

Effective May 10, 2024

**ONLINE TERMS AND CONDITIONS
FOR SERVICES AND/OR EQUIPMENT PROVIDED BY KINETIC**

PLEASE READ THESE ONLINE TERMS AND CONDITIONS CAREFULLY. IT IS ESPECIALLY IMPORTANT FOR YOU TO READ SECTION 3 (DISPUTE RESOLUTION) CAREFULLY, AS SECTION 3 PROVIDES FOR RESOLUTION OF DISPUTES THROUGH FINAL AND BINDING ARBITRATION BEFORE A NEUTRAL ARBITRATOR INSTEAD OF IN A COURT BY A JUDGE OR JURY OR THROUGH A CLASS OR MASS ACTION. YOU WILL CONTINUE TO HAVE CERTAIN RIGHTS TO OBTAIN RELIEF FROM FEDERAL OR STATE AGENCIES.

1. Definitions.

“You” or “Customer” means the person or entity that subscribes to Services or purchases or leases Equipment and anyone who accesses the Services and Equipment provided to you, except as specifically provided in Section 3 (Dispute Resolution) herein.

“We,” “us,” “our,” “Company,” “Windstream”, “Kinetic” refer to the Windstream legal entities providing Services to you and as identified on your bill.

“Service(s)” refer to any services you have agreed to obtain from us.

“Equipment” means any equipment or accessories you purchase or lease from us or those provided by us for use in any manner in connection with your Services. Services and Equipment provided by Kinetic may be referred at times to in this document collectively as, “Services.”

“Promotional Terms” mean terms that apply to special offers from time to time. Promotional terms will be specified in your first bill message. Promotional terms may include limited-time promotional pricing or speeds, a term commitment and an early termination fee in the event the Service is not installed or maintained, or in the event you disconnect Service prior to the end of the term.

“Service Order” means the form (whether paper or electronic, including online order forms), if any, in which you apply for or make changes to Services and may include the length of time you will subscribe to a Service, rate plans, access charges, fees, taxes and surcharges, choice of long-distance carrier, and the Equipment you have selected.

2. Agreement and Acceptance.

You accept and agree to be bound by these Online Terms and Conditions (“Terms”) by: (a) giving us your written or electronic signature; (b) telling us orally or electronically that you accept (i.e., by clicking the “I Accept” button for online purchases or account changes); or (c) activating, using, or paying for any Services. If you have never used the Services before, and do not wish to be bound by these Terms, then do not begin using them, and notify us immediately. By accepting these Terms, you acknowledge that you are 18 years of age or older, are competent to enter into a contract with us, and are authorized to obtain Services or make changes to an existing account.

Additionally, you are bound by, and these Terms incorporate, the following: 1) any applicable tariffs filed with the Federal Communications Commission (“FCC”) or the relevant state public service commission; 2) the FCC or state web-posted price lists or terms and conditions (either, “price lists”) posted at <https://www.windstream.com/tariffs>; 3) any applicable Service-Specific Terms and Conditions at <https://windstream.com/kinetic-product-schedules> for Residential and <https://business.windstream.com/kinetic-business-product-schedules> for Kinetic Business and any additional agreements associated with such products, as they may change over time; 4) any Promotional Terms, at <https://www.windstream.com/offer-conditions> and Your bill messages; 5) the Service Order, if any; 6) any relevant click-through agreement for the Services you received; 7) these Terms, as they may change over time; 8) the Acceptable Use Policy posted at

<https://www.windstream.com/about/legal/Acceptable-Use-Policy> and 9) the Privacy Policy posted at <https://www.windstream.com/about/legal/privacy-policy>. The foregoing documents are collectively referred to in these Terms as, the "Agreement". Note that we may make changes to these incorporated terms at any time in accordance with Section 22 (Changes to these Terms and Conditions).

You may obtain a copy of these Terms and the Service-Specific Terms and Conditions by visiting <https://www.windstream.com>, or calling a service representative at 877-807-9463. This Agreement supersedes all statements or promises made to you by any of our employees or agents.

If you have a written contract with Kinetic, then those contract terms and conditions will control.

3. Dispute Resolution.

PLEASE READ THIS CAREFULLY - IT AFFECTS YOUR RIGHTS. This section outlines how disputes between you and Kinetic will be resolved through an informal dispute resolution process, individual arbitration, or small claims court.

For purposes of this Dispute Resolution section, references to "Kinetic", "we", and "us" include our subsidiaries, affiliates, agents, employees, predecessors in interest, successors, and assigns. This Dispute Resolution provision shall survive termination of this Agreement.

YOU AND KINETIC AGREE TO WAIVE ANY RIGHT TO A TRIAL BY JURY IN A COURT OF GENERAL JURISDICTION AND ANY RIGHT TO PARTICIPATE IN A CLASS OR MASS ACTION OR CONSOLIDATED ACTION REGARDING A DISPUTE EXCEPT AS PROVIDED IN THIS SECTION. Specifically, you and Kinetic agree to waive any right to pursue a dispute by joining a disputed claim with the disputed claim of any other person or entity or to assert a disputed claim in a representative capacity on behalf of anyone else in any lawsuit, arbitration, or other proceeding.

a. *Here are the ways you would resolve a dispute with Kinetic.*

i. Resolving your dispute directly with Kinetic within sixty (60) days.

