided personal information without the consent of a parent or guardian, that parent or guardian should contact us to request that the information be deleted from our records. More information about parental controls may be found on Windstream websites or by contacting a Windstream customer care representative.

Windstream does not knowingly collect PII from children under the age of 13 in connection with providing products and services, and it strives to comply with all provisions of the Children's Online Privacy Protection Act (COPPA). If Windstream inadvertently collects information from minors below the age of 13, the information will be treated as PII of the adult customer.

## **I. Links**

Windstream is not responsible for the content or privacy policies of other non-Windstream websites. You should keep this in mind when accessing sites through links on Windstream websites or through third party advertisements appearing on Windstream websites. Further, Windstream may advertise on other websites. The advertising companies placing our ads may use cookies or web beacons to track the effectiveness of our ads. The use of such technology is subject to the privacy policies of the advertising companies, and not this Statement.

## **J. Google GMail**

Some of our customers may have email provided by Google pursuant to their specific agreements. Use of Google GMail is subject to both this Statement and the GMail privacy policy available under the Terms section at <http://mail.google.com>.

## **K. Statement Updates**

We may update this Privacy Statement at any time in connection with our constant efforts to improve our products and services. We strongly encourage you to periodically review this Statement. We reserve the right to expand our capabilities for information collection and use and change this Statement in this regard. If any change constitutes a material change to this Statement, we will post a notice on our websites in a prominent position. If Windstream decides to use PII in a manner that is materially different from what is contained herein, we will post the change on this page for 30 days before making the change.

## **L. Security Breaches**

While our goal is to prevent any unauthorized disclosure of PII, Windstream cannot guarantee that a disclosure will not occur. We will make reasonable efforts to contact you if we determine that a security breach has occurred and that there is a reasonable risk of identity theft or as otherwise required by law.

## **M. Contact Us**

If you have questions, concerns, or complaints about this Statement or Windstream's privacy practices, please contact a Windstream customer care representative; email us at [privacy.statement@windstream.com](mailto:privacy.statement@windstream.com); or write to us at Windstream Communications, Inc., ATTN: Privacy Officer, 4001 Rodney Parham Road, Little Rock, Arkansas 72212. We will respond to your inquiries in a timely manner.

## **N. Definitions**

**Cookies** are small, encrypted data strings our server writes to your hard drive that contains your unique Windstream User ID.

**Web beacons** are small graphic images imbedded in a webpage or email.



## **O. Internet Information**

Windstream's network management practices are designed to provide the best possible online experience to its customers. To that end, Windstream monitors traffic flows between points within its network and between its network and locations on the Internet for purposes of reasonable network management. Windstream uses this information to manage its network, provide security for its customers, plan for future needs, and ensure its network runs efficiently. Monitored information includes the amount of data sent to and from your connection, the source and destination of the data, and the type of information sent and received. In limited circumstances, Windstream may also look into the contents of the information to determine whether it is malicious in nature (such as a virus, spam, worm, etc.) or when required by law to comply with judicial orders or regulations.

## **P. Safe Harbor Principles**

Windstream adheres to the Safe Harbor Privacy Principles and complies with the U.S.– EU Safe Harbor Framework as agreed to and set forth by the United States Department of Commerce and the European Union ("EU"), <http://export.gov/safeharbor/>. For individually identifiable information received by Windstream in the United States, from Users in the EU, Windstream adheres to the following principles:

**Notice.** Windstream will inform Users about the purposes for which it collects and uses PII, the types of non-agent third parties to which Windstream discloses PII, and the choices and means, if any, Windstream offers for limiting use and disclosure of PII.

**Choice.** Windstream will offer Users the opportunity to choose (opt-out) whether their PII is (a) to be disclosed to a third party who is not an agent, or (b) to be used for a purpose other than the purpose for which it was originally collected or subsequently authorized. For sensitive PII, Windstream will give Users the opportunity to affirmatively and explicitly (opt-in) consent to such disclosure or use.

**Access.** Upon request, Windstream will provide Users with the PII that it holds about them and will take reasonable steps to provide individuals with a means to correct, amend or delete PII that is inaccurate or incomplete.

**Dispute Resolution.** For complaints that cannot be resolved between Windstream and the User, such disputes will be governed by the current provisions of Windstream's Terms and Conditions.



