

Region 4 ESC

Contract # R210813

for

Internet Service Provider for TEA Connect Texas Program

with

Windstream Services, LLC

Effective: August 1, 2021

The following documents comprise the executed contract between the Region 4 Education Service Center and Windstream Services, LLC effective August 1, 2021:

- I. Supplier Contract
- II. Offer & Contract Signature Form
- III. Supplier's Response to the RFP, incorporated by reference.

Company Overview

Today, it seems every company is in the technology business, whether they want to be or not. This puts great pressure on IT leaders to solve complex, new, strategic challenges. And even more on their networks.

At Kinetic Business by Windstream, we saw these challenges as opportunities. So, we made it our own business to deliver the responsiveness and agility that digital transformation demands from your business. With a range of innovative network, communications and collaboration solutions optimized and secured for a cloud-centric, anytime/anywhere world.

Advanced Solutions. Local Provider.

As network, security and application performance become continuously more critical, Kinetic Business by Windstream will be the partner that responds to your unique needs—a pathfinder to help lead you through technology transformation. We pride ourselves on being a local business bringing advanced solutions to elevate your business, and available to help, in person, whenever you need it.

Solving challenges. Not selling services.

It takes skill and insight to design, deliver, and manage innovative cloud-driven network solutions. One skill that sets us apart: Listening. The ability to work closely with our customers, build true collaborative partnerships, and respond with agility delivering solutions tailored to empower them to achieve their ongoing objectives.

We've done it for thousands of companies. Solving challenges, not selling services. Moving technology—and businesses—forward.

A nationwide network designed, built, and managed for the cloud.

Network, communications, and collaboration solutions are only as good as the network they rely on. That's why Windstream created proprietary Cloud Core network architecture, harnessing software-defined network intelligence, to deliver the bandwidth, performance and agility required to deliver innovative apps, drive superior experiences, and power anytime, anywhere businesses.

It's all about experience; both ours, and yours.

No two businesses are exactly alike, so your network shouldn't be either. We leverage deep experience across industries—banking, content & media, K-12 and higher education, state/local government, healthcare, hospitality, and retail—to deliver what you need, when and where you need.

We're also focused on another kind of experience, the one we provide our customers which is embedded in our culture—from our leadership team to our expert local account teams to 24/7 tech support.

Key Facts

- + Kinetic Business is a division of Windstream Holdings, a leading provider of advanced network communications and technology solutions
- + Solutions tailored to unique customer needs, geared to address these essential challenges:
 - Elevating customer experience
 - Enabling employee productivity/collaboration
 - Enhancing security and compliance
- + A broad range of innovative, scalable solutions optimized for the cloud:
 - Network and connectivity, including SD-WAN, hybrid networks, Ethernet, fixed wireless, access diversity, MPLS, WIFI and more
 - Unified Communications (UC) and voice, including OfficeSuite UC®, our proprietary UCaaS solution, and SIP trunking
 - Security, including managed network security
- + Industry-leading SD-WAN solution with thousands of customers
- + Nationwide network with 164,000 fiber route miles, fiber and fixed wireless connectivity, and proprietary Cloud Core™ architecture engineered to maximize performance, reliability, scalability, security, and efficiency
- + Winners of multiple awards for innovation and excellence:
 - Named to the prestigious Gartner Magic Quadrant for Unified Communications
 - Internet Telephony Product of the Year Award for SD-WAN
 - TMC Leadership Award for SD-WAN
 - TMC Product of the Year award for Unified Communications
 - Internet Telephony Friend of the Channel Award
- + Broad vertical expertise and expert teams focused on providing a superior customer experience

Government	- Serving local and state government agencies and departments
Healthcare	- Non-profit and for-profit facilities and organizations of all sizes
Retail	- Retail facilities of all sizes and needs
K-12 Education	- K-12 education, school, and library environments, with facilities of all sizes - Long-time FCC E-Rate program provider; SPIN number 143030766
Higher Education	- Institutions of all sizes
Hospitality	- Serving small properties to those with several hundred rooms
Banking	- Enabling banks and credit unions to deliver a personalized member experience via reliable, secure cloud-optimized connectivity

APPENDIX A

CONTRACT

This Contract ("Contract") is made as of June 29, 2021, by and between Windstream Services LLC ("Contractor") and Region 4 Education Service Center ("Region 4 ESC") for the purchase of Internet Service Provider for TEA Connect Texas Program ("the products and services").