If you have a dispute, first, notify Kinetic's Customer Care department at the number listed on your invoice. If the Customer Care department is unable to resolve your dispute, you must submit your dispute in writing at the following address:

Windstream Communications, LLC
4005 N. Rodney Parham Rd.
Little Rock, AR 72212
Attn: Executive Customer Relations

Describe your dispute with enough detail to allow us to understand it and provide any supporting documentation with your written dispute. Visit www.windstream.com/notice-of-dispute for a form that you may, but are not required to, use to submit your written dispute to us. To safeguard your account, you might be required to provide authentication and/or consent for Kinetic to discuss or share your account information with anyone other than you, including but not limited to an attorney representing you. If we have a dispute with you, we will send you a written notice to your billing address to attempt to resolve the dispute.

A dispute is any claim or controversy related in any way to Kinetic's Services, including charges for Services, Equipment, Service Order(s), or our agreements pursuant to these Terms or any other agreements, whether the dispute: arises in tort, contract, by statute, or any other legal theory; arises under this or any prior agreement with us; or arises after your Services with Kinetic are terminated. Note this Section 3 is intended to resolve outstanding disputes between us, and not to collect a debt owed by you to Kinetic.

ii. Pursuing small claims or arbitration.

If you and Kinetic are unable to resolve the dispute within sixty (60) days from the date Kinetic receives the written dispute, except as provided in subsection 3(b)(x), you agree that the dispute shall be resolved in only one of two possible ways:

- a) **Small Claims Court.** You may seek relief in a small claims or equivalent court, if appropriate under the applicable court's rules, in the city or county of the billing address reflected on your bill, so long as the action remains in that court and is not removed or appealed to a court of general jurisdiction. If the small claims or equivalent court does not allow for declaratory relief, then the action could be brought in a court which does have such relief.
- b) **Arbitration.** All disputes not filed in small claims court will be resolved by arbitration that will be final and binding on both you and Kinetic, subject to any exceptions required by applicable law. An arbitration is a less formal alternative to a lawsuit or jury trial in court. While the procedures in arbitration may be different, they are more streamlined with limited discovery to simplify the process and reduce cost. An arbitrator applies the same law and can award the same damages and relief as a court would under the terms of this Agreement. This Agreement evidences a transaction in interstate commerce, and thus the Federal Arbitration Act governs the interpretation and enforcement of this provision.

This Section does not prohibit you from submitting any issue you have with Kinetic to any federal, state, or local governmental agency or public service commission which may be able to seek relief from Kinetic on your behalf. If the dispute is regarding the charges for Services, you agree that if you do not seek relief in small claims or equivalent court or by arbitration following the sixty (60) day dispute period, then you will immediately begin paying the disputed amount that Kinetic determines is valid, plus any charges that were not paid during the sixty (60) day dispute period, or Kinetic may terminate the Services.

b. *The following provisions apply to arbitration.*

- i. Notice of Arbitration. If you intend to seek arbitration after expiration of the sixty (60) day written dispute period, you must first file a claim with JAMS. Visit www.windstream.com/notice-for-arbitration for a form that you may, but are not required to, use. Your claim must include:
 - a) your account number;
 - b) the Services (if any) to which your claim pertains;
 - c) a description of the nature and basis of the claim or dispute;
 - d) a brief outline of previous efforts to resolve the dispute;
 - e) an explanation of the specific relief sought and the basis for the calculations;
 - f) all supporting documentation; and
 - g) if you have retained an attorney, your signed statement authorizing Kinetic to disclose your confidential account records to your attorney if necessary to resolve your claim.

The claim must be signed, and a copy along with proof of payment of the filing fee should be sent to Kinetic at:

4005 Rodney Parham Rd.
Little Rock, AR 72212
Attn: Legal Department

Unless you specifically request otherwise, the Executive Customer Relations group may still contact you regarding the claim even if you are represented by counsel.

- ii. Arbitration Fees and Applicable Rules. The arbitration will be governed by the JAMS Comprehensive Arbitration Rules and Procedures ("JAMS Rules"), as modified by these Terms, and will be administered by JAMS. The JAMS Rules are available online at www.jamsadr.org by calling JAMS at 1-800-352-5267(JAMS).

The arbitrator is bound by these Terms. All issues are for the arbitrator to decide, *except* issues relating to the scope and enforceability of the Dispute Resolution provision, whether a dispute can or must be brought in arbitration, or whether there has been a violation of the Class or Mass Action prohibition, which are for the court to decide.

Unless agreed otherwise, arbitration hearings will take place in the county (or parish) of your billing address. If your claim is \$10,000 or less, you may choose whether the arbitration will be conducted solely on the basis of documents submitted to the arbitrator, through a telephonic hearing, or by an in-person hearing as established by the JAMS Rules. If your claim exceeds \$10,000, the right to a hearing will be determined by the JAMS Rules. Regardless of the manner in which the arbitration is conducted, the arbitrator shall issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the award is based.