This Service Level Agreement (“SLA”) only applies to Windstream’s Enterprise Data Products, as defined herein (the “Services”), and is offered as part of networking services provided by the applicable Windstream company. The SLA does not apply to any applications or enhanced telecommunications services, local access circuits, equipment sales and related maintenance services, or any other services provided by a Windstream company or any third party provider. The SLA is effective as of the first day of the first whole calendar month after the initial installation of Services. This SLA shall be deemed an addendum to either the written contract executed by the parties or the Windstream Online Terms and Conditions to which Customer is subject, whichever is applicable. To be eligible for the credits under this SLA, Customer must be in good standing with Windstream and current in Customer’s obligations.

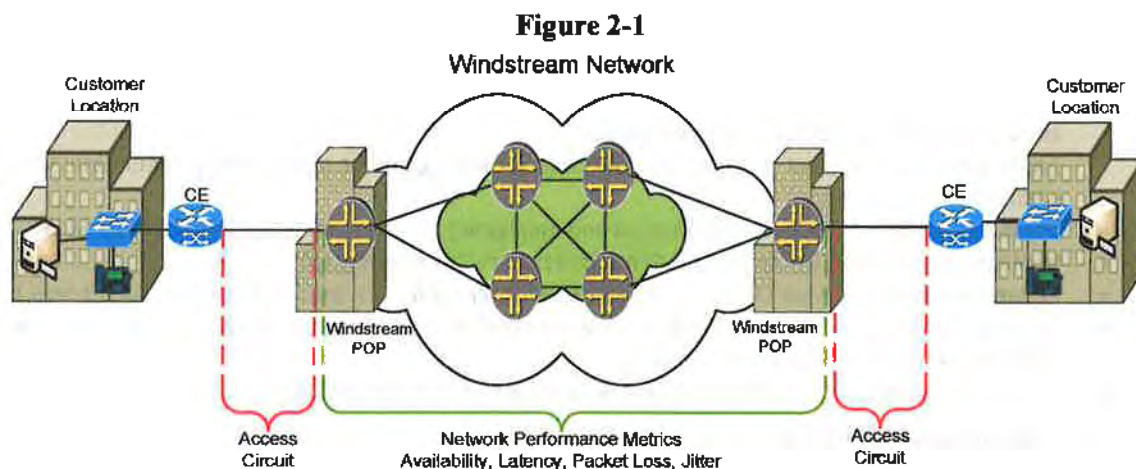
## 1 Description of Services

The Services covered under this SLA are Ethernet Internet (“EI”), Dedicated Internet (“DI”), and MPLS Networking Services. MPLS Networking Services (“MPLS Networking”) are IP Virtual Private Network (“IP VPN”), Virtual LAN Services (“VLS”), Dynamic IP, and Virtual PBX. Individually, the Services may be referenced in this SLA by the noted abbreviations. Collectively, the term “Services” as used in this SLA refers to any of the qualifying EI, DI, and MPLS Networking Services but does not refer and shall not be interpreted as referring to other services offered by Windstream or any third party provider. Services under this SLA shall only be entitled to credits consistent with the terms of this SLA and shall not be subject to credits under any other agreement or arrangement that may exist between Windstream and Customer. To the extent of any conflict between the terms of this SLA and such other agreement with respect to service credits, this SLA shall govern.

### 1.1 MPLS Networking

As noted above, MPLS Networking includes for purposes of this SLA only IP VPN, VLS, Dynamic IP, and Virtual PBX. Windstream’s MPLS Networking provides connectivity through Windstream’s network at designated speeds, enabling Customer to transport private data between two or more Customer locations. MPLS Networking enables Customer to prioritize voice or data through Quality Of Service (“QOS”) levels, as defined later, based on Customer’s unique business requirements.

