

## WiLine Service Agreement Terms and Conditions

**THIS AGREEMENT REQUIRES YOU TO ARBITRATE ANY DISPUTES YOU HAVE WITH US ON AN INDIVIDUAL BASIS ONLY. BY USING THE SERVICES AND ENTERING INTO THIS AGREEMENT, YOU WAIVE THE ABILITY TO BRING CLAIMS AGAINST US IN ANY COURT, TO HAVE ANY DISPUTE HEARD BY A JUDGE OR JURY, OR TO BRING ANY CLAIMS AGAINST US IN A CLASS ACTION FORMAT (INCLUDING AS A CLASS REPRESENTATIVE OR MEMBER OF ANY PUTATIVE CLASS). THESE AND OTHER DISPUTE RESOLUTION REQUIREMENTS ARE STATED BELOW IN PARAGRAPH 18 AND ITS SUBPARTS.**

This WiLine Service Agreement Terms and Conditions ("Agreement") is by and between WiLine Networks, Inc., with its principal place of business at 104 Carnegie Center, Princeton, NJ 08540 ("WiLine", "we", "us" or "our") and entity ("Customer", "you" or "your") with its principal place identified on the service agreement work order ("Service Agreement") for WiLine services ("Services") described in the Service Agreement. Any Services provided by WiLine to Customer shall be governed by the terms and conditions herein.

- 1. Acknowledgment and Acceptance of Agreement.** The Services are provided to Customer by WiLine in accordance with this Agreement and signed Service Agreement, which comprise the entire agreement between WiLine and Customer superseding any prior agreements pertaining to this subject matter. Customer agrees that Customer is subject to any posted policies or rules applicable to Services which may be posted at any time. IF CUSTOMER DOES NOT AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT, CUSTOMER IS NOT PERMITTED TO USE THE SERVICES. PLEASE CONTACT WILINE CUSTOMER CARE AT [CONTRACTS@WILINE.COM](mailto:CONTRACTS@WILINE.COM) TO CLOSE CUSTOMER ACCOUNT AND DISCONTINUE THE SERVICES. CUSTOMER'S CONTINUED USE OF THE SERVICES EVIDENCES CUSTOMER AGREEMENT TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, INCLUDING ANY AMENDMENT.
- 2. Customer Representations.** Customer represents to WiLine that, at all times: (a) Customer is at least 18 years of age; (b) Customer owns the premises at which the Services will be installed ("Site") or have the consent of the owner for any changes needed to the Site for installation of the Service; (c) Customer has reviewed any restrictive covenants or building restrictions and confirmed that an antenna and WiLine Equipment as defined below may be installed on the Site; (d) Customer will notify WiLine of any change of occupancy, ownership, or tenancy of the Site; (e) Customer will use the Service in accordance with this Agreement; and (f) Customer will provide and maintain routers, switches, firewalls, computer(s), cabling and other customer-premises based equipment necessary to receive and operate the Service (hereafter referred to as "Other Products").
- 3. Services, Installation and Activation.** The Service Installation Address ("Service Address") will be recorded as Customer's Primary Place of Use. WiLine will provide the Services identified on the Service Agreement through either WiLine's own network, or in some cases another carrier's network. If Services are provided through WiLine's facilities, WiLine will make said Services available at the Service Address within thirty (30) business days from the date this Agreement is signed so long as delays described below have not occurred. If WiLine uses other carriers' facilities and services to provide the Services, WiLine will make said Services available at the Service Address within (90) business days. It shall be the Customer's responsibility to allow access to the facility for the third-party carrier, as well as coordinate with the property owner at the Service Address to ensure Services can be terminated at a pre-established demarcation point. The Term of this contract will commence on the 1<sup>st</sup> day of the following month that WiLine notifies Customer that a Service is available. Notwithstanding any notice provisions in the Agreement to the contrary, for purposes of this Section, notification of the Activation Date will be deemed delivered on the day such notice is provided by WiLine and billing will commence on the earlier of the Activation Date, the date Customer first uses the Service, or 10-days after Customer is in receipt of internet connectivity equipment. Customer acknowledges and agrees that if Customer causes an installation delay of any of its services past sixty (60) days from signed agreement, Customer will pay all applicable monthly recurring charges for all Customer's services as if all services were installed and commenced on such Scheduled Service Date. If Customer or its affiliate is the property owner of the Service Address listed above or controls use of and access to the property, including any common spaces, rooftop, conduits, telecom closets or other space necessary to deliver services to any tenant located at the Service Address, Customer grants a rent-free right of access to the property, including any common spaces, rooftop, conduits, telecom closets, or any other space necessary to deliver services to any tenant located at the Service Address. If WiLine is solely responsible for any delays in Service availability beyond that 30-business day period, WiLine will credit any Install Fee or Setup Fee previously paid for that Service. To receive installation credit, Customer must request the credit in writing or email to [billing@wiline.com](mailto:billing@wiline.com) within 30 days of the date of the first invoice. No credit will be issued, however, if delays were a result of: (a) WiLine's inability to secure access to the property/properties, including but not limited to rooftop(s), Main Point of Entry (MPOE), Customer suite or point of demarcation; or (b) Customer's faulty or incomplete facilities or equipment; or (c) Customer's request for delay, failure to promptly respond to WiLine's request or timely supply any requested or necessary information; or (d) Customer's negligence or omissions; or (e) Customer's failure to meet Agreement approval terms; or (f) any special installation circumstances WiLine identified to Customer at the time of sale; or (g) events or circumstances beyond our control, such as "Events of Force Majeure"; or (h) inability to acquire or maintain commercially reasonable transport and other facilities; or (i) any delay pursuant to federal or state action; or (j) any delay in the transfer or porting of a phone number. Further, no installation credit will be payable if Services require special set-up or installation at Customer's Service Address, whether or not identified at the time of sale. Should special set-up or installation be required, WiLine may terminate this Agreement or cancel any Services without any obligation or liability to Customer. Installation commitments and credits do not apply to any locations outside Service Address.

**4. Service Level Guarantee and Commitment.** Data services described herein consist of symmetric or asymmetric Internet transit services and Ethernet private line connections, and are measured from Customer's origination site demarcation point to Customer's termination site demarcation point. Internet transit services with different specified upload and download speeds are asymmetric data services. Internet transit services with the same specified upload and download speeds are symmetric data services. For WiLine's Internet transit service, the Customer's origination site demarcation point is defined as the point at which WiLine interconnects with the customer's MPOE in said Service Address and the Customer's termination site demarcation point is defined as the point at which WiLine interconnects with the Internet. For WiLine's Ethernet private line connections, the Customer's origination site is defined as the point at which WiLine interconnects with the Customer's MPOE in said Service Address at one location and the Customer's termination site is defined as the point at which WiLine interconnects with the Customer's MPOE at the second location. Voice service described herein applies to the availability of 'dial-tone' and associated voice features at the demarcation point between the WiLine network and the Customer's MPOE in said Service Address. Service Level Guarantees are available only for WiNet Data and Premium Internet Service symmetric data services, and Ethernet private line connection and voice services provided to commercial Customers. Service Level Guarantees do not apply to the following: Asymmetric data services, Standard Internet Service symmetric data services, in cases where an Ethernet private line connection does not interconnect with WiLine's network, in cases where a Voice service is operating over a non-WiLine network ("non-SLA services"). Customer acknowledges and agrees that non-SLA Services are provided "as is" and credit allowances for interruption of the Services shall not be provided.