After Kinetic receives notice that you have commenced arbitration and proof of payment, we will reimburse you for payment of the filing fee, unless your claim is greater than \$75,000 ("JAMS' fees"). A consumer's share of the filing fee is currently limited to \$250, though JAMS may change that amount. If, however, the arbitrator finds that either the substance of your claim or the relief sought is frivolous or brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)), then the payment of all such fees will be governed by the JAMS Rules. You agree to reimburse Kinetic for all monies previously disbursed that are your obligation to pay under the JAMS Rules. In addition, if you initiate an arbitration seeking more than \$75,000 in damages, the payment of JAMS' fees will be governed by the JAMS Rules. If Kinetic initiates the arbitration, it will pay JAMS' fees regardless of the amount of its claim.

- iii. Alternate Payment by Kinetic. If, after finding in your favor in any respect on the merits of your claim, the arbitrator issues you an award, exclusive of attorneys' fees, that is greater than the value of Kinetic's last written settlement offer made before an arbitrator was selected, then Kinetic shall pay the greater of the award or \$5,000 ("the Alternative Payment"). If Kinetic did not make a written offer to settle the dispute, you are eligible to receive the Alternative Payment if the arbitrator awards you relief less than \$5,000 on the merits. If you are still a current customer when the arbitrator's award is issued, then Kinetic, in its sole discretion, can pay the Alternative Payment by issuing a credit for services on the Customer's account.
- iv. Attorneys' Fees. If you are entitled to the Alternative Payment, then Kinetic will also pay your attorney, if any, the amount of attorneys' fees, and reimburse any reasonable expenses, that your attorney reasonably accrues for investigating, preparing, and pursuing your claim in arbitration ("the Attorney Premium"). If you are not entitled to this Attorney Premium, Kinetic will reimburse for reasonable attorneys' fees and reasonable expenses if it is required to do so under applicable law. However, you may not receive both the Attorney Premium and an award of attorneys' fees under a statute.
- v. No Duplicative Awards. The arbitrator may make rulings and resolve disputes as to the payment and reimbursement of fees, expenses, the Alternative Payment and the Attorney Premium at any time during the proceeding and upon request from either party made within fourteen (14) days of the arbitrator's ruling on the merits. However, you may not recover duplicative awards of attorneys' fees or costs.
- vi. Individual Arbitration Required. The arbitrator may award declaratory or injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief

warranted by that party's individual claim. **YOU AND KINETIC AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF, CLASS MEMBER OR MASS ACTION MEMBER IN ANY PURPORTED CLASS, MASS ACTION, OR REPRESENTATIVE PROCEEDING EXCEPT AS OUTLINED IN SUBSECTION 3(B)(VII).**

Unless agreed otherwise, the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding, or private attorney general claims. The parties expressly waive the right to have any dispute or claim brought, heard, administered, resolved, or arbitrated as a Mass Action. Neither an arbitrator nor an arbitration provider shall have authority to hear, arbitrate, or administer any Mass Action except as provided in subsection 3(b)(vii) below. A "Mass Action" includes, but is not limited to, instances in which you or Kinetic are represented by counsel, a law firm, or collection of coordinated law firms that has filed twenty-five (25) or more arbitration demands of a substantially similar nature against the other party within one hundred and eighty (180) days of the arbitration demand filed on your or Kinetic's behalf.

You and Kinetic agree that one of the essential purposes of this Dispute Resolution provision is to provide for the prompt, efficient, and cost-effective resolution of disputes and is a material part of these Terms. Subsection 3(b)(vii) furthers these purposes by ensuring disputes are resolved on an individual basis and by providing for alternative low-cost paths to resolving individual disputes. Any claim that all or part of this Class or Mass Action waiver is unenforceable, unconscionable, void, or voidable may be determined only by a court of competent jurisdiction and not by an arbitrator. If this specific proviso is found to be unenforceable, then the entirety of this Dispute Resolution provision shall be null and void.

vii. Procedure in the case of Prohibited Mass Actions. If a court determines that a breach of the Dispute Resolution provision has occurred, or that you have participated in a prohibited Mass Action, then we agree that the following shall apply, in addition to any other remedy ordered by a court.

a) **Opting Out.** If it is determined that there has been a violation of the Mass Action waiver, the parties may opt out of arbitration within thirty (30) days of the decision and proceed on an individual basis in small claims court. You may opt out of arbitration by providing written notice of your intention to opt out to the arbitration provider and to Kinetic at:

4005 Rodney Parham Rd.
Little Rock, AR 72212
Attn: Legal Department

This written notice must be signed by you, and not any attorney, agent, or other representative of yours. Kinetic may opt out of arbitration by sending written notice of its intention to opt out to the arbitration provider and to you or your attorney, agent, or representative if you are represented. The ability to opt out of arbitration described in this subsection 3(b)(vii) only applies if it has been determined by a court that there has been a violation of the Mass Actions prohibition. If the parties do not opt out of the arbitration, the parties agree to following the batching procedure outlined below. **You agree to this process even though it may delay the arbitration of your claim.**

b) **Batching.** In the first batch, claimants' counsel and Kinetic will each select ten (10) cases (twenty (20) cases total) to be filed in arbitration and resolved individually by different arbitrators. In the meantime, no other cases may be filed or proceed in arbitration, and JAMS must not assess or demand payment of fees for the remaining cases, administer, or accept them.