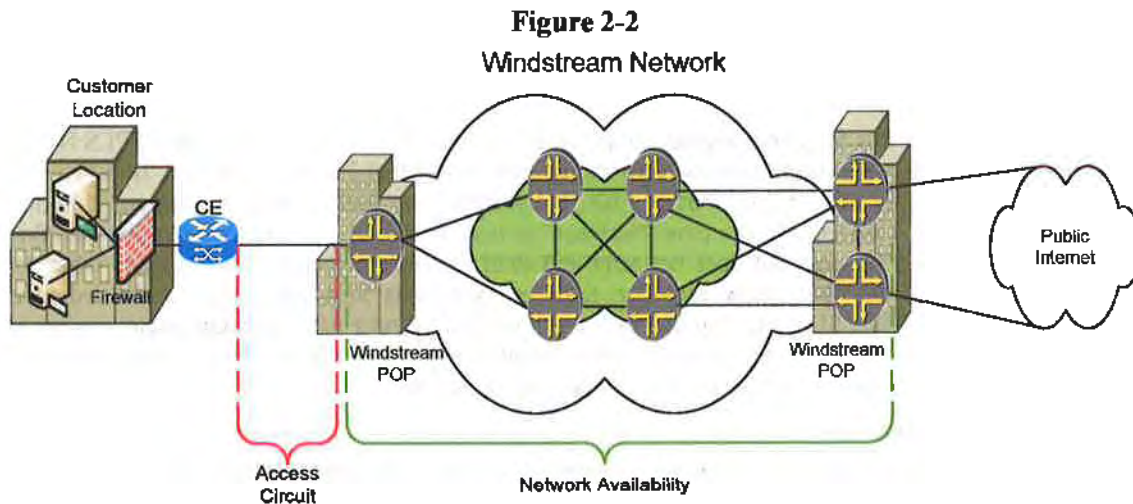
The performance of Windstream’s network for purposes of measuring MPLS Networking deliverables under this SLA is measured through Network Availability, Network Latency, Network Packet Loss, and Network Jitter. These individual metrics are defined in Section 3 below and collectively may be referenced in this SLA as “Network Performance Metrics.” All Network Performance Metrics will be measured across specific Points of Presence (“POP”) on Windstream’s Network (See figure 2-1). Windstream’s network management system is the sole and conclusive measurement for purpose of this SLA regarding Network Performance Metrics.



## 1.2 Dedicated Internet / Ethernet Internet Access

As noted previously, in addition to MPLS Networking, this SLA applies to DI and EI. DI and EI provide connectivity to the public internet through Windstream’s network at designated speeds.

The performance of Windstream’s network for purposes of measuring DI and EI deliverables under this SLA is measured through Network Availability. For purposes of DI and EI, Network Availability will be measured across specific POPs on the Windstream Network. (See figure 2-2). Windstream’s network management system is the sole and conclusive measurement for purpose of this SLA regarding Network Availability.



## 2 Definition

### 2.1 Service Outage:

A Service Outage is defined as the complete unavailability or degradation of Services during any unscheduled period of time except that Windstream is not responsible for failure to meet performance objectives for any of the following reasons which shall not be deemed a Service Outage (collectively, “Exclusions”):

- Any Service Outage for which Customer may have previously obtained credit or compensation outside the terms of this SLA;
- Actions, failures to act or delays by Customer or others authorized by or acting on behalf of Customer to use the Services;
- Failure of power, equipment, services or systems not provided by Windstream;
- Customer owned or leased equipment or facilities (e.g., Customer’s PBX or local area network);
- Failure of Customer to afford Windstream or its agents access to the premises where access 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 planned and emergency) as set forth in Section 5 of this SLA;
- Implementation of a Customer order that requires Services interruption;
- Failure to report a Service Outage to Windstream or reporting of a trouble where no trouble was found;
- Labor difficulties, governmental orders, civil commotion, acts of God, and other circumstances beyond Windstream’s reasonable control; and
- Failure of equipment or systems responsible for network measurements.

### 2.2 Windstream Point of Presence (“POP”):

Physical location of Windstream router at the edge of Windstream’s network that faces the Customer Edge and delivers private data and/or Internet Services to Customer’s network.

### 2.3 Customer Edge (“CE”):

CE refers to the router at Customer’s premises that is connected to the Windstream POP.



#### 2.4 Quality of Service (“QOS”):

QOS is the ability to provide different priority to different applications, users, or data flows, or to offer a certain level of performance for data flows. For example, a required bit rate, delay, jitter, packet dropping probability and/or bit error rate may be offered by Windstream to Customer. To determine what QOS level applies to the Services, Customer either must select from the following QOS classes of service or subscribe to a Service that is defaulted into one or more QOS classes. The Windstream QOS classes are identified as:

QOS Class of Service	Description
Real Time	Real-time Class of Service delivers premium QOS to a customer’s site and is optimized for low latency and low jitter performance required for voice communications. All managed VoIP services are defaulted into Real-time QOS.
Mission Critical Data	Mission Critical Class of Service provides the highest priority treatment for data. Intended for applications with high business value requiring large bandwidth allocations and/or lower latency such as interactive video conferencing, streaming video, credit card transactions, and ERP applications like SAP and PeopleSoft.
Business Critical Data	Business Critical Data Class of Service provides priority treatment to transactional and interactive data such as email, or client/server applications
Standard Data	Standard Data class of Services enables customers to share latency and jitter tolerant data and Internet applications across all locations. DI and EIA traffic are defaulted into Standard Data QOS.