**4.1 Definition. "End-to-End Network Availability" or "Network Availability" or "Data Availability"** is the number of minutes in each calendar month during which a Service is available to exchange data between the Customer's origination and termination points and **"Voice Availability"** is defined as the availability of 'dial-tone' and shall be determined as follows:  $[(\text{Total Minutes in Calendar Month}) - (\text{Total Minutes of Non-Availability})] / (\text{Total Minutes in Calendar Month})$ .

**"Total Minutes in Calendar Month"** is determined by multiplying 24 hours times number of days in the month times 60 minutes, and **"Total Minutes of Non-Availability"** means the total of all minutes of service Non-Availability for a specific Service in a calendar month.

Customer's Service shall be considered "Available" until the date/time of WiLine's receipt from Customer of a Service Non-Availability Notice and the issuance by WiLine to Customer of a Trouble Ticket. The measurement period for determining Service Non-Availability shall commence upon WiLine's receipt of a Service Non-Availability Notice and issuance by WiLine of a Trouble Ticket and conclude upon the date/time of the Service Restoration Notice from WiLine to the Customer.

**"Mean Time to Repair" or "MTTR"** is the monthly average time to repair all Trouble Tickets on a specific Service, with the same severity level, during a Service Outage. The length of all Service Outages related to Customer is totaled at the end of the service month and is divided by the total number of Trouble Tickets opened by the Customer for that service month:  $(\text{Cumulative Length of Service Outage(s) per Service}) / (\text{Total Number of Trouble Tickets per Calendar Month per Service})$  **"Service Outage"** is an unscheduled period in which one or more of Customer's Service(s) is interrupted and not usable for sixty (60) or more seconds within a 15- minute period as measured by WiLine. A Service Outage will commence when the Customer reports a Service Outage to WiLine via a Trouble Ticket and will end when the affected Service is restored and WiLine issues a Service Restoration Notice. If the Customer fails to initiate a Trouble Ticket with WiLine, or does not release the Service to WiLine for testing, WiLine will not be obligated to issue credits for the Service Outage.

**"Trouble Ticket"** is the official method used by the Customer to advise WiLine of a perceived Service outage.

**"Service Restoration Notice"** is the official method used by WiLine to advise Customer of the restoration of a Service Outage.

**"Latency"** is the monthly average roundtrip packet travel time between two WiLine service-related mega-POP locations("POP-to-POP").

**"Jitter"** is monthly average short-term variation of the digital signal from its ideal position in time. If  $S_i$  is the timestamp from packet  $i$ , and  $R_i$  is the time of arrival in timestamp units for packet  $i$ , then for two packets  $i$  and  $j$ ,  $D$  may be expressed as:

$$D(i,j) = (R_j - R_i) - (S_j - S_i) = (R_j - S_j) - (R_i - S_i)$$

**"Packet Loss"** is monthly average failure of one or more packets between Customer's origination site demarcation point and a test point on the WiLine network.

## 4.2 SERVICE LEVEL GUARANTEES.

With respect to each Service ordered by Customer and subject to the exclusions specified above, WiLine offers "Network Availability", "Voice Availability" (collective referred to as "Service Availability"), "Mean Time to Repair (MTTR)", "Latency", "Jitter", and "Packet Loss" Service Level Guarantees as described below.

Service Item	Service Level Guarantee
Network Service	99.99% Availability
Voice Service	99.99% Availability
MTTR	4 Hours
Latency	10msec
Jitter	2msec
Packet Loss	0.001%

If the Service Availability, MTTR, Latency, Jitter, or Packet Loss for a particular service fall below the applicable parameters in any given calendar month, Customer shall be eligible to receive a credit for such month in accordance to that described below.

## 4.3 SERVICE CREDITS.

Customer will be entitled to the applicable credits (the "Service Credits" or "Credits") should WiLine fail to meet the Service Level Guarantee. These Credits are the customer's sole and exclusive remedy for Service-related claims. Eligibility for any credit is subject to the Customer's account being held current and having no outstanding balance due. Service Credits will be applied as a credit to Customer's account, and Customer acknowledges that it normally takes approximately three to four weeks after receipt of a valid Service Credit request for the request to be evaluated and processed. Pending evaluation of a Service Credit request does not absolve Customer of Customer's obligation to keep their account current and make timely payments.

The non-compliance credit structure is based on monthly service fee calculations. For any service month in which WiLine fails to meet a Service Level Guarantee, the Credit will be applied to the prorated monthly recurring service charges of the affected Service as defined in the applicable Service Agreement.

For every hour of Network or Voice Service Non-Availability, Customer is eligible for two (2) hours of credit for any service affected up to a maximum of one full month service credit in any given calendar month. Should Customer receive the maximum service credit for three (3) consecutive months, Customer may terminate the Agreement without liability for Early Termination Charges but liability for Services through the effective date of termination for that Service, subject to receipt of fifteen (15) days prior written notice from Customer sent to [contracts@wiline.com](mailto:contracts@wiline.com) no later than thirty (30) days after the end of the consecutive three (3) month period.

In addition to Service Non-Availability credits, if WiLine fails to meet the MTTR, Latency, Jitter, or Packet Loss guarantees, customer shall be entitled to one (1) day's credit prorated from the Customer's Recurring Monthly Service Fees for each service level item.

## 4.4 SERVICE CREDIT ELIGIBILITY.

To be eligible for a Service Credit, Customer must report a Service Outage to the appropriate WiLine Service Center and submit a Service Non-Availability Notice and make a written request (the "Credit Request") for a Service Credit from WiLine within thirty (30) days of receipt of the Trouble Ticket. The Credit Request must contain the Trouble Ticket number, the date the Trouble Ticket was opened and closed, and the credit identification number for each Service affected by a Service Outage. If Customer fails to comply with the written notice requirement within the 30-day period described above, Customer shall, with respect to such Service, have permanently waived its right to any Service Credit for the month in which WiLine has failed to meet the Service Level Guarantee.

Customer must choose which Service Level Guarantee to be verified when seeking non-compliance. In the event WiLine is non-compliant with Network Availability and Voice Availability, Customer will only receive non-compliance credits for one of the two (2) missed Service Level Guarantees. In addition to Service Availability credits, in the event WiLine is non-compliant with MTTR, Latency, Jitter or Packet Loss, Customer will only receive non-compliance credits for each Service Level Guarantee.

Two (2) or more service interruptions to the same service of two (2) hours or more during any one 24-hour period shall be considered as one interruption.