After the first batch is completed, the parties must engage in a single mediation of all remaining cases with the mediation costs being split between the parties. If the parties cannot agree how to resolve the remaining cases after mediation, they will repeat the process of selecting and filing twenty (20) additional cases to be resolved individually by different arbitrators, followed by mediation.

If any claims remain after the second batch, the process will be repeated until all claims are resolved. However, a total of fifty (50) cases may be filed in the third and later batches and will be randomly selected. The parties may also negotiate with JAMS regarding the amount or timing of JAMS fees.

- c) **Tolling.** If this subsection 3(b)(vii) applies to a dispute filed with JAMS and the parties elect the batching procedure set forth herein, the relief set forth in that claim will be extended (including the tolling of any applicable statute of limitations or contractual limitations period for the claims and requested relief) until that claim is selected for a batched proceeding, withdrawn, or otherwise resolved. A court will have the authority to enforce this subsection, including by enjoining the Mass Action filing, the prosecution or administration of arbitrations, or the assessment or collection of JAMS' fees.
 - d) **Severability.** This subsection 3(b)(vii) is intended to be severable from the rest of this Dispute Resolution provision. If, a court determines that the batching process in this subsection is not enforceable, then the cases may be filed in arbitration and the payment of JAMS filing, administration, case-management, hearing, and arbitrator fees will be assessed as the arbitrations advance and arbitrators are appointed rather than when the arbitrations are initiated.
- viii. **Confidentiality.** Any arbitration shall remain confidential. During the arbitration, the amount of any settlement offer made by either Kinetic or you shall not be disclosed to the arbitrator until after the arbitrator determines the amount, if any, to which you or Kinetic is entitled. Neither you, nor Kinetic, may disclose the existence, content, or result of any arbitration or award, except as may be required by law, or to confirm and enforce an award.
- ix. **Notice to California Customers.** California Customers may seek public injunctive relief through arbitration if, and only to the extent, provided by California law (if deemed applicable) and, in the event the provisions of this Section 3 are found to be unenforceable despite the foregoing exception, such California Customers may seek public injunctive relief through the courts only after the individual claims are fully resolved in arbitration. The preceding sentence shall not apply to Customers in any other state.
- x. **Exceptions.** Nothing in this Section shall prevent Kinetic from doing the following:
- a) issuing notices, including takedown notices for alleged trademark or copyright infringement pursuant to the Digital Millennium Copyright Act;
 - b) termination of Service pursuant to Kinetic's Acceptable Use Policy for your abuse of your Internet access Services; or
 - c) filing a lawsuit, including through a third-party collections agency, in a court of general jurisdiction to collect outstanding balances for unpaid Services or Equipment, any other type of charge owed on your account, or for the theft of any Services or Equipment by you even if the amount in controversy exceeds the limits of small claims in the jurisdiction in which the nonpayment arises.
- xi. **Limitation of Liability.** This Section 3 is subject to the Section 17 (Limitation of Liability) in these Terms.

- xii. Limitations Period. Except as provided in subsection 3(b)(vii), any written dispute must be brought by you or Kinetic within two (2) years after the date the basis for the claim or dispute first arises.

4. Charges for Services and Taxes, Fees, and Surcharges.

You are responsible for paying all charges applicable to Services provided to you including, but not limited to, monthly recurring charges (“MRCs”), access charges, features, changes and moves to Services, Service repair visits and no-show charges, installation charges, IP-address charges, billing charges, credit-card surcharges, toll, long distance, and directory assistance, equipment fees, and any other usage-based charges at our current rates when used. Certain offers may include limited-time promotional pricing; at the end of any promotional pricing period, standard rates for the applicable Service(s) will apply and you will be responsible for payment of such increased rates. In addition to the monthly recurring and usage-based charges, other charges (such as taxes, fees, surcharges, and assessments) apply to all Services and Equipment, including how those may change in the future. In certain service areas, paper bills are available for a monthly charge.

To determine whether certain taxes, fees, and surcharges are applicable to Services provided to you, we are required by federal law to obtain your street address, which must be within our service area. You represent and warrant that the address you provide us to obtain Service is correct, and you acknowledge that we are relying on this information to determine which taxes, fees, or surcharges are applicable to your Service. You agree to notify us if your address changes. In the event you do not provide us with a valid address or address change, you may be responsible for additional taxes, fees, surcharges, and penalties associated with failure to pay taxes based on the proper address, and we may terminate your Services.

As a convenience to you, we may include charges for third-party services purchased or ordered using your Kinetic Services on your monthly bill. You should always review your bill carefully and contact the Company if you are unsure about a charge on your bill. Company also offers the ability to block such third-party charges from your monthly bill. This Service is optional and free of charge. If you are interested in adding a third-party block to your account, then call a Company representative at the number found at the top-right-hand corner of your statement to determine if your account is eligible. The block does not apply to Services provided by Kinetic or its affiliates to which you subscribe.

5. Billing and Payment; Rate Increases.

We will bill you the recurring and installation rates you were quoted for Services or those associated with the Services you currently use or previously ordered, with increases on notice. All recurring charges are billed one month in advance. Billing at a location will begin upon the earlier of either (i) the Installation Date (which may be the date administrative access to certain software-based Services are granted to Customer), or (ii) thirty (30) days after delivery of the applicable facility and/or equipment to Customer’s premises (if the delay in connection of the facility and/or equipment is due to Customer or its agent). Company 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.