RECITALS

WHEREAS, Region 4 ESC issued Request for Proposal Number 21-08 for ("RFP"), to which Contractor provided a response ("Proposal"); and

WHEREAS, Region 4 ESC selected Contractor's Proposal and wishes to engage Contractor in providing the services/materials described in the RFP and Proposal;

WHEREAS, both parties agree and understand the following pages will constitute the Contract between the Contractor and Region 4 ESC, having its principal place of business at 7145 West Tidwell Road, Houston, TX 77092.

WHEREAS, Contractor included, in writing, any required exceptions or deviations from these terms, conditions, and specifications; and it is further understood that, if agreed to by Region 4 ESC, said exceptions or deviations are incorporated into the Contract.

WHEREAS, this Contract consists of the provisions set forth below, including provisions of all attachments referenced herein. In the event of a conflict between the provisions set forth below and those contained in any attachment, the provisions set forth below shall control.

WHEREAS, the Contract will provide that any state and local governmental entities, public and private primary, secondary and higher education entities, non-profit entities, and agencies for the public benefit ("Public Agencies") may purchase products and services at prices indicated in the Contract upon the Public Agency's registration with OMNIA Partners.

- 1) Term of agreement. The term of the Contract is for a period of three (3) years unless terminated, canceled, or extended as otherwise provided herein. Region 4 ESC shall have the right to renew the Contract for two (2) additional one-year periods or portions thereof. Region 4 ESC shall review the Contract prior to the renewal date and notify the Contractor of Region 4 ESC's intent renew the Contract. Contractor may elect not to renew by providing three hundred sixty-five days' (365) notice to Region 4 ESC. Notwithstanding the expiration of the initial term or any subsequent term or all renewal options, Region 4 ESC and Contractor may mutually agree to extend the term of this Agreement. Contractor acknowledges and understands Region 4 ESC is under no obligation whatsoever to extend the term of this Agreement.
- 2) Scope: Contractor shall perform all duties, responsibilities, and obligations, set forth in this agreement, and described in the RFP, incorporated herein by reference as though fully set forth herein.
- 3) Form of Contract. The form of Contract shall be the RFP, the Offeror's proposal and Best and Final Offer(s).

4) Order of Precedence. In the event of a conflict in the provisions of the Contract as accepted by Region 4 ESC, the following order of precedence shall prevail:

- i. This Contract
- ii. Offeror's Best and Final Offer
- iii. Offeror's proposal
- iv. RFP and any addenda

If awarded this contract, the following documents will become a part of any final contract: 1) this RFP, which includes all attachments and any amendments, 2) Windstream's proposal, which includes any exceptions noted by Windstream, and 3) the executed service agreement, if applicable. The order of precedence shall be (i) the executed service agreement, if applicable, (ii) Windstream's proposal, and (iii) the RFP.

5) Commencement of Work. The Contractor is cautioned not to commence any billable work or provide any material or service under this Contract until Contractor receives a purchase order for such work or is otherwise directed to do so in writing by Region 4 ESC.

6) Entire Agreement (Parol evidence). The Contract, as specified above, represents the final written expression of agreement. All agreements are contained herein and no other agreements or representations that materially alter it are acceptable.

Windstream has read and understands; however, Windstream would require the opportunity to fully negotiate these terms to incorporate any additional non-conflicting Windstream terms into the Agreement. Except where Windstream has already stated an exception, to the extent there are any conflicts between the final negotiated Agreement and any additional terms provided by Windstream, the fully negotiated Agreement shall govern.