#### 4.5 OTHER SERVICE LEVEL GUARANTEE TERMS AND CONDITIONS.

The Service Level Guarantee shall not apply and a period of Service Non-Availability shall not be deemed to have occurred (and a Service Credit not due Customer) in the event (a) the service is expressly excluded from being eligible for a Service Level Guarantee or (b) if the service is unavailable due to any of the following

- (1) scheduled Network maintenance; or
- (2) the occurrence of a Force Majeure event; or
- (3) the Interruptions on Services that are not "Accepted Services" (i.e., an Accepted Service is one that WiLine and the Customer have tested and mutually agree is working as ordered); or
- (4) The negligence, act, error, or omission of Customer or others authorized by Customer to use Customer's
- (5) service; or
- (6) Service Outages attributable to customer premise equipment (CPE), third party equipment or any Customer application on a service; or
- (7) Any act or omission on the part of Customer, its contractors, agents or vendors, including any refusal to release a Service to WiLine for testing or maintenance; or
- (8) WiLine or its agents not being afforded access to the premises where the access lines associated with
- (9) Customer's service originate or terminate; or
- (10) Customer or user has released service to WiLine for maintenance or rearrangement purpose, or for the installation of Customer's Service Agreement; or
- (11) Customer elects not to release the service for testing and/or repair and continues to use it on an impaired basis; or
- (12) Customer use of services in an unauthorized or unlawful manner; or
- (13) WiLine disconnects a Service for non-payment; or
- (14) Customer submits an incorrect Service Agreement.
- (15)

**5. Acceptable Use Policy ("AUP").** Customer agrees: (a) not to use the Services for illegal purposes; (b) not to take any action that imposes, or may impose in our sole discretion an unreasonable or disproportionately large load on our infrastructure; (c) not to interfere with or disrupt the Services or servers or networks connected to the Services or take any action which might prevent or restrict access to the Site except as the parties agree; (d) to comply with all requirements, procedure, policies, and regulations of networks connected to the Services; (e) not to resell the Services or use of or access to the Services; and (f) to comply with all applicable laws regarding the transmission of technical data exported from the United States.

Customer agrees not to upload, post, email, or otherwise transmit through the Services: (a) any unlawful, harassing, libelous, privacy invading, abusive, threatening, harmful, vulgar, obscene, indecent, tortuous, or otherwise objectionable material of any kind; (b) any material that violates the rights of another, including, but not limited to, the intellectual property rights of another; (c) any material that violates any applicable local, state, national, or international law or regulation; (d) contains any viruses, Trojan horses, worms, time bombs, cancelbots, easter eggs or other computer programming routines that may damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data, or personal information; or (e) create liability for us or cause us to lose (in whole or in part) the services of our ISPs or other suppliers. In the event of such an occurrence, WiLine shall notify Customer of the occurrence and reserves the right to terminate the Service should Customer not rectify the occurrence in a timely manner and to WiLine's satisfaction. WiLine reserves the right to immediately suspend Service of any Customer in violation of any part of the Federal CAN-SPAM Act of 2003. The sending of any form of unsolicited bulk email ("UBE") through the WiLine network is prohibited. Similarly, the sending of UBE from another service provider advertising a website, email address or utilizing any resource hosted on WiLine's network, is prohibited. The Service may not be used to solicit customers from, or collect replies to messages sent from other Internet service providers where those messages violate this Acceptable Use or that of the other provider.

Customers may not sell or distribute lists of "harvested" email addresses. Customers who provide or make use of a service employing referral IDs will be considered responsible for UBE sent by members of the referral ID service that makes reference to services provided by WiLine. Purchasing lists of email addresses from third parties for mailing through any WiLine hosted network, collocation or referencing any WiLine account is prohibited.

Customers sending bulk email, using WiLine services, may only engage in such activity through the use of "closed-loop opt-in" mailing lists, where this refers to lists obtained and assembled only be the sender and with the direct permission of the listed recipients. Subscribing email addresses to any mailing list without the express and verifiable permission of the email address owner is prohibited. Customers who send bulk email must have a method of confirmation or verification of subscriptions ("Subscription Confirmation") and must be able to show evidence of such Subscription Confirmation to users who complain about receiving unsolicited email. Customer shall keep all Subscription Confirmations for each mailing list address for the duration of the existence and use of any mailing list and for a reasonable time after such use. Customer must provide a mechanism by which email recipients can submit requests to unsubscribe from any mailing list. Customer must honor all unsubscribe requests within 5 business days.

Customer may not send or attempt to send e-mail messages or transmit any electronic communications using a name or address of someone other than Customer for purposes of deception. Any attempt to impersonate someone else by altering a source IP address information or by using forged headers or other identifying information, including the domain name is prohibited. Any attempt to fraudulently conceal, forge, or otherwise falsify Customer's identity in connection with use of the Service is prohibited.

Customer shall not operate an account on behalf of, or in connection with, or reselling any service to, persons or firms listed in the Spamhaus Register of Known Spam Operations (ROKSO) database at [www.spamhaus.org](http://www.spamhaus.org).

WiLine does not monitor on-line content; nevertheless, WiLine may suspend Service in order to remove content that WiLine deems to be in violation of this AUP. The AUP applies to e-mail, USENET postings, chatting, and browsing. In the event WiLine is notified of the existence of child pornography being transmitted over the WiLine network, WiLine may immediately suspend Service.

In the event WiLine is notified of a violation of the Digital Millennium Copyright Act ("DMCA"), WiLine shall forward such complaint to Customer. Customer shall abide by the "takedown and notice" procedures set forth in the DMCA. Customer expressly indemnifies WiLine from any costs, liabilities, or damages resulting from Customer's failure to abide by the DMCA or this AUP. WiLine may, in its sole discretion, disable and/or terminate the accounts of users as a result of DMCA violation notices.

Customer shall not obtain or attempt to obtain service by any means or device with intent to avoid payment. Customer shall not advertise, transmit, or otherwise make available any software, program, product, or service that violates this AUP or the AUP of any other Internet service provider, which includes, but is not limited to, the facilitation of the means to send UBE, initiation of pinging, flooding, mail-bombing, denial of service attacks.

Unauthorized access, alteration, destruction, or any attempt thereof, of any information of any of WiLine's customers or end-users by any means or device is prohibited.

Customer shall not engage in any activities that harass, or that will cause a denial-of-service (e.g., synchronized number sequence attacks) to any other user whether on the WiLine network or on another provider's network.

Customer shall not use the Service to interfere with the use of the WiLine network by other customers or authorized users.

WiLine implements DNS name resolving servers in each market for the purpose of providing DNS name resolution services ("DNS Service") to our direct customer base. Customer is not permitted to resell this DNS Service or to package it into a service or product that will in turn be resold to third parties. In addition, the DNS Service is to be used for the sole purpose of DNS name resolution. Customer is not permitted to query the DNS Service for any purpose other than a specific information request for use by WiLine direct customer and not to be-reused by a customer of WiLine's direct customer, except when used for troubleshooting and diagnostics.

Customer agrees not to attempt to gain unauthorized access to other computer systems or networks connected to the Services. Customer acknowledges and agrees that, in addition to other remedies in law or equity for Customer failure to comply with these standards: (a) WiLine may ban Customer from future use of the Services; (b) WiLine may recover damages from Customer; (c) WiLine may remove all data which, in WiLine's sole discretion and judgment, violate these standards; and (d) Customer agrees to indemnify, defend and hold harmless WiLine from all claims, damages, losses (including all costs and attorneys' fees) arising from or relating to Customer representations, obligations or use of the Services or WiLine equipment as defined below.