We reserve the right to back-bill you for Services actually used, but not previously billed.

Additionally, you may be enrolled in paperless billing when you subscribe to Kinetic Services. If you have paperless billing, each month we will send an email to your official email address on file with the Company when your invoice is available. You may review your monthly bill and make a payment, or switch back to a paper bill by changing your billing preference, in the Go Kinetic portal (my.gokinetic.com). You may also call us at 800-347-1991 to change your billing preference. For Kinetic Local, please go to <https://mybusiness.gokinetic.com/> or call us at 833-241-0100.

Please note that a monthly fee may apply if you choose to receive a paper bill.

Payment in full is due no later than the due date indicated on your bill and we may apply a late fee, interest, and other charges (including, but not limited to, collection fees) up to the maximum amount permitted by law. Returned checks, payment by phone, paper bills, and other fees due to your choice of payment method or billing receipt may also be subject to fees.

Further, you agree that you may be subject to collections either by Kinetic or a third-party collections agency. If Kinetic uses a collection agency or commences legal action to recover monies due, to the extent permitted by law, you must reimburse Kinetic all expenses incurred to collect amounts you owe us, including attorneys' fees. If your account is referred to third-party collections, you are responsible for payment of any collection fee which will be assessed and due at the time of the referral. Subject to applicable law, you agree that Kinetic is not responsible or liable for any negative consequences that may arise as a result of referring your account, payment information, or history to any third-party credit reporting or collections agency.

We may require you to authorize payment for Services by credit card or by debiting a bank account, and no additional notice or consent is required before we invoice the credit card or debit the bank account for all amounts due to us for any reason.

6. Credits, Deposits, and Advanced Payments.

Our agreement to provide you Services is subject to credit approval, and, as such, you authorize us to ask credit-reporting agencies for credit information about you. We may require you to submit an initial deposit and/or an advanced payment or participate in certain payment-related programs, such as automatic payment enrollment, as security for payment of charges. If you decline to participate, or cease participation at any time, in such payment-related programs, or if either the amount/number of Services is increased, you are late on payment or your credit rating changes, an initial or additional deposit or advanced payment may be required. Simple interest will be paid on the cash deposit for the period it is held by us and will be refunded if satisfactory credit has been established or upon termination of Service (if no balance is due). We reserve the right to apply the deposit to any amount due and unpaid, and the payment of a deposit in no way relieves you of paying your bills in a timely manner. Regarding advanced payments, any advanced payment will appear as a credit to your first-month's bill. If you cancel Services before installation, or we cannot install your Services for some reason, then we may refund the advanced payment. We will not refund any advanced payment made after installation of Services.

7. Termination by You.

- a. *Pre-Installation.* If you are a business customer, and you terminate your order prior to the installation of Services, then you will be required to pay a pre-installation cancellation charge equal to the greater of (i) three (3) months of MRCs; or (ii) our costs to other providers. You agree that this charge is a reasonable measure of the administrative costs and other fees, incurred by us, to prepare for installation.
- b. *After Installation.* If you cancel your Services or a portion thereof after installation, then you remain liable for payment of all outstanding charges for all Services you used and Equipment you purchased from us prior to termination. If you terminate Services prior to the last day of your billing cycle, then you will be charged for the full last month of Service with no proration or credit.
- c. *Fixed-Term Agreements.* When you purchased your Service(s), you may have been required to commit to a term or a minimum purchase. Either you or we may elect not to renew your service by providing notice to the other no later than thirty (30) days prior to expiration of the fixed term. If neither you nor we deliver a timely notice not to renew, THEN the Services will renew on a month-to-month basis. IF YOU TERMINATE SERVICES AFTER INSTALLATION OR DURING THE INITIAL OR RENEWAL TERM FOR ANY REASON OTHER THAN FOR CAUSE, OR WE TERMINATE FOR CAUSE PURSUANT TO SECTION 8 BELOW, THEN YOU WILL BE REQUIRED TO PAY TO US AS LIQUIDATED DAMAGES AN AMOUNT EQUAL TO 100% OF THE MONTHLY RECURRING CHARGES ("MRCs") MULTIPLIED BY THE NUMBER OF MONTHS REMAINING IN THE THEN CURRENT TERM. IF YOU

TERMINATE OR DISCONNECT LESS THAN THE ENTIRETY OF YOUR SERVICES SUCH THAT YOUR ACTUAL USAGE AT A LOCATION FALLS BELOW MINIMUM MONTHLY FEE (“MMF”) FOR THAT LOCATION, THEN YOU AGREE TO PAY AN AMOUNT EQUAL TO THE MMF FOR EVERY MONTH REMAINING IN THE THEN CURRENT TERM (“LIQUIDATED DAMAGES”).

You agree that in the event of termination by you, the actual damage to Kinetic is difficult to ascertain, and that the early termination fee represents liquidated damages, not a penalty, and is a reasonable estimate of the actual reduction in the value of this Agreement that we will sustain.