7) Assignment of Contract. No assignment of Contract may be made without the prior written approval of Region 4 ESC. Contractor is required to notify Region 4 ESC when any material change in operations is made (i.e., bankruptcy, change of ownership, merger, etc.).

As a nationwide telecommunications services provider, it is imperative that Windstream have the ability to assign the contract without the prior written consent of Region 4 ESC to an affiliate or purchaser of all or substantially all of its assets. Windstream proposes the following: Neither party shall assign or transfer its rights and obligations under the agreement between the parties without the prior written consent of the other, which consent shall not be unreasonably withheld or delayed, except each party shall have the right to assign, convey or otherwise transfer its rights, title, interest and obligations under the contract, in whole or in part, to any entity controlled by, controlling or under common control of said party, or any entity into which said party may be merged or consolidated or which purchases all or substantially all of the assets of said party. Any attempted assignment in violation of this provision shall be void.

8) Novation. If Contractor sells or transfers all assets or the entire portion of the assets used to perform this Contract, a successor in interest must guarantee to perform all obligations under this Contract. Region 4 ESC reserves the right to accept or reject any new party. A change of name agreement will not change the contractual obligations of Contractor.

9) Contract Alterations. No alterations to the terms of this Contract shall be valid or binding unless authorized and signed by Region 4 ESC.

10) Adding Authorized Distributors/Dealers. Contractor is prohibited from authorizing additional distributors or dealers, other than those identified at the time of submitting their proposal, to sell under the Contract without notification and prior written approval from Region 4 ESC. Contractor must notify Region 4 ESC each time it wishes to add an authorized distributor or dealer. Purchase orders and payment can only be made to the Contractor unless otherwise approved by Region 4 ESC. Pricing provided to members by added distributors or dealers must also be less than or equal to the Contractor's pricing.

11) TERMINATION OF CONTRACT

a) Cancellation for Non-Performance or Contractor Deficiency. Region 4 ESC may terminate the Contract if purchase volume is determined to be low volume in any 12-month period. Region 4 ESC reserves the right to cancel the whole or any part of this Contract due to failure by Contractor to carry out any obligation, term, or condition of the contract. Region 4 ESC may issue a written deficiency notice to Contractor for acting or failing to act in any of the following:

- i. Providing material that does not meet the specifications of the Contract;
- ii. Providing work or material was not awarded under the Contract;
- iii. Failing to adequately perform the services set forth in the scope of work and specifications;
- iv. Failing to complete required work or furnish required materials within a reasonable amount of time;
- v. Failing to make progress in performance of the Contract or giving Region 4 ESC reason to believe Contractor will not or cannot perform the requirements of the Contract; or
- vi. Performing work or providing services under the Contract prior to receiving an authorized purchase order.

Upon receipt of a written deficiency notice, Contractor shall have ten (10) days to provide a satisfactory response to Region 4 ESC. Failure to adequately address all issues of concern may result in Contract cancellation. Upon cancellation under this paragraph, all goods, materials, work, documents, data and reports prepared by Contractor under the Contract shall immediately become the property of Region 4 ESC.

Windstream takes exception to this requirement as written. Region 4 ESC may terminate a service in accordance with the termination for default provisions set forth in Section 10 of the Windstream Service Terms and Conditions, attached as part of this RFP response. Any termination without cause would be subject to the Cancellation Charges and/or Liquidated Damages set forth in Section 11 of the Windstream Service Terms and Conditions.

Windstream takes exception to Region 4 ESC's right to terminate the Agreement for default without giving Windstream a reasonable time to cure. In the event Windstream breaches a material term or condition or fails to perform any material obligation under the agreement, Region 4 ESC shall have the right to terminate the agreement in whole or in part if, after forty-five (45) days' notice of a default, Windstream fails to cure the default. In the event Windstream fails to cure, Region 4 ESC may terminate the agreement with no liability other than for accrued charges owed under the agreement up to the date of termination.