Each WiLine customer is responsible for the activities of its users and, by accepting service from WiLine, is agreeing to ensure that its customers/representatives or end-users abide by this Agreement. Complaints about customers/representatives or end-users of Customer will be forwarded to Customer's Postmaster for action. If violations occur, WiLine reserves the right to terminate services with or take action to stop Customer from violating WiLine's Agreement as WiLine deems appropriate, without notice.

Customer also expressly agrees not to use the Service for auto-dialing, continuous or extensive call forwarding, telemarketing, fax broadcasting or fax blasting, or for any other use that results in excessive usage inconsistent with normal calling patterns. WiLine reserves the right to immediately disconnect, modify, or limit Customer's Service if WiLine determines, in its sole and absolute discretion, that Customer's use of the Service is, or at any time was, inconsistent with normal usage patterns, including but not limited to over 60 calls per minute per line. Customer will defend, indemnify, and hold WiLine, its affiliates, and their agents and suppliers harmless against any and all claims, losses, or liability arising under this Section. The foregoing sentence will survive termination or expiration of the Agreement for any reason.



If Customer violates any provision of this AUP, WiLine reserves the right to immediately suspend the Service. In most cases, WiLine will attempt to notify Customer of any AUP violations and may request that Customer immediately cease such prohibited activity. However, in cases where the integrity of the WiLine network is threatened, where Customer violates the AUP of a WiLine's third party service provider, or in cases involving request from law enforcement or governmental agencies or court orders, WiLine reserves the right to suspend or terminate Customer's Service without notification. In addition, WiLine may take any other appropriate action, legal or otherwise, against Customer for violations of the AUP, including termination of the WiLine Service Agreement and/or any service order form(s) signed by Customer.

- 6. Service Agreement. Services. WiLine Equipment. Other Products.** Customer will approve a WiLine-issued Service Agreement describing the Services for the Term at the corresponding price to be used at the Site. WiLine will accept the Service Agreement and provide the Services subject to this Agreement and any applicable tariffs if Customer qualifies and Customer complies with this Agreement. Customer is not allowed to assign this Agreement or any Service Agreement, in whole or in part, without the express written consent of WiLine. Approval of any assignment is at the sole discretion of WiLine. WiLine may modify or discontinue, temporarily or permanently, the Services upon 60 days prior written notice to Customer. Customer agrees that WiLine shall not be liable to Customer or any third party for any modification or discontinuance of the Services. WiLine will provide the hardware and software listed on the Service Agreement ("WiLine Equipment") which Customer agrees will be used only in conjunction with the Services. At all times, title and risk of loss or damage remain with WiLine (excluding loss or damage caused by or attributable to Customer or Customer employees, agents, or subcontractors). Customer will keep the WiLine Equipment free and clear of all liens, attachments and other encumbrances. Customer will not assign, otherwise transfer or dispose, remove or relocate the WiLine Equipment without WiLine's written consent. Unless the parties otherwise agree, Customer will make the WiLine Equipment available for return within 5 days from the expiration or earlier termination of the Agreement at Customer's expense.

WiLine will assign to Customer, on a temporary basis, an Internet Protocol Address ("IP Address") either from the address space assigned to WiLine or a non-public NAT address. This IP Address belongs to WiLine and is not portable. WiLine reserves the right to change the IP Address at any time, for any reason without notice or liability. In the event that such change is required WiLine shall coordinate with the Customer so as to minimize impact to Customer's use of Service. Customer may be required, at Customer's expense, to provide and maintain Other Products.

To provide the Services, WiLine may ship Equipment to Customer. All Equipment shipments are F.O.B. WiLine's facility. WiLine's liability for delivery shall cease, and title (if applicable) and all risk of loss or damage shall pass to Customer upon delivery to carrier.

Customer will be provided the manufacturer's warranty from the date of purchase of Equipment or Service. Customer shall be required to obtain authorization from WiLine to return any Equipment. WiLine will provide replacement Equipment only if the Equipment is deemed to be defective and covered under the warranty. WiLine will not cover replacement for lost, stolen or modified equipment. Equipment returned by Customer that is not covered under warranty may be refused by WiLine, and Customer will be responsible to pay return shipping charges.

- 7. Payment.** Upon Service Activation (as defined in Section 3), billing will commence in advance on an annual billing frequency. Service Fees, Install and Set-up Fees, and other charges begin for each Service as each Service is made available to Customer, regardless of whether multiple Services may have been ordered on a single Service Agreement. Where non-standard installation or Professional Services charges are incurred, WiLine, at its sole discretion, may invoice for these charges prior to installation and activation of Service. For Voice services, activation may occur after dial tone. Prices quoted on the Service Agreement may be subject to price adjustments. The Customer will receive at least (30) days prior written notice of any such adjustments. Such notice will generally be provided in Customer's monthly statement. Each month, WiLine will send or make available online an electronic statement. Customer agrees to pay the total amount of each invoice by the invoice due date shown on that invoice. Customer agrees to electronically pay invoices by authorizing WiLine to debit Customer's bank account using Automated Clearing House ("ACH"). Payments rendered by credit card shall be subject to an additional processing fee of three percent (3%) where applicable. Invoiced charges are due and payable within twenty (20) days of the date of invoice. If Customer fails to pay any charges when due, WiLine may collect a \$50 late fee for commercial customers or the greater of 1-1/2% of the amount then due or the maximum allowed by law plus all amounts then due, plus any of WiLine's costs or expenses (including bank fees charged for insufficient funds or the like. Customer will advise WiLine of any billing discrepancies or disputes within 20 days after receiving notice of the charge or the amount charged shall be deemed due and payable. WiLine reserves the right, in its sole discretion, to apply an annual price adjustment to the current service fees, based on the Consumer Price Index (CPI) as published by United States Department of Labor, Bureau of Statistics. Currently, WiLine is not required to and does not collect taxes for WiLine's broadband services. Voice services are provided to Customer by VoiceCo. Inc. ("VoiceCo"). WiLine is the billing agent for VoiceCo. Any and all Federal, State and Local taxes, surcharges and/or fees that may be due will be billed by WiLine on behalf of VoiceCo. WiLine and/or Federal, State and Local governments may assess fees, surcharges and/or taxes on Customer's use of WiLine service. These charges may be a flat fee or a percentage of Customer's WiLine charges and may change from time to time without notice. These charges are based on the rates applicable to the address Customer provided to us. Customer is responsible for all applicable federal, state, provincial, municipal, local, or other governmental sales, use, excise, value-added, personal property, public utility or other taxes, fees, or charges now in force or enacted in the future, that arise from or as a result of Customer's subscription or use or payment for the Service. Such amounts are in addition to payment for the Service and will be billed as set forth in this Agreement. If Customer is exempt from payment of such taxes, Customer must provide us with an original certificate that satisfies applicable legal requirements attesting to tax-exempt status. Tax exemption will only apply from and after the date WiLine receives such certificate.

