



Agreement No. 379260

Master Customer Equipment and Maintenance Agreement

1814 W. Tacoma, Broken Arrow, Oklahoma 74012-1406 | 918-664-8200 | 918-664-6876 (fax)

Customer				Billing Address			
Carroll County Schools				Carroll County Schools			
Customer Name ("Customer")				Name			
813 Hawkins St.				813 Hawkins St.			
Street Address				Street Address			
Carrollton		KY	41008	Carrollton		KY	41008
City	County	St	ZIP	City	County	St	ZIP
502-732.7070				502-732.7070			
Contact Person Telephone				Contact Person Telephone			

**MASTER CUSTOMER EQUIPMENT AND MAINTENANCE AGREEMENT**

The parties to this Master Customer Equipment and Maintenance Agreement ("Agreement") are Carroll County Schools ("Customer") and the Windstream legal entity that provides the Services to Customer under this Agreement ("Company"). The effective date of this Agreement is the date it is signed by the Customer ("Effective Date"). The purpose of this Agreement is to set forth the terms and conditions under which the Company will sell Customer Premises Equipment ("CPE") to Customer and provide maintenance services ("Maintenance") to Customer, if applicable (for convenience, Maintenance and CPE will be referred to herein collectively as "Services").

- A. **SERVICE SCHEDULES.** For each engagement under this Agreement, the Services to be provided by Company will be described in a **Service Schedule ("Schedule")**. Each Schedule and each amendment thereto must be signed by both parties and must state that it is made pursuant to this Agreement. Each Schedule shall constitute a separate agreement which incorporates the terms and conditions of this Agreement. The provisions of this Agreement shall control over any conflicting provisions in a Schedule, except to the extent that a provision of this Agreement specifically states that a Schedule may provide different terms. A Schedule may contain additional terms, provided that the terms do not conflict with the provisions of this Agreement.
- B. **TERM AND AUTOMATIC RENEWAL.** This Agreement shall be for the term set forth in the Schedule and shall automatically renew for additional one year terms unless: 1) Notice is provided by Customer at least thirty (30) days prior to the end of the then current term, 2) CPE is no longer supported by the manufacturer per the manufacturer's published product lifecycle, or 3) Company substantially changes or discontinues the Services purchased by Customer. Windstream will provide Notice at least thirty (30) days prior to the end of the then current term in the event of any termination by Windstream pursuant to 2 or 3 above.
- C. **PAYMENT TERMS.** Unless a Schedule provides otherwise, fifty percent (50%) of Customer's CPE cost shall be paid by Customer on the Effective Date, prior to Company ordering such CPE. The remaining fifty percent (50%) of the Customer's CPE cost, in addition to any recurring and/or non-recurring Maintenance costs incurred by the Customer shall be paid within thirty (30) days of the invoice date. Customer is responsible for payment of all fees set out in a Schedule, plus all taxes, fees and surcharges associated with the Services. If Company does not receive full payment when due or does not receive payment in immediately available funds, Company will add a late payment fee to the amounts owed and will calculate such fee as the total owed times interest at the maximum rate allowable by law, and Company may terminate this Agreement. Customer agrees to pay ALL costs incurred by Company to collect the amounts due to Company, including but not limited to: legal fees, costs, in-house attorney costs and fees, collection service costs, etc.
- D. **EARLY TERMINATION CHARGES.**