Further, Region 4 ESC's right to terminate the Agreement is limited as described in the Windstream Fiber Build Addendum, which has been included with this RFP response.

- b) **Termination for Cause.** If, for any reason, Contractor fails to fulfill its obligation in a timely manner, or Contractor violates any of the covenants, agreements, or stipulations of this Contract Region 4 ESC reserves the right to terminate the Contract immediately and pursue all other applicable remedies afforded by law. Such termination shall be effective by delivery of notice, to the Contractor, specifying the effective date of termination. In such event, all documents, data, studies, surveys, drawings, maps, models and reports prepared by Contractor will become the property of the Region 4 ESC. If such event does occur, Contractor will be entitled to receive just and equitable compensation for the satisfactory work completed on such documents.

Windstream takes exception to Region 4 ESC's right to immediately terminate the Agreement for default without giving Windstream a reasonable time to cure. In the event Windstream breaches a material term or condition or fails to perform any material obligation under the agreement, Region 4 ESC shall have the right to terminate the agreement in whole or in part if, after forty-five (45) days' notice of a default, Windstream fails to cure the default. In the event Windstream fails to cure, Region 4 ESC may terminate the agreement with no liability other than for accrued charges owed under the agreement up to the date of termination.

Further, Region 4 ESC's right to terminate the Agreement is limited as described in the Windstream Fiber Build Addendum, which has been included with this RFP response.

- c) **Delivery/Service Failures.** Failure to deliver goods or services within the time specified, or within a reasonable time period as interpreted by the purchasing agent or failure to make replacements or corrections of rejected articles/services when so requested shall constitute grounds for the Contract to be terminated. In the event Region 4 ESC must purchase in an open market, Contractor agrees to reimburse Region 4 ESC, within a reasonable time period, for all expenses incurred.

Windstream takes exception to Region 4 ESC's right to immediately terminate the Agreement for default without giving Windstream a reasonable time to cure. In the event Windstream breaches a material term or condition or fails to perform any material obligation under the agreement, Region 4 ESC shall have the right to terminate the agreement in whole or in part if, after forty-five (45) days' notice of a default, Windstream fails to cure the default. In the event Windstream fails to cure, Region 4 ESC may terminate the agreement with no liability other than for accrued charges owed under the agreement up to the date of termination.

Further, Region 4 ESC's right to terminate the Agreement is limited as described in the Windstream Fiber Build Addendum, which has been included with this RFP response.

Windstream's liability in the event of a breach is limited as provided in Section 12 of the Windstream Service Terms and Conditions, which is included with this RFP response. In no event will Windstream be liable for the cost of substitute service, and Customer does not have the right to reduce or withhold payment due for any reason, except in the event of a good faith dispute over charges owed, and only then to the extent of the disputed amount.

- d) Force Majeure. If by reason of Force Majeure, either party hereto shall be rendered unable wholly or in part to carry out its obligations under this Agreement then such party shall give notice and full particulars of Force Majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied upon, and the obligation of the party giving such notice, so far as it is affected by such Force Majeure, shall be suspended during the continuance of the inability then claimed, except as hereinafter provided, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch.

The term Force Majeure as employed herein, shall mean acts of God, strikes, lockouts, or other industrial disturbances, act of public enemy, orders of any kind of government of the United States or the State of Texas or any civil or military authority; insurrections; riots; epidemics; landslides; lighting; earthquake; fires; hurricanes; storms; floods; washouts; droughts; arrests; restraint of government and people; civil disturbances; explosions, breakage or accidents to machinery, pipelines or canals, or other causes not reasonably within the control of the party claiming such inability. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty, and that the above requirement that any Force Majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing party or parties when such settlement is unfavorable in the judgment of the party having the difficulty.