- 8. Terms and Termination.** The Term of this Service will be stated on the Service Agreement. At the end of the Initial Term, this Agreement will be automatically renewed for successive Term periods ("Renewal Term") until either party terminates this Agreement upon thirty (30) days written notice which will commence at the start of the next billing cycle. Such written termination notice must be sent to [contracts@wiline.com](mailto:contracts@wiline.com) and may be liable for Early Termination Charges as detailed in Section 9.

Customer may terminate Services without liability for Early Termination Charges if Customer experiences Service Non-Availability, subject to the terms of the Service Level Guarantee and Commitment for that particular Service. Customer may also terminate this Agreement if WiLine fails to comply with any other WiLine obligation under this Agreement for 30 consecutive days after receiving written notice from Customer. In either case, Customer may terminate the affected Service only if Customer's account is current before termination (i.e., no balance due more than 30 days) and Customer and Customer Equipment did not contribute to the Service Non-Availability or to WiLine's failure to comply with this Agreement, either directly or indirectly.

Customer may, however, terminate its Services at any time (with liability for Early Termination Charges) by written, 30-day notification in advance of the end of the next billing cycle. To terminate its Services, Customer must send a notice of cancellation to [contracts@wiline.com](mailto:contracts@wiline.com) including the Service Agreement numbers which Customer is terminating.

This Agreement will be immediately terminated, without notice, for a material breach, if Customer becomes insolvent, is unable to pay its debts when due, files for bankruptcy, is the subject of involuntary bankruptcy, has a receiver appointed, or has Customer's assets assigned. Upon termination of this Agreement for any reason except for WiLine's termination of the contract without cause or Customer's termination due to a material default by WiLine and WiLine failed to cure within such notice period, WiLine may cancel any unfulfilled obligations and is entitled to collect all sums due resulting from such termination, including Early Termination Charges.

WiLine may terminate this Agreement or suspend all of any Services if: (a) Customer fails to take any action that we have requested in order for WiLine to install or activate the Service; (b) Customer fails to pay any amount owed to WiLine when due, and fails to pay all past due amounts within ten (10) days after notice from WiLine; (c) Customer fails to comply with the AUP described above; (d) Customer fails to perform or comply with any other obligation under this Agreement, and does not perform and comply with that obligation within thirty (30) days after notice from WiLine; (e) WiLine determines at any time (in WiLine's sole discretion) that Customer's payment record, ability to make timely payments or credit worthiness has become unsatisfactory; (f) Customer is involved in or is the subject of any change-in-control, including sales of Customer's stock or assets, reorganization or merger. If WiLine elects to terminate this Agreement or any Services, Customer must pay Early Termination Charges as described below. If WiLine elects to suspend any Services, Customer must pay all resumption and other charges described in the following section.

If WiLine elects to suspend Services under any circumstances pursuant to this Agreement, then to resume those Services, Customer must first pay all past due and other applicable charges, including any late payment fees and other fees describe above, and a resumption fee of \$100. Before WiLine resumes Services, WiLine may request satisfactory assurances from Customer's future ability to pay for Services in a timely manner, even if Customer has paid the required resumption fee and other amounts. Those assurances may include a one-month advanced payment for future Services. If Customer fails to provide satisfactory assurances (in WiLine's sole discretion) or Customer fails to promptly make all required payments to resume Services, then Customer will be considered to have terminated this Agreement. At such time, Customer must pay Early Termination Charges, in addition to all other amounts owed under this Agreement.

At WiLine's sole discretion, should this Agreement be terminated, Customer will return the IP Address and all of the WiLine Equipment in good working order, wear and tear excepted within 30 days of termination for any reason with an RMA issued by WiLine. WiLine may remove WiLine Equipment as Customer requests in accordance with its then standard prices and terms and conditions. If Customer fails to return WiLine Equipment, Customer agrees to provide access to the Site for WiLine to remove WiLine Equipment at Customer's expense at WiLine's request, or to pay for the WiLine Equipment at the manufacturer's MSRP. Customer will also pay WiLine for any WiLine Equipment damaged or lost, normal wear and tear excepted. WiLine is not responsible for holes, or WiLine Equipment customer elects to ask WiLine to leave on the Site after de-installation.

- 9. Early Termination Charges.** Except for proper termination of this Contract under Section 8 above, in every other instance in which this Agreement terminates before the end of the Initial Term or Renewal Term, Customer is responsible to pay an early termination charge ("Early Termination Charge"). Early Termination Charges will be calculated as follows:

If, after Customer has signed the Service Agreement, termination occurs before WiLine installs its equipment or activates the Services, Customer shall be liable for \$1,000;

If termination occurs during the Initial Term or Renewal Term of this Agreement: all outstanding nonrecurring fees plus all Monthly Fees for each month remaining for the balance of the Initial or Renewal Term.

- 10. Ported Telephone Numbers on Service Disconnection.** Customer may request, or “port”, Customer’s current telephone number(s) to another service provider. WiLine will use commercially reasonable efforts to facilitate a port. Customer will be responsible for all charges and fees required by said service provider as well as WiLine’s charges as detailed in the then current price list associated with this port and must have paid any current and outstanding invoices.
- 11. Privacy.** WiLine utilizes the public Internet and third-party networks to provide fax, voice, data, and video communication services. Accordingly, WiLine cannot guarantee the security of fax, voice and video communications of Customer. WiLine is committed to respecting Customer’s privacy. Once Customer chooses to provide personally identifiable information, it will only be used in the context of the Customer’s relationship with WiLine. WiLine will not sell, rent, or lease Customer’s personally identifiable information to others. Unless required by law or subpoena or if Customer’s prior permission is obtained, WiLine will only share the personal data Customer provides with other WiLine entities and/or business partners that are acting on WiLine’s behalf to complete the activities described herein. Such WiLine entities and/or national or international business partners are governed by WiLine’s privacy policies with respect to the use of this data. WiLine may be required to file numerous reports with different administrative bodies. As such, WiLine may provide aggregate statistics about customers, sales and traffic patterns. None of these reports or statistics will include personally identifiable information. However, WiLine reserves the right to use personally identifiable information to investigate and help prevent potentially unlawful activity that threatens either WiLine or any company affiliated with WiLine. Moreover, upon the appropriate request of a government agency, law enforcement agency, court or as otherwise required by law, WiLine may disclose personally identifiable information.
- 12. Notices.** WiLine communicates with Customers primarily via Customers’ monthly statement. Notices to Customer shall be sent to the email address specified by Customer at the time of registration for the Services or as subsequently specified by Customer (“Billing Email Address”). Customer is responsible for notifying WiLine of any Billing Email Address changes. Customer agrees that sending a message or notification via the Customer’s monthly statement addressed to the Billing Email Address is the agreed upon means of providing notification. These Notices communicate important information about the Services, billing, changes to the Services and other information. The information is time-sensitive in nature. It is required that Customer read any Notices sent to the Billing Email Address in a timely manner in order to avoid any potential interruption in the Services provided hereunder.
- 13. Installation and Ongoing Access. Other Products.** Standard installation consists of installing the WiLine Equipment at the MPOE in said Service Address (“Demarcation Point”). Customer is solely responsible for bringing WiLine’s services from the MPOE to customer’s suite. Additional work that may be required to complete installation, including the wiring installation from the MPOE in said Service Address to the customer’s suite where Other Products exists and additional equipment not specified in the Service Agreement, and other services may be performed by WiLine, should customer request WiLine to perform these services (“Professional Services”) on a time and materials basis. WiLine will perform a Site survey and provide Customer with the installation and maintenance specifications required for installation of the Service. Customer is solely responsible for providing, installing, operating and maintaining Other Products. After Customer prepares the Site including installing Other Products, at Customer’s expense, as required by the Site survey, WiLine will install the Service. Customer must provide WiLine and its authorized installers such ongoing access to the Site as required to complete installation. Customer also grants WiLine, and its authorized representatives, the right to enter Customer’s Site during normal business hours, Monday through Saturday, subject to Customer’s security policies, to install, repair, replace or remove WiLine Equipment. WiLine is not responsible for any Site alterations or holes because of installation or removal of WiLine Equipment.