- d. *Month-to-Month Agreements.* If no length of time is identified on the Service Order or you were not otherwise required to commit to a term, then the term is month-to-month, and you or we may terminate at any time by providing notice at least thirty (30) days prior to the effective date of termination. You remain liable for payment of all outstanding charges for all Services you used and Equipment you purchased from us prior to termination. If you terminate Service prior to the last day of your billing cycle, then you will be charged for the full last month of Service with no proration or credit.
- e. *Bundled Services.* Some plans may offer a discount, if you sign up for bundled Services, and may require a term commitment. If you sign up for bundled Services, then you agree to maintain the bundled Services for the applicable term. If you receive bundled Services, and you subsequently unbundle, terminate, or disconnect any of these Services, or we disconnect any of the Services, then we may adjust the rates for the remaining Service(s) to the then current price.
- f. *Change in Location.* A change in your service address or location to which any Service is provided to you may constitute, at our sole discretion, termination of the Services or result in an increase in the prices you must pay for the Services.
- g. *Change to Another Carrier.* We may deem a request by you to port your numbers as a request by you to terminate your Agreement. If you choose to port less than all your numbers, or you leave any Services connected, then we will continue to bill you for the numbers and/or Services still connected.

8. Termination by Us.

Provisioning of the Service is subject to the availability of the requisite equipment and facilities. We may limit, interrupt, suspend, terminate, or refuse to provide a Service if:

- you do not honor any provision of this Agreement;
- you use a Service in an adverse manner that affects Kinetic’s network or other customers, you have used a Service fraudulently or unlawfully or are suspected of doing so, or there occurs an event for which Kinetic reasonably believes that the suspension or termination of Services is necessary to protect Kinetic, its employees or Kinetic’s other customers from an imminent and significant operational, physical, financial or security risk, in which case Kinetic will provide advance notice if practicable;
- you modify your phone, or any software residing thereon, from the original manufacturer specifications, including for the purpose of accessing non-Kinetic services;
- you use a Service in a manner that is excessive or unreasonable when compared to the predominant usage patterns of other customers, on a similar service plan, in your geographic area (and we may, also, implement charges or change you to the appropriate rate plan consistent with such use);
- you resell any Service;
- for any other reason set forth in the relevant tariffs and price lists or terms and conditions;
- you do not pay any amount due to us or billed by us on behalf of others, including disputed amounts that Kinetic determines are valid charges on your bills and any deposits or advanced payments that Kinetic may require;

- facilities or property associated with providing the Services have been condemned, or use has been prohibited by the government in any manner;
- you fail to acquire and maintain the right-of-way or property access necessary for installation or maintenance of Services;
- you are insolvent, have made an assignment for the benefit of credits, or you have filed or had filed against you a petition for bankruptcy;
- we determine in our sole discretion that facilities are not technically or economically feasible, including if copper or fiber facilities are no longer available to Kinetic at reasonable rates or are not available for any reason, including, but not limited to, regulatory changes or retirement of copper plant pursuant to FCC rules;
- you make nuisance calls, impersonate another person, use obscene or profane language or are verbally or physically abusive or harassing when interacting with Kinetic representatives, Kinetic may in its sole discretion but, is not required to provide advanced notice or warning; or
- you fail to comply with any law, or regulation, including but not limited to any applicable regulations and do not cure such failure of compliance within ten (10) days of receiving notice from Kinetic.

We may restore such interrupted or terminated Service, in our sole discretion, following your correction of the violation and payment of any amounts due (including any restoration charge we assess for restoring your Service). Kinetic reserves the right to delete your windstream.net email account, without notice, if unused for one hundred and eighty (180) consecutive days. The contents of the email account will be unrecoverable once the account has been deleted.

9. Personal Identifiers.

We assign telephone numbers, e-mail addresses, IP addresses, and other personal identifiers in connection with the Services. You have no proprietary right to any such identifiers, and we reserve the right to change them upon notice to you. In the event that we allow you to transfer a personal identifier to another party to obtain any Services we provide you, we reserve the right, prior to honoring the request for transfer, to charge a fee for the transfer, and to collect any money owed for the Services.

10. Disputed Bills.

You must review bills in a timely manner. To dispute a bill, you must comply with the Dispute Resolution provisions in Section 3, and submit your dispute, in writing, within sixty (60) days after the date on the bill. You must pay any undisputed portion while your dispute is investigated. You accept all charges on your bill not disputed within sixty (60) days and must pay those charges.

11. Company Provided and Owned Equipment.

Any Equipment installed by us, on your premises, that is not the subject of a sale or lease to you (such as the CSU/DSU interface cards, Channel Bank, and router, if applicable) shall remain at all times our property. It shall remain in good condition, less normal wear and tear. If we do not have access to your premises within thirty (30) days after Services are terminated, then you shall reimburse us for the full purchase price of the equipment, as well as any attorney's fees and costs. You are responsible for all security measures over the Services, including, but not limited to, access to authorization codes or encryption you deem necessary or required. Once the Equipment is delivered to you, you bear the risk of loss.