- e) Standard Cancellation. Region 4 ESC may cancel this Contract in whole or in part by providing written notice. The cancellation will take effect 30 business days after the other party receives the notice of cancellation. After the 30th business day all work will cease following completion of final purchase order.

Region 4 ESC may terminate a service in accordance with the termination for default provisions set forth in Section 10 of the Windstream Service Terms and Conditions, attached as part of this RFP response. Any termination without cause would be subject to the Cancellation Charges and/or Liquidated Damages set forth in Section 11 of the Windstream Service Terms and Conditions.

- 12) Licenses. Contractor shall maintain in current status all federal, state and local licenses, bonds and permits required for the operation of the business conducted by Contractor. Contractor shall remain fully informed of and in compliance with all ordinances and regulations pertaining to the lawful provision of services under the Contract. Region 4 ESC reserves the right to stop work and/or cancel the Contract if Contractor's license(s) expire, lapse, are suspended or terminated.
- 13) Survival Clause. All applicable software license agreements, warranties or service agreements that are entered into between Contractor and Region 4 ESC under the terms and conditions of the Contract shall survive the expiration or termination of the Contract. All Purchase Orders issued and accepted by Contractor shall survive expiration or termination of the Contract.
- 14) Delivery. Conforming product shall be shipped within 7 days of receipt of Purchase Order. If delivery is not or cannot be made within this time period, the Contractor must receive authorization for the delayed delivery. The order may be canceled if the estimated shipping time is not acceptable. All deliveries shall be freight prepaid, F.O.B. Destination and shall

be included in all pricing offered unless otherwise clearly stated in writing.

- 15) Inspection & Acceptance. If defective or incorrect material is delivered, Region 4 ESC may make the determination to return the material to the Contractor at no cost to Region 4 ESC. The Contractor agrees to pay all shipping costs for the return shipment. Contractor shall be responsible for arranging the return of the defective or incorrect material.
- 16) Payments. Payment shall be made after satisfactory performance, in accordance with all provisions thereof, and upon receipt of a properly completed invoice.
- 17) Price Adjustments. Should it become necessary or proper during the term of this Contract to make any change in design or any alterations that will increase price, Region 4 ESC must be notified immediately. Price increases must be approved by Region 4 ESC and no payment for additional materials or services, beyond the amount stipulated in the Contract shall be paid without prior approval. All price increases must be supported by manufacturer documentation, or a formal cost justification letter. Contractor must honor previous prices for thirty (30) days after approval and written notification from Region 4 ESC. It is the Contractor's responsibility to keep all pricing up to date and on file with Region 4 ESC. All price changes must be provided to Region 4 ESC, using the same format as was provided and accepted in the Contractor's proposal.

Price reductions may be offered at any time during Contract. Special, time-limited reductions are permissible under the following conditions: 1) reduction is available to all users equally; 2) reduction is for a specific period, normally not less than thirty (30) days; and 3) original price is not exceeded after the time-limit. Contractor shall offer Region 4 ESC any published price reduction during the Contract term.

- 18) Audit Rights. Contractor shall, at its sole expense, maintain appropriate due diligence of all purchases made by Region 4 ESC and any entity that utilizes this Contract. Region 4 ESC reserves the right to audit the accounting for a period of three (3) years from the time such purchases are made. This audit right shall survive termination of this Agreement for a period of one (1) year from the effective date of termination. Region 4 ESC shall have the authority to conduct random audits of Contractor's pricing at Region 4 ESC's sole cost and expense. Notwithstanding the foregoing, in the event that Region 4 ESC is made aware of any pricing being offered that is materially inconsistent with the pricing under this agreement, Region 4 ESC shall have the ability to conduct an extensive audit of Contractor's pricing at Contractor's sole cost and expense. Region 4 ESC may conduct the audit internally or may engage a third-party auditing firm. In the event of an audit, the requested materials shall be provided in the format and at the location designated by Region 4 ESC.