Customer ensures that Other Products are compatible with the Service. Customer will change obsolete Other Products and ensure such Other Products do not interfere with the Services. If Other Products impair Customer’s use of Services, Customer will continue to pay WiLine for the Services. If WiLine notifies Customer that the Other Products impair or are likely to impair Service, Customer agrees to remove or repair the impediment. WiLine, at its election and without liability, may suspend Services until the impairment is corrected. At Customer’s request, WiLine may assist with identifying and repairing problems caused by Other Products at WiLine’s then current prices and standard terms and conditions.

**Limitations of Emergency 9-1-1 Services.** As with any telephone and/or data technology, there are certain circumstances under which 9-1-1 services delivered by WiLine may not function. These circumstances include, but are not limited to, the following: (a) the telephone device to which a particular telephone number has been assigned is moved to a location outside the premises where it was originally installed; (b) there is a loss of electrical power to the telephone and/or equipment necessary to maintain the broadband connection; or (c) there is an outage, degradation or other disruption to the broadband connection. Customer’s signature on this Agreement and/or receipt of these terms and conditions will serve as Customer’s acknowledgement that WiLine has informed Customer of these limitations and that Customer accepts the Services with these limitations.



**REQUIRED FEDERAL COMMUNICATIONS ("FCC") WARNING.** THE FCC REQUIRES THAT WILINE INFORMS YOU OF POTENTIAL LIMITATIONS TO 911 SERVICES DELIVERED VIA WILINE. 911 AND/OR E911 SERVICES WILL NOT BE AVAILABLE OF FUNCTION IF (A) THE TELEPHONE DEVICE TO WHICH A PARTICULAR TELEPHONE NUMBER HAS BEEN ASSIGNED IS MOVED TO A LOCATION OUTSIDE THE PREMISES WHERE THE TELEPHONE DEVICE WAS ORIGINALLY INSTALLED; (B) THERE IS A LOSS OF ELECTRICAL POWER TO THE TELEPHONE AND/OR TO EQUIPMENT NECESSARY TO

MAINTAIN YOUR BROADBAND CONNECTION; OR (C) THERE IS AN OUTAGE, DEGRADATION OR OTHER DISRUPTION TO YOUR BROADBAND CONNECTION. YOUR SIGNATURE TO THIS AGREEMENT WILL BE YOUR ACKNOWLEDGEMENT THAT WILINE HAS ADVISED YOU OF THESE LIMITATIONS AND THAT YOU ACCEPT THE SERVICES WITH THESE LIMITATIONS. WILINE WILL ALSO PROVIDE YOU WITH LABELS THAT ALERT USERS TO THE LIMITATIONS IN THIS PARAGRAPH. THE FCC RECOMMENDS THAT YOU PLACE THESE LABELS ON OR NEAR THE TELEPHONE AND OTHER EQUIPMENT ASSOCIATED WITH YOUR WILINE VOICE SERVICE.

WILINE DOES NOT INTERACT WITH 9-1-1 AND OTHER EMERGENCY SERVICES IN THE SAME MANNER AS LANDLINE TELEPHONE SERVICES. DEPENDING ON YOUR LOCATION, THE TYPE OF HANDSETS AND OTHER EQUIPMENT YOU USE, THE TYPE OF EQUIPMENT USED BY THE PUBLIC SAFETY ACCESS POINT OR OTHER APPLICABLE EMERGENCY SERVICES PROVIDER, AND THE CIRCUMSTANCES AND CONDITIONS OF A PARTICULAR CALL, YOU MAY NOT BE CONNECTED OR YOUR PHONE NUMBER AND/OR LOCATION MAY NOT BE IDENTIFIABLE TO EMERGENCY SERVICE PROVIDERS. EMERGENCY 9-1-1 SERVICE THAT IS COMPATIBLE WITH FCC TECHNICAL REQUIREMENTS IS, NONETHELESS, NOT AVAILABLE IN ALL AREAS, AND EVEN ON THOSE AREAS WHERE IT IS AVAILABLE, IT IS NOT ENTIRELY RELIABLE. THE INFORMATION AVAILABLE TO EMERGENCY SERVICE PROVIDERS MAY ALSO BE LIMITED IF YOUR NUMBER OF NUMBERS ARE IN THE PROCESS OF BEING PORTED. BY YOUR SIGNATURE BELOW TO THIS AGREEMENT, YOU ACKNOWLEDGE THAT EMERGENCY 9-1-1 SERVICE IS NOT AVAILABLE IN ALL AREAS, IS NOT COMPLETELY RELIABLE, AND IS FURTHER LIMITED DURING THE NUMBER PORTING PROCESS.