#### 2.5 Calendar Month:

For the purpose of this SLA a Calendar Month is based on 60 Minutes/Hour, 24 Hours/Day, 30 Days/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.

### 3 Service Levels

#### 3.1 Network Availability

For purposes of measuring Windstream’s MPLS Networking, DI, and EI QOS under this SLA, the term “Network Availability” is defined as the percentage of time in one Calendar Month during which POPs on Windstream’s wholly owned IP/MPLS network can deliver traffic to/from other Windstream POP locations and does not apply to local access circuits. Network Availability shall be calculated based on an aggregate monthly measurement average between specific Windstream POP endpoints. Network Availability measurements do not include the specified Exclusions (e.g., scheduled maintenance windows or planned outages).

The following outlines the Network Availability objectives in any given Calendar Month:

<b>MPLS Networking DIA / EIA</b>	99.99% (≤ 4.32 minutes of network unavailability per month)
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#### 3.1.1 Services Credit for time when Network Availability is not provided (“Network Unavailability”)

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

>7hours and ≤ 8 hours	8/30 <sup>th</sup> of the Monthly Recurring Charge
>8 hours and ≤ 9 hours	9/30 <sup>th</sup> of the Monthly Recurring Charge
>9 hours and ≤ 10 hours	10/30 <sup>th</sup> of the Monthly Recurring Charge
>10 hours and ≤ 11 hours	11/30 <sup>th</sup> of the Monthly Recurring Charge
>11 hours and ≤ 12 hours	12/30 <sup>th</sup> of the Monthly Recurring Charge
>12 hours and ≤ 13 hours	13/30 <sup>th</sup> of the Monthly Recurring Charge
>13 hours and ≤ 14 hours	14/30 <sup>th</sup> of the Monthly Recurring Charge
> 14 hours	15/30 <sup>th</sup> of the Monthly Recurring Charge

### 3.2 Network Latency

For purposes of measuring Windstream's MPLS Networking under this SLA, Network Latency is defined as the round trip delay (in milliseconds) of packets transported between specific Windstream POP locations across Windstream's wholly owned IP/MPLS network and does not apply to local access circuits. Network Latency shall be calculated based on an aggregate monthly measurement average between specific Windstream POP endpoints. The following outlines the latency objectives, depending on the class selected by Customer, in any given Calendar Month.

QOS Class of Service	Target Commitment
Real Time	≤ 40 ms (Roundtrip)
Mission Critical Data	≤ 45 ms (Roundtrip)
Business Critical Data	≤ 48 ms (Roundtrip)
Standard Data	N/A

#### 3.2.1 Services Credit for Network Latency

QOS Class	Target	Network Latency, =(Credit as a fraction of the MRC for the Affected Services)
Real Time	≤ 40ms (Roundtrip)	1/30 MRC for each day (any 24 hour period) Windstream fails to meet the Network Latency SLA for Real Time QoS in a Calendar Month
Mission Critical Data	≤ 45 ms (Roundtrip)	1/30 MRC for each day (any 24 hour period) Windstream fails to meet the Network Latency SLA for Mission Critical QoS during any Calendar Month
Business Critical Data	≤ 48 ms (Roundtrip)	1/30 MRC for each day (any 24 hour period) Windstream fails to meet the Network Latency SLA for Business Critical Data QoS during any Calendar Month.
Standard Data	N/A	N/A

### 3.3 Network Packet Loss

For purposes of measuring Windstream's MPLS Networking under this SLA, Network Packet Loss is defined as the percentage of packets in a Calendar Month that are dropped between specific Windstream POP locations across Windstream's wholly owned IP/MPLS network and does not apply to local access circuits. Network Packet Loss shall be calculated based on an aggregate monthly measurement average between specific Windstream POP endpoints. The following outlines the Network Packet Loss objectives, depending on the class selected by Customer, in any given Calendar Month.

QOS Class of Service	Target Commitment
Real Time	≤ .10%
Mission Critical Data	≤ .30%
Business Critical Data	≤ .50%
Standard Data	N/A

### 3.3.1 Services Credit for Network Packet Loss

QOS Class	Target	Network Packet Loss =(Credit as a fraction of the MRC for the Affected Services)
Real Time	≤ .10%	1/30 MRC for each day (any 24 hour period) Windstream fails to meet the Network Packet Loss SLA for Real Time QoS during any Calendar Month.
Mission Critical	≤ .30%	1/30 MRC for each day (any 24 hour period) Windstream fails to meet the Network Packet Loss SLA for Mission Critical QoS during any Calendar Month.
Business Critical Data	≤ .50%	1/30 MRC for each day (any 24 hour period) Windstream fails to meet the Network Packet Loss SLA for Business Critical Data QoS during any Calendar Month.
Standard Data	N/A	N/A