Windstream understands and makes a qualified acceptance in that, while Windstream has no objection to independent audit of documentation related services provided by Windstream to enable verification of all invoices, charges and expenses paid by Region 4 ESC for such services, Windstream requires that any such audits (i) are subject to Region 4 ESC and/or Region 4 ESC's third party designated auditor executing a non-disclosure agreement provided by Windstream with respect to the use and disclosure of such documentation, (ii) may be conducted no more than once a year during Windstream's normal business hours, (iii) are preceded by written notice from Region 4 ESC at least thirty (30) days prior to the date of the proposed audit, and (iv) are paid for by Region 4 ESC. Windstream shall retain all audited records in accordance with the terms of Windstream's record retention policy.

- 19) Discontinued Products. If a product or model is discontinued by the manufacturer, Contractor may substitute a new product or model if the replacement product meets or exceeds the specifications and performance of the discontinued model and if the discount is the same or greater than the discontinued model.
- 20) New Products/Services. New products and/or services that meet the scope of work may be added to the Contract. Pricing shall be equivalent to the percentage discount for other products. Contractor may replace or add product lines if the line is replacing or supplementing products, is equal or superior to the original products, is discounted similarly or greater than the original discount, and if the products meet the requirements of the Contract. No products and/or services may be added to avoid competitive procurement requirements. Region 4 ESC may require additions to be submitted with documentation from Members demonstrating an interest in, or a potential requirement for, the new product or service. Region 4 ESC may reject any additions without cause.
- 21) Options. Optional equipment for products under Contract may be added to the Contract at the time they become available under the following conditions: 1) the option is priced at a discount similar to other options; 2) the option is an enhancement to the unit that improves performance or reliability.
- 22) Warranty Conditions. All supplies, equipment and services shall include manufacturer's minimum standard warranty and one (1) year labor warranty unless otherwise agreed to in writing.
Windstream cannot agree to the warranties outlined in this section. Please refer to Section 13 of the Windstream Service Terms and Conditions for Windstream's standard warranty disclaimer.
- 23) Site Cleanup. Contractor shall clean up and remove all debris and rubbish resulting from their work as required or directed. Upon completion of the work, the premises shall be left in good repair and an orderly, neat, clean, safe and unobstructed condition.
- 24) Site Preparation. Contractor shall not begin a project for which the site has not been prepared, unless Contractor does the preparation work at no cost, or until Region 4 ESC includes the cost of site preparation in a purchase order. Site preparation includes, but is not limited to: moving furniture, installing wiring for networks or power, and similar pre-installation requirements.
- 25) Registered Sex Offender Restrictions. For work to be performed at schools, Contractor agrees no employee or employee of a subcontractor who has been adjudicated to be a registered sex offender will perform work at any time when students are or are reasonably expected to be present. Contractor agrees a violation of this condition shall be considered a material breach and may result in the cancellation of the purchase order at Region 4 ESC's discretion. Contractor must identify any additional costs associated with compliance of this term. If no costs are specified, compliance with this term will be provided at no additional charge.
- 26) Safety measures. Contractor shall take all reasonable precautions for the safety of employees on the worksite and shall erect and properly maintain all necessary safeguards for protection of workers and the public. Contractor shall post warning signs against all hazards created by its operation and work in progress. Proper precautions shall be taken pursuant to state law and standard practices to protect workers, general public and existing structures from injury or damage.