- 14. Force Majeure.** WiLine will not be in violation of this Agreement or otherwise liable for any delay, failure to perform or equipment or property damage, loss, destruction or malfunction, or any consequence thereof, caused in whole or in part by anything beyond our reasonable control, including, without limitation, fire; earthquake; flood; weather; acts of God; public health emergency or pandemic; labor disputes; utility curtailments; power failures; cable cuts; failure caused by telecommunications or other Internet provider(s); worms; Trojan horses; viruses or other destructive code or software; explosions; civil disturbances; terrorism; vandalism; governmental actions; property access denial; or shortages of equipment or supplies (collectively, "Events of Force Majeure").
- 15. Relocation of Services.** If Customer desires to transfer Service location for any Service to a different location, Customer must request that move in writing to WiLine at least 45 days in advance. The new location must be in the United States of America and must be a commercial property if the customers current "Service Address" is a commercial space. If the new location is serviceable by WiLine, the Customer and WiLine must enter into a new Agreement with a term of no less than the Initial Term (the "Replacement Agreement"). The Replacement Agreement may include additional or different installation, recurring and other charges and fees, however in any event Customer will be required to pay an installation charge without discount. After the Service is provided to the new location, the Agreement for the original Service Address will be terminated with no liability for Early Termination Charges provided the monthly recurring cost of the services in the Replacement Agreement is not less than the monthly recurring cost of the services being replaced, otherwise Customer will be liable for a prorated early termination fee. If Customer's new location is not within WiLine's service area or a new agreement for the new location is not entered into by the parties, then Customer will be deemed to have terminated this Agreement and Early Termination Charges will apply.
- 16. Use of Service and Equipment Outside the United States.** WiLine may or may not support the use of its Equipment and Service by customers located in other countries. If Customer's, or any of its Users', removal of the Equipment from the United States violates any export control law or regulation, Customer will be solely liable for such violation and Customer agrees to defend, indemnify, and hold WiLine, its affiliates, and their agents and suppliers harmless against any and all claims, losses, or liability arising under this section. The foregoing sentence will survive termination or expiration of the Agreement for any reason.
- 17. Disclaimers. Limitation of Liability.** CUSTOMER EXPRESSLY AGREES THAT USE OF THE SERVICES IS AT CUSTOMER'S SOLE RISK. THE WILINE EQUIPMENT AND SERVICES ARE PROVIDED ON AN "AS-IS" AND "AS AVAILABLE" BASIS WITHOUT WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR INFRINGEMENT. NO ADVICE OR INFORMATION GIVEN WILL CREATE A WARRANTY. WILINE AND ITS LICENSORS AND SUPPLIERS DO NOT WARRANT THAT SERVICES WILL MEET CUSTOMER'S REQUIREMENTS OR THAT THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE OR ERROR FREE; NOR DOES WILINE OR ITS LICENSORS OR SUPPLIERS MAKE ANY WARRANTY AS TO THE RESULTS WHICH MAY BE OBTAINED FROM THE USE OF THE SERVICES OR WILINE EQUIPMENT OR AS TO THE ACCURACY OR RELIABILITY OF ANY INFORMATION OBTAINED THROUGH THE SERVICES, THAT DEFECTS IN SOFTWARE WILL BE CORRECTED, OR THAT ANY SOFTWARE OR SERVICES ARE FREE FROM VIRUSES. CUSTOMER IS SOLELY RESPONSIBLE FOR ANY DAMAGE TO CUSTOMER'S COMPUTER, OTHER PRODUCTS OR ANY LOSS OF DATA RESULTING FROM USE OF THE SERVICE OR WILINE EQUIPMENT.

Some jurisdictions do not allow the exclusion of certain warranties, therefore some of the above exclusions do not apply.

CUSTOMER AGREES THAT WILINE AND ITS LICENSORS AND SUPPLIERS SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES RESULTING FROM THE USE OR THE INABILITY TO USE THE SERVICES, OR FOR COST OR COVER, COST OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES, OR RESULTING FROM ANY GOODS OR SERVICES PURCHASED OR OBTAINED, OR FROM MESSAGES RECEIVED OR TRANSACTIONS ENTERED INTO THROUGH OR FROM THE SERVICES, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, USE, DATA, OR OTHER INTANGIBLES, EVEN IF WILINE, ITS LICENSORS OR THIRD PARTY SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CUSTOMER FURTHER AGREES THAT WILINE AND THEIR THIRD-PARTY SERVICE PROVIDERS SHALL NOT BE LIABLE FOR ANY DAMAGES ARISING FROM INTERRUPTION, SUSPENSION, OR TERMINATION OF SERVICES FOR ANY REASON, INCLUDING, BUT NOT LIMITED TO, DIRECT, INDIRECT, INCIDENTAL, SPECIAL CONSEQUENTIAL, OR EXEMPLARY DAMAGES, WHETHER SUCH INTERRUPTION, SUSPENSION, OR TERMINATION WAS JUSTIFIED OR NOT, NEGLIGENT, OR INTENTIONAL, INADVERTENT OR ADVERTENT. IN NO EVENT SHALL WILINE BE LIABLE FOR ANY AND ALL MATTERS RELATING TO THIS AGREEMENT FOR ANY AGGREGATE AMOUNT IN EXCESS OF THE CHARGES FOR THE INITIAL TERM. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, THEREFORE SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO CUSTOMER.

## **18. RESOLUTION OF DISPUTES.**

**PLEASE READ THIS ENTIRE SECTION CAREFULLY, AS YOU ARE WAIVING CERTAIN LEGAL RIGHTS IN THE EVENT OF ANY DISPUTE WITH US AND ARE AGREEING TO BINDING INDIVIDUAL ARBITRATION, AMONG OTHER THINGS.**

**A. First – Try to Resolve Disputes and Excluded Disputes.** If any controversy, allegation, or claim arises out of or relates to the Services, this Agreement or the Service Agreement, including any payment obligations, whether heretofore or hereafter arising (collectively, "Dispute"), or to any of WiLine's actual or alleged proprietary rights (an "Excluded Dispute"), then you and we agree to send a written notice to the other providing a reasonable description of the Dispute or Excluded Dispute, along with a proposed resolution of it. Our notice to you will be sent to you based on the most recent contact information that you provide us. But if no such contact information exists or if such information is not current, then we have no obligation under this Section 18(A). Your notice to us must be sent via certified U.S. mail to: WiLine Networks, Inc., 104 Carnegie Center, Suite 201, Princeton, NJ 08540. The written description included in your notice must be on an individual basis and provide at least the following information: your name and the name of your business; the nature or basis of the claim or dispute; the date of any purchase or transaction at issue (if any and if available), and the relief sought. For a period of sixty (60) days from the date of receipt of notice from the other party, WiLine and you will engage in a dialogue in order to attempt to resolve the Dispute or Excluded Dispute, through an informal telephonic dispute resolution conference between you and WiLine. The informal telephonic dispute resolution conferences shall be individualized such that a separate conference must be held each time either party intends to commence individual arbitration. This informal dispute resolution process is a prerequisite and condition precedent to commencing any formal dispute resolution proceeding. The parties agree that any relevant limitations period and filing fee or other deadlines will be tolled while the parties engage in this informal dispute resolution process. Certain portions of this Section 18(A) are deemed to be a "written agreement to arbitrate" pursuant to the Federal Arbitration Act. You and WiLine agree that we intend that this Section 18(A) satisfies the "writing" requirement of the Federal Arbitration Act ("FAA").

**B. Binding Arbitration.** If we cannot resolve a Dispute as set forth in Section 18(A) within sixty (60) days of receipt of the notice, then ANY DISPUTE ARISING BETWEEN YOU AND WILINE OR ANY OF ITS AGENTS, VENDORS, CONTRACTORS, OR OTHER THIRD PARTY BENEFICIARY OF THIS AGREEMENT (whether based in contract, statute, regulation, ordinance, tort (including, but not limited to, fraud, any other intentional tort or negligence), common law, constitutional provision, respondeat superior, agency or any other legal or equitable theory), whether arising before or after the effective date of this Agreement, MUST BE RESOLVED BY **FINAL AND BINDING INDIVIDUAL ARBITRATION**. The FAA, not state law, shall govern the arbitrability of all disputes between WiLine and you regarding this Agreement, the Service Agreement and the Services including the "No Class Action Matters" Section below. BY AGREEING TO ARBITRATE, EACH PARTY IS GIVING UP ITS RIGHT TO GO TO COURT AND HAVE ANY DISPUTE HEARD BY A JUDGE OR JURY. WiLine and you agree, however, that the applicable state or federal law, as contemplated in Section 18(I) below, shall apply to and govern, as appropriate, any and all claims or causes of action, remedies, and damages arising between you and WiLine regarding this Agreement, the Service Agreement and the Services, whether arising or stated in contract, statute, common law, or any other legal theory, without regard to any jurisdiction's choice of law principles. An Excluded Dispute will only be subject to binding arbitration pursuant to this Section 18 if the parties mutually agree. Any Dispute will be resolved solely by binding arbitration in accordance with the then-current Commercial Arbitration Rules (the "Rules") of the AAA, except as modified herein, and the arbitration will be administered by the AAA. If a party properly submits the Dispute to the AAA for formal arbitration and the AAA is unwilling to set a hearing, then either party can elect to have the arbitration administered by the Judicial Arbitration and Mediation Services Inc. ("JAMS") using JAMS's streamlined Arbitration Rules and Procedures, or by any other arbitration administration service that you and an officer or legal representative of WiLine consent to in writing.