### 3.4 Network Jitter

For purposes of measuring Windstream’s MPLS Networking under this SLA, Network Jitter is defined as the variation in the delay of received packets transmitted between specific Windstream POP locations across Windstream’s wholly owned IP/MPLS network and does not apply to local access circuits. Network Jitter shall be calculated based on an aggregate monthly measurement average between specific Windstream POP endpoints. Network Jitter measurement is only available to customers selecting the Real Time and/or Mission Critical QOS class. The following outlines the Network Jitter objectives in any given Calendar Month:

QOS Class of Service	Target Commitment
Real Time	≤ 2.5 ms
Mission Critical Data	≤ 3.0 ms
Business Critical Data	≤ 3.5 ms
Standard Data	N/A

#### 3.4.1 Services Credit for Network Jitter

QOS Class	Target	Network Jitter, =(Credit as a fraction of the MRC for the Affected Services)
Real Time	≤ 2.5 ms	1/30 MRC for each day (any 24 hour period) Windstream fails to meet the Network Jitter SLA for Real Time QoS during any Calendar Month.
Mission Critical	≤ 3.0 ms	1/30 MRC for each day (any 24 hour period) Windstream fails to meet the Network Jitter SLA for Real Time QoS during any Calendar Month.
Business Critical Data	≤ 3.5 ms	1/30 MRC for each day (any 24 hour period) Windstream fails to meet the Network Jitter SLA for Real Time QoS during any Calendar Month.
Standard Data	N/A	N/A

## 4 Credits

When Customer’s Services fail to meet the applicable commitments outlined in this SLA after being reported by Customer, Customer may receive a credit adjustment to its account. Windstream maintains internal escalation procedures and call-out technical support for observed holidays and after-business hours emergencies and critical outages. To request a credit under this SLA, Customer shall email their Business Sales Representative with a description of the requested credit along with the Windstream trouble ticket number(s) provided by the Service Center within thirty (30) calendar days of the asserted Service Outage. The Business Sales Representative shall notify Customer when the requested credit has been approved or declined.

### 4.1 Calculations of Credits

Maximum Credit - In no event may the credits provided for hereunder (either individually or on a cumulative basis) in any billing period exceed the total MRCs for that period for service and facilities.



## 5 Maintenance

As set forth above, maintenance activities are Exclusions and do not constitute a Service Outage for purposes of this SLA. Windstream reserves the right to schedule maintenance and upgrades to the network 7 days a week from 12 a.m. to 6 a.m. in the local time zone of the affected area without prior notice to Customer or upon reasonable advance notice outside these time frames.

### 5.1 Scheduled Network Maintenance

The term “Scheduled Network Maintenance” refers to upgrades or modifications to network equipment software, network equipment hardware, or network capacity. Scheduled Network Maintenance may temporarily degrade the quality of Customer’s Services. Windstream takes every reasonable precaution to minimize the duration of any impacts during the Scheduled Network Maintenance window. Such effects related to Scheduled Network Maintenance shall not give rise to 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 of the local time zone.**

### 5.2 Emergency Network Maintenance:

The term “Emergency Network Maintenance” refers to efforts to correct network conditions that are likely to lead to a material Service Outage and that require immediate action. Emergency Network Maintenance may temporarily degrade the quality of Customer’s Services, including the possibility of causing short-duration outages. Such effects related to Emergency Network Maintenance shall not give rise to credits under this SLA and shall not be deemed a Service Outage. Windstream may undertake Emergency Network Maintenance at any time deemed necessary to preserve network services.

## 6 LIMITATION OF LIABILITY

Windstream’s total liability to Customer under this SLA is limited to the MRCs for the affected Services for the applicable Calendar Month in which the Service Outage occurs. Except for the credits identified in this SLA, this SLA does not modify or amend the written contract executed by the parties or the Online Terms and Conditions to which Customer is subject, whichever is applicable, including but not limited to any warranty disclaimers or limitation of liability provisions.

**THE PROVISIONS OF THIS SLA ARE CUSTOMER’S SOLE AND EXCLUSIVE REMEDIES FOR WINDSTREAM’S FAILURE TO MEET THE STANDARDS IN THIS SLA AND ANY OTHER NETWORK, EQUIPMENT OR SERVICE ISSUES.**

Customer: \_\_\_\_\_

Windstream: \_\_\_\_\_