- 27) Smoking. Persons working under the Contract shall adhere to local smoking policies. Smoking will only be permitted in posted areas or off premises.
- 28) Stored materials. Upon prior written agreement between the Contractor and Region 4 ESC, payment may be made for materials not incorporated in the work but delivered and suitably stored at the site or some other location, for installation at a later date. An inventory of the stored materials must be provided to Region 4 ESC prior to payment. Such materials must be stored and protected in a secure location and be insured for their full value by the Contractor against loss and damage. Contractor agrees to provide proof of coverage and additionally insured upon request. Additionally, if stored offsite, the materials must also be clearly identified as property of Region 4 ESC and be separated from other materials. Region 4 ESC must be allowed reasonable opportunity to inspect and take inventory of stored materials, on or offsite, as necessary. Until final acceptance by Region 4 ESC, it shall be the Contractor's responsibility to protect all materials and equipment. Contractor warrants and guarantees that title for all work, materials and equipment shall pass to Region 4 ESC upon final acceptance.
- 29) Funding Out Clause. A Contract for the acquisition, including lease, of real or personal property is a commitment of Region 4 ESC's current revenue only. Region 4 ESC retains the right to terminate the Contract at the expiration of each budget period during the term of the Contract and is conditioned on a best effort attempt by Region 4 ESC to obtain appropriate funds for payment of the contract.
Please refer to Windstream's USAC Addendum – E-Rate which is included with this RFP response and addresses loss of USAC funding after an initial approval.
- 30) Indemnity. Contractor shall protect, indemnify, and hold harmless both Region 4 ESC and its administrators, employees and agents against all claims, damages, losses and expenses arising out of or resulting from the actions of the Contractor, Contractor employees or subcontractors in the preparation of the solicitation and the later execution of the Contract. Any litigation involving either Region 4 ESC, its administrators and employees and agents will be in Harris County, Texas.
Windstream has read and understands its obligation to indemnify Region 4 ESC would like to clarify that such indemnification extends only to third party claims arising from Windstream's gross negligence or willful misconduct with respect to its obligations under the final contract between the parties.
- 31) Marketing. Contractor agrees to allow Region 4 ESC to use their name and logo within website, marketing materials and advertisement. Any use of Region 4 ESC name and logo or any form of publicity, inclusive of press releases, regarding this Contract by Contractor must have prior approval from Region 4 ESC.
- 32) Certificates of Insurance. Certificates of insurance shall be delivered to the Region 4 ESC prior to commencement of work. The Contractor shall give Region 4 ESC a minimum of ten (10) days' notice prior to any modifications or cancellation of policies. The Contractor shall require all subcontractors performing any work to maintain coverage as specified.
- 33) Legal Obligations. It is Contractor's responsibility to be aware of and comply with all local, state, and federal laws governing the sale of products/services and shall comply with all laws while fulfilling the Contract. Applicable laws and regulation must be followed even if not specifically identified herein.

OFFER AND CONTRACT SIGNATURE FORM

The undersigned hereby offers and, if awarded, agrees to furnish goods and/or services in strict compliance with the terms, specifications and conditions at the prices proposed within response unless noted in writing.

Company Name windstream Services, LLC on behalf of itself and its Affiliates

Address 130 W New Circle Road, Ste. 170

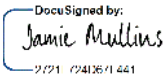
City/State/Zip Lexington, KY 40505

Telephone No. 859-357-6000

Email Address Jamie.Mullins@windstream.com

Printed Name Jamie Mullins

Title Area Sales Director - Kinetic Select

Authorized signature  _____
DocuSigned by:
Jamie Mullins
2/21/2021 09:41:06:1441

Accepted by Region 4 ESC:

Contract No. R210813

Initial Contract Term 8/1/2021 to 7/31/2024

 _____ 6/29/2021
 Region 4 ESC Authorized Board Member Date

Margaret S. Bass
Print Name _____

 _____ 6/29/2021
 Region 4 ESC Authorized Board Member Date

Linda Tinnerman
Print Name _____

PRODUCTS, PRICING, AVAILABILITY

Texas Connect Program:

- i. Present Offeror's plans and pricing for offering service under the TEA Connect Texas Program. The Offeror's proposal should clearly outline any requirements Offeror proposes of Texas school districts and program households. Separate pricing may be submitted for urban and rural areas.