**C. Arbitration Process.** If after sixty (60) days the informal dispute resolution procedure set forth in Section 18(A) above is unsuccessful in resolving the parties' dispute, a party who desires to initiate arbitration must provide the other party with a written Demand for Arbitration as specified in the Rules. (The AAA provides applicable forms for Demands for Arbitration available at [https://www.adr.org/sites/default/files/Demand\\_for\\_Arbitration\\_0.pdf](https://www.adr.org/sites/default/files/Demand_for_Arbitration_0.pdf) (Commercial Arbitration Rules).) The arbitrator will be either a retired judge or an attorney licensed to practice law. The arbitration may be conducted by telephone or based on written submissions, and if an in-person hearing is required, then it will be conducted at your principal place of business or at a mutually agreed upon location. You and we will pay the administrative and arbitrator's fees and other costs in accordance with the requirements of the Rules. The arbitration will be conducted by a single arbitrator who will apply and be bound by this Agreement and the Service Agreement. The arbitrator's award of damages and/or other relief must be consistent with the terms of the Limitation of Liability section above as to the types and the amounts of damages or other relief for which a party may be held liable. If a claim is brought seeking public injunctive relief and a court determines that the restrictions prohibiting the arbitrator from awarding relief on behalf of third parties are unenforceable with respect to such claim (and that determination becomes final after all appeals have been exhausted), the claim for public injunctive relief will be determined in court and any individual claims will be arbitrated. In such a case, the court shall stay the claim for public injunctive relief until the arbitration pertaining to individual relief has been entered in court. In no event will a claim for public injunctive relief be arbitrated. All issues are for the arbitrator to decide, except that issues relating to the scope and enforceability of the arbitration and class action waiver provisions are for the court to decide. Attorneys' fees will be available to the prevailing party in the arbitration only if authorized under applicable substantive law governing the claims in the arbitration. This arbitration provision shall survive termination of this Agreement, the Service Agreement or the Services. You can obtain AAA and JAMS procedures, rules, and fee information as follows: AAA: 800.778.7879 and <http://www.adr.org> and JAMS: 800.352.5267 and <http://www.jamsadr.com>.

**D. Limited Time to File Claims.** TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IF YOU OR WE WANT TO ASSERT A DISPUTE (BUT NOT A EXCLUDED DISPUTE) AGAINST THE OTHER, THEN YOU OR WE MUST COMMENCE IT (BY DELIVERY OF WRITTEN NOTICE AS SET FORTH IN SECTION 18(A)) WITHIN ONE (1) YEAR AFTER THE DISPUTE ARISES—OR IT WILL BE FOREVER BARRED. Commencing means, as applicable: (i) by delivery of written notice as set forth above in Section 18(A); (ii) filing for arbitration with JAMS as set forth in Section 18(B); or (iii) filing an action in state or federal court. The parties expressly waive any contrary statute of limitations or time bars, both legal and equitable, to the Disputes.

**E. Injunctive Relief.** The foregoing provisions of this Section 18 will not apply to any legal action taken by WiLine to seek an injunction or other equitable relief in connection with any loss, cost, or damage (or any potential loss, cost, or damage) relating to the Services, this Agreement, the Service Agreement and/or WiLine's proprietary rights (including such WiLine may claim that may be in dispute), WiLine's operations and/or WiLine's products or services.

**F. No Class Action Matters.** YOU AND WE AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING OR AS AN ASSOCIATION. Disputes will be arbitrated only on an individual basis and will not be joined or consolidated with any other arbitrations or other proceedings that involve any claim or controversy of any other party. Notwithstanding any other provision of this Section 18, any and all issues relating to the scope, interpretation and enforceability of the class action waiver provisions contained herein (described in this No Class Action Matters section), are to be decided only by a court of competent jurisdiction, and not by the arbitrator. Notwithstanding any other provision of this Agreement, if the foregoing class action waiver and prohibition against class arbitration is determined to be invalid or unenforceable, then this entire arbitration agreement shall be void and the Dispute must be brought exclusively in court pursuant to Section 18(G). If any portion of this arbitration agreement other than the class action waiver and prohibition against class arbitration is deemed invalid or unenforceable, it shall not invalidate the remaining portions of this arbitration agreement.

**G. Federal and State Courts in California.** Except where arbitration is required above or for small claims actions, or with respect to the enforcement of any arbitration decision or award, any action or proceeding relating to any Dispute or Excluded Dispute arising hereunder may only be instituted in a state or federal court of competent jurisdiction in California. Accordingly, you and WiLine consent to the exclusive personal jurisdiction and venue of such courts for such matters.

**H. Small Claims Matters Are Excluded from Arbitration Requirement.** Notwithstanding the foregoing, either of us may bring qualifying claim of Disputes (but not Excluded Disputes) in small claims court on an individual basis for disputes and actions within the scope of such court's competent jurisdiction.

**I. Governing Law.** This Agreement and the Service Agreement will be governed by and construed in accordance with, and any Dispute and Excluded Dispute will be resolved in accordance with, the laws of the State of New York, without regard to its conflicts of law provisions.

**19. GENERAL.** Customer and WiLine are independent contractors, and no agency, partnership, joint venture, employee-employer or franchiser-franchisee relationship is intended or created by this Agreement. Sections 2, 3 (access), 5, 6 (return of WiLine Equipment), 7, 8, 9, 17, 18, 19 survive any termination or expiration of this Agreement. WiLine shall not be liable to Customer for any breach by its licensors or suppliers of this Agreement. The failure of WiLine to exercise or enforce any right or provision of this Agreement shall not constitute a waiver of such right or provision. If any provision of this Agreement is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision and rule that the other provisions of this Agreement remain in full force and effect. All notices will be provided in writing to WiLine at the address stated on the Service Agreement or as updated on our Website. Notice is effective upon receipt. Except for the payment of any amounts due hereunder, performance will be suspended for force majeure.

THIS SERVICE AGREEMENT TERMS AND CONDITIONS IS BINDING UPON CUSTOMER ACKNOWLEDGEMENT AND SIGNING OF A WILINE SERVICE AGREEMENT WORK ORDER. THE PERSON SIGNING THE SERVICE AGREEMENT ON BEHALF OF THE CUSTOMER PERSONALLY REPRESENTS AND WARRANTS TO WILINE THAT HE OR SHE HAS THE AUTHORITY AND POWER TO SIGN ON BEHALF OF THE CUSTOMER AND BIND CUSTOMER TO THIS AGREEMENT

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