12. Disconnection of Current Provider; Special Construction; Third-Party Charges.

You are solely responsible for disconnecting Services with your current service provider, and we are not responsible for any charges assessed against you by such provider. You shall pay all charges if we or a third-party provider is required to extend the demarcation point, undertake special construction, or non-routine installation for you. Unless we specifically agree—in writing—to undertake equipment installation and maintenance work, you are responsible for all charges assessed by your phone-system vendor and other third-parties in connection with the Services, and we shall have no responsibility for maintenance or repair of same.

13. Access to Third-Party Services.

You agree that the telephone line, on which your Services are activated, may not be used to access any third-party services equivalent to Services we provide or can make available, even if you declined to purchase such Services from us. Your telephone line contains programming designed to enable access to our Services only. You may not use any manual or electronic means to circumvent any restrictions placed on your telephone line to modify, without authorization, any programming supplied by us.

14. Access and Installation; Repair and Maintenance.

You agree that you are responsible for acquiring and maintaining the right-of-way necessary to allow installation and maintenance of Services. Failure to acquire and maintain necessary right-of-way may result in delay of installation or termination of Services by Kinetic. Upon notice, we may make tests and inspections to determine you are complying with the requirements of these terms, or for routine and emergency maintenance of the equipment and facilities. We may take action to protect our facilities and equipment. We may substitute, change, or rearrange any Equipment or facility at any time. We may limit or allocate use of existing facilities, when necessary, due to a lack of facilities or a cause beyond our reasonable control.

15. Privacy and Customer Proprietary Network Information.

You authorize us to monitor and record communications, from you to us, regarding your account or the Services, for purposes of quality assurance. For online orders, we may implement reasonable procedures, including, but not limited to, validating information provided by you or restricting the amount of Services purchased online. We reserve the right to cancel or reject online orders at any time for security or privacy reasons.

To provide Services to you, we maintain certain customer proprietary network information ("CPNI"). CPNI includes information that relates to the quantity, technical configuration, type, destination, location, and amount of use of any telecommunications Service we provide to you, and which we obtain because of the carrier-customer relationship between us. CPNI also includes information contained in your bill. We may use and share your CPNI without your permission for the following purposes:

- To protect our rights or property, or those of other customers or carriers, from fraudulent, abusive, or unlawful use of or subscription to the Services you get from us;
- To initiate, render, bill, and collect for your Services;
- To provide information telemarketing, referral, or administrative services to you, when you call us, if you give us permission to do so;
- To provide call location information regarding the user of a wireless mobile Service to certain other parties in an emergency situation;
- To provide information requested by law enforcement or a third-party pursuant to a subpoena or other method of requesting information. We will not give you notice of any subpoena or court or administrative orders related to your account, IP address, contact information, or use of Services unless required to do so by law.

If you do not want us to provide your information to other Kinetic entities, please notify us by calling Residential Support at 800-347-1991 or Business Support at 800-843-9214.

When you view your account information or shop for Services online, you agree that we may display your CPNI online, after proper verification by you, to fill orders or allow you to make account changes.

16. Theft and Fraud.

You agree to keep all passwords, Member ID's, IP addresses, and computer names confidential. If your Services are lost, stolen, or fraudulently used, then you are responsible for all usage incurred before we receive notice from you of such loss or theft. If we choose to pursue investigation or prosecution of the loss or theft, you agree to cooperate in the investigation of fraud or theft, and to provide us with such information and documentation as we may request (including affidavits and police reports).

17. Limitation of Liability.

FOR PURPOSES OF THIS SECTION AND THE DISCLAIMER OF WARRANTIES AND EMERGENCY/CRITICAL LINES SECTIONS, "OUR" OR "WE" INCLUDES KINETIC'S OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, AGENTS, SUBCONTRACTORS, VENDORS, AND ANY ENTITY ON WHOSE BEHALF THE COMPANY RESELLS SERVICES. UNDER NO CIRCUMSTANCES WILL WE BE LIABLE FOR: ANY ACCIDENT OR INJURY CAUSED BY SERVICES; ANY DAMAGE OR LOSS RESULTING FROM THE INSTALLATION, MAINTENANCE, OR REMOVAL OF THE SERVICES; ANY INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES (SUCH AS LOST PROFITS, LOST BUSINESS OPPORTUNITIES, BUSINESS INTERRUPTION, AND LOSS OF BUSINESS DATA); ANY PUNITIVE OR EXEMPLARY DAMAGES; THE COST OF ALTERNATIVE SERVICE; OR FOR ANY SERVICE INTERRUPTIONS, DELAY, OR FAILURE TO PERFORM UNDER THIS AGREEMENT DUE TO CAUSES BEYOND OUR REASONABLE CONTROL. SUCH CAUSES INCLUDE, BUT ARE NOT LIMITED TO, STRIKES, LOCKOUTS, OTHER LABOR UNREST, NATURAL DISASTERS, ACTS OF GOD, CABLE CUTS, OR COMMON CARRIER DELAYS. YOU AGREE THAT THE PRICING OF SERVICES REFLECTS THE INTENT OF BOTH YOU AND US TO LIMIT OUR LIABILITY AS PROVIDED HEREIN.