1. **CPE:** IF CUSTOMER TERMINATES THIS AGREEMENT OR ANY CPE SCHEDULE AFTER THE EFFECTIVE DATE AND AFTER COMPANY HAS ORDERED CPE (BUT PRIOR TO THE INSTALLATION OF SUCH CPE), CUSTOMER WILL PAY COMPANY A PRE-INSTALLATION CANCELLATION CHARGE (CANCELLATION CHARGE) EQUAL TO SEVENTY-FIVE PERCENT (75%) OF THE CPE COST SET FORTH IN THE SCHEDULE AND COMPANY SHALL ALSO BE ENTITLED TO KEEP ANY AMOUNT PAID BY CUSTOMER PURSUANT TO SECTION C ABOVE.
  2. **MAINTENANCE:** IF CUSTOMER TERMINATES THIS AGREEMENT OR ANY MAINTENANCE SCHEDULE PROVIDED HEREUNDER DURING THE INITIAL *OR RENEWAL TERM* FOR ANY REASON OTHER THAN FOR CAUSE, IT SHALL PAY TO COMPANY AN AMOUNT EQUAL TO FIFTY PERCENT (50%) OF THE MONTHLY RECURRING CHARGES "MRCS" MULTIPLIED BY THE NUMBER OF MONTHS REMAINING IN THE THEN-CURRENT TERM OR RENEWAL TERM (TERMINATION FEE). THE CANCELLATION CHARGE AND TERMINATION FEE SHALL NOT BE PENALTIES AND SHALL INSTEAD BE DEEMED AN ADEQUATE MEASURE OF LIQUIDATED DAMAGES INCURRED BY THE COMPANY DUE TO EARLY TERMINATION BY THE CUSTOMER.
- E. **DISPUTES.** To dispute a bill, Customer must do so in good faith and provide Notice to Company of the specific basis for such dispute within thirty (30) days after the date on the bill. If Customer does not follow this dispute process, the dispute shall be deemed waived.
- F. **MAINTENANCE PLAN.** Company offers various tiered Maintenance Service Plans ("Plans"). Customer's choice of Plan, if any, shall be indicated on a Schedule, where each Plan is further described. All work performed by Company for Customer shall be billed at Company's then current time and material rates for: 1) any services performed which Company deems as out of scope of the Agreement, or 2) for CPE not covered by a Plan under a Schedule.
- G. **LIMITED WARRANTY.**
1. **CPE.** All assignable manufacturers' warranties applicable to CPE will be assigned to the Customer and will begin upon Customer's signature on the Certificate of Delivery and Acceptance. All CPE warranties are subject to, and limited by, the terms and conditions imposed by the written warranties extended by the respective manufacturers of the CPE. Any extended warranty available from the manufacturer of such CPE may be made available to the Customer.
  2. **Maintenance.** All Maintenance performed by Company is described in the Schedule(s) and is warranted to be free of defects under normal use ("Defects") for ninety (90) days from the date such Maintenance is provided. Remedy for any Defects is limited to re-performance. Company shall be relieved of all obligations and liability if Customer fails to provide Notice of the Defect to Company within thirty (30) days after the Defect becomes reasonably apparent. No action, including, without limitation, contract and/or tort actions, relating to the Maintenance may be brought by the Customer more than one (1) year after the cause of action or same accrues.
  3. **NO OTHER WARRANTIES. THE WARRANTIES SET FORTH ABOVE, INCLUDING ANY TIME PERIOD BY WHICH THE WARRANTIES ARE EXTENDED BY AN EXTENDED WARRANTY PLAN, ARE EXCLUSIVE OF, IN LIEU OF, AND CUSTOMER HEREBY WAIVES, ANY AND ALL OTHER WARRANTIES, GUARANTEES, REMEDIES, OR LIABILITIES, EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE. THE WARRANTIES ARE ONLY EFFECTIVE UPON CUSTOMER'S PAYMENT IN FULL OF ALL SUMS DUE TO COMPANY PURSUANT TO THE SCHEDULE AND CANNOT BE EXTENDED, ALTERED, OR VOIDED, EXCEPT BY A WRITTEN SCHEDULE SIGNED BY AN AUTHORIZED DESIGNEE OF COMPANY AND CUSTOMER.**
- H. **TITLE AND RISK OF LOSS.** Risk of loss passes to Customer on delivery by Company or manufacturer or such CPE to a common carrier for delivery to Customer or upon installation of such CPE at Customer's premises, whichever occurs earlier. Title to the CPE does not pass to either Customer or any third party financing the CPEs purchase on behalf of Customer until Company has been paid in full for such CPE.
- I. **CREATION OF LIEN.** It is expressly understood and agreed by Customer that a mechanic's lien in favor of Company shall be created against the property where the Services are installed or provided. Said lien shall take effect immediately upon the installation of such Services. Company agrees that said lien will not be recorded or foreclosed unless Customer fails to timely pay for the Services furnished by Company.

- J. **LIMITATION OF LIABILITY.** Except as set forth herein, in no event will Company be liable for any special, incidental, indirect, consequential, punitive or similar damages including but not limited to attorney's fees, loss of profits, business, or to the extent permitted by law, damages for injury to person or property or death. Company shall have no responsibility for, nor any other liability or warranty for, defects, damages or delays caused by the actions or inactions of persons or entities not affiliated with Company, or caused by, or attributable to any reason beyond Company's reasonable control including, but not limited to any acts of God, strikes, work stoppages, etc., or failure of Customer to provide Company with access to CPE or failure of Customer to provide Company with notice of malfunction, Company makes no warranty to prevent unauthorized use of the system, including toll fraud. Company shall not be liable for damages of any kind arising or resulting from unauthorized use of the system, including toll fraud.
- K. **CONDITIONS OF PREMISES.** Customer warrants that the premises and conditions to be encountered by Company at the premises and in areas where work is to be performed shall: (i) be in compliance with all applicable laws, rules and regulations, (ii) be safe and non-hazardous, and (iii) not contain, present, or expose Company representatives to hazardous materials or substances. Customer shall at all times maintain a suitable environment in which the CPE can operate, including but not limited to, the necessary space to accommodate the CPE and the necessary power, heating and cooling, humidity and dust control as required by manufacturer specifications.
- L. **INDEMNIFICATION.** Each party agrees to indemnify and hold harmless and upon request defend the other party and its representatives, affiliates, employees or agents from and against any and all claims, costs (including reasonable attorneys' fees), liabilities, judgments, or obligations arising out of or relating to the negligent act or failure to act or willful misconduct by the indemnifying party or its representatives, affiliates, employees or agents in performance of this Agreement.
- M. **ASSIGNABILITY.** Either party may assign this Agreement to an affiliate or acquirer of all or substantially all of its assets but Customer shall provide Company with Notice and complete all paperwork necessary to effectuate any change in ownership or other account changes. Otherwise, Customer may not assign its rights and obligations under this Agreement without Company's advance written consent.
- N. **GOVERNING LAW.** This Agreement is subject to applicable federal law and the laws of the state in which the Services are provided, without regard to that state's conflict of laws principles. If this Agreement covers multiple states, then it is subject to Delaware law, without regard to its conflict of law principles.
- O. **END USER LICENSE AGREEMENT.** If Customer's Services include third party software, Customer agrees to comply with the terms of any applicable end user license agreement posted at such third party's website prior to using the relevant Services.
- P. **Notices.** Until Company or Customer notifies each other of any new address, all Notices, requests and other communications hereunder ("Notice") shall be in writing and delivered personally or sent by prepaid registered or certified mail, return receipt requested, to the address identified herein.

Windstream Communications, Inc.  
 1814 W Tacoma Street  
 Broken Arrow, OK 74012-1406  
 Attn: Contract Administration

**Modifications to this Agreement**

The parties have agreed to alter the text of this Agreement as provided in the following paragraph(s). Any other modifications or amendments to the Agreement or to any order must be in writing and signed by each party.

CUSTOMER	COMPANY

Signature

Date

Signature

Date

Name

Name

Title

Title

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Social Security No., Tax ID No., or Tax Exempt Status

Tax Exempt Attach Documentation

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