18. Data Services.

YOU ACKNOWLEDGE THAT THE INTERNET IS A VOLATILE ENVIRONMENT AND EXCEPT AS OUTLINED IN OUR PRIVACY POLICY, WE ARE NOT LIABLE FOR CONFIDENTIAL INFORMATION STORED ON OR TRAVERSING OUR NETWORK. YOU MUST TAKE ALL APPROPRIATE PRECAUTIONS TO SECURE CONFIDENTIAL INFORMATION, INCLUDING ENCRYPTING, IF YOU DEEM NECESSARY.

19. Disclaimer of Warranties.

THE SERVICES 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; IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE; WARRANTY ARISING BY COURSE OF TRADE, COURSE OF DEALING, OR COURSE OF PERFORMANCE; ANY WARRANTY THAT THE SERVICES WILL MEET CUSTOMER'S REQUIREMENTS; OR ANY WARRANTY REGARDING THE QUALITY, CONTENT, ACCURACY, OR VALIDITY OF THE INFORMATION OR DATA RESIDING ON, PASSING THROUGH, OR OVER THE NETWORK. ALL SUCH WARRANTIES ARE HEREBY DISCLAIMED. WITHOUT LIMITING THE FOREGOING, BROADBAND SPEEDS, TRANSMISSION QUALITY, NETWORK SECURITY OR RELIABILITY, AND ACCURACY OF ANY DIRECTORY LISTINGS ARE NOT GUARANTEED. NO ORAL OR WRITTEN ADVICE OR INFORMATION BY COMPANY'S EMPLOYEES, AGENTS, OR CONTRACTORS SHALL CREATE A WARRANTY, AND CUSTOMER MAY NOT RELY ON ANY SUCH INFORMATION. KINETIC DOES NOT GUARANTEE YOUR SERVICE CAN OR WILL BE INSTALLED BY A PARTICULAR DATE. ANY INSTALLATION DATE PROVIDED IS ONLY AN ESTIMATE.

20. Indemnification.

You agree to indemnify and hold Kinetic and its subsidiaries, affiliates, officers, agents, co-branders, licensors or other partners, and employees harmless from any claim or demand, including those for reasonable attorneys' fees or those made by any third-party due to or arising out of: content you

submit; post; transmit; or otherwise make available through the Service, your use of the Service, your connection to the Service, your violation of this Agreement, including, without limitation, the Acceptable Use Policy, or your violation of any rights of another.

You acknowledge that you are responsible for all use of the Service, by your account (including use by subaccounts), and that this Agreement and incorporated policies, as they may change from time to time, applies to all usage of your account. You agree to abide by these terms, and you agree to defend, hold harmless, and indemnify Kinetic from and against all claims stemming from usage of this account and any subaccounts, whether or not such usage is expressly authorized by you.

21. Emergency/Critical Lines.

CUSTOMER ACKNOWLEDGES THAT CERTAIN SERVICES MAY NOT PROVIDE ACCESS TO 911, OR TRANSMIT THE LOCATION OR EXTENSION, IF CUSTOMER ATTEMPTS TO ACCESS 911 IN AN EMERGENCY. If your voice Services are provided via an internet connection (e.g., voice over Internet protocol (VoIP), Centrex, and private branch exchange), the Services are different from traditional voice services and require both electrical power and broadband function. The Services will not function if power is lost, if there is a disruption to the broadband connection, if the network is congested, or if your account has been suspended. You expressly acknowledge that in such instances You or anyone using Your Services will not be able to place or receive calls including calls to emergency 911 services and that communications between a home security system and home security monitoring service will not function. Kinetic strongly recommends you maintain an alternative means of accessing 911 Services and that you purchase a battery backup for use with your Services during power outages.

22. Changes to these Terms and Conditions.

We may make changes to these Terms, Service-Specific Terms, and any other terms referenced herein and incorporated into the Agreement, including any change in any charge or fee, and the imposition of a new charge or fee, at any time, if we give you notice of the change. If we make a change to the Agreement that is material, and you do not wish to accept such material change, then you may terminate the affected Service by giving us thirty (30) days' written notice, in which case you will not be subject to an early cancellation fee. You will, however, still be responsible for all charges for Services provided before you terminated your Agreement. A material change is ONLY a change that (a) terminates or substantially reduces the availability of a Service for you or (b) results in the increase of any charge by more than ten percent (10%) of the monthly access charge for that Service. Material changes in your Service DO NOT include the increase in or imposition of (1) any charge required to be collected by any governmental authority (such as taxes or surcharges) or (2) any charge not prohibited by any governmental authority to recoup our expense incurred to comply with a governmental requirement.

23. Applicable Law.

Your Agreement and our provision of Services to you are subject to (a) the laws of the state identified in the billing address that you have provided us and (b) any applicable federal laws, including, but not limited to, the Federal Arbitration Act, 9 U.S.C. § 1 et seq. In the event of an inconsistency between any governmental requirement and these Terms regarding the provision of a Service that is subject to the governmental requirement, the provisions of the governmental requirement will apply to the extent necessary to avoid the inconsistency.

24. Assignment.

We may assign this Agreement to another entity without any advance consent from or notice to you. You may not assign this Agreement without our consent.

25. No Waiver; Severability.

If we do not enforce any right or remedy available under this Agreement, that failure is not a waiver. If any part of this Agreement is held invalid or unenforceable, the remainder of this Agreement will remain in force.