25x4 Broadband + Kinetic Secure

- o **\$35 per month**
- o **36M term**
- o **Includes Free Installation and wireless modem**

25x4 Broadband Only

- o **\$25 per month**
- o **36M term**
- o **Includes Free Installation and wireless modem**

Wireless modem information can be viewed at:

<https://www.windstream.com/Support/Internet-Security/Router-Wi-Fi/Actiontec-T3200>

OfficeSuite UC

- o **Basic Seat \$5.95**
- o **Standard Seat \$13.95**
- o **Advanced Seat \$23.95**
- o **Slim (5304) Phone \$3.00**
- o **18-Key Color (6920) Phone \$3.50**
- o **72-Key Color (6930) Phone \$5.00**
- o **96-Key Color Touch (6940) Phone \$9.00**
- o **96-Key Color Touchscreen Conference (6970) Phone \$12.00**
- o **Additional Phone Number \$1.00**

HD Meeting

- o **OfficeSuite HD Meeting (25) \$7.99**
- o **OfficeSuite HD Large Meeting (100) \$13.99**

- ii. Describe Offeror's proposed equipment deposit and return strategy.
Windstream will send the required equipment to the applicable address. Upon cancellation of service, the customer must return the leased equipment. Windstream will send a return label to the customer so the customer can package the equipment and return, or the customer can return the equipment to a Windstream retail store. If the returned equipment is not received, a \$100 non-return fee will be applied to the customer's bill.
- iii. Should a student leave a school district, describe a school district's ability to terminate an individual household before the end of a school year.
The District would notify the Customer Advocate handling the account of the address where service would need to be terminated.

- iv. Describes Offeror's content filtering capabilities. How do these capabilities align with the Children's Internet Protection Act?

Kinetic by Windstream understands the need for a safe and secure experience. Therefore, we offer our "Kinetic Secure" package. See above in section i. for details.

Kinetic Secure by Windstream is award-winning Internet security that lets your family surf safely at home or on the go. Plus, you can take control of your Wi-Fi network and create a healthy online environment for children with content filters and online time limits. It's total protection for all of your family and all of your devices.

Features include:

- ***Enhanced Internet Security with parental controls and device protection at home and on the go***
- ***MyWin App to easily manage your home Wi-Fi***
- ***Premium Technical Support for enhanced connectivity and technical support***
- ***Identity Theft Protection with monitoring of personal info and credit***

Please refer to the "Value Add" section of the RFP response for additional details.

- v. Describe Offeror's coverage across Texas. Include known dead zones without service and any known plans to bring service to dead zone areas.

Please refer to Windstream's interactive network map located on our website at: <https://www.windstreamenterprise.com/wholesale/interactive-map/>.

Windstream's residential coverage map can also be viewed on our website at: <https://www.windstream.com/about/windstream-information/coverage-map>.

A service address will require qualification in order to determine if a proposed service can be provided.

- vi. Describe Offeror's ability to provide multi-lingual support to households.
Windstream currently has 11 bilingual agents in Consumer Care and 6 bilingual agents in Residential Inside Sales (RIS) to support calls from consumers households.

- vii. Is pricing available for all products and services?
Pricing is available for all products and services if the service location qualifies.

- viii. Describe any shipping charges.
Shipping charges do not apply for the equipment that will be shipped to the household; however, there is a monthly equipment rental fee, which is included in the monthly price.

- ix. Provide pricing for warranties on all products and services.
Equipment that is leased by the customer from Windstream includes lifetime support of the equipment so long as the customer is an active subscriber.

- x. Describe any return and restocking fees.
Windstream does not charge a return fee or a restocking fee. Windstream will send a return label to the customer so the customer can package the equipment and return, or the customer can return the equipment to a Windstream retail store. The customer must return the leased equipment upon cancellation. A \$100 non-return fee will apply if the equipment is not returned.
- xi. Describe any additional discounts or rebates available. Additional discounts or rebates may be offered for large quantity orders, single ship to location, growth, annual spend, guaranteed quantity, etc.
Not applicable to Windstream's proposed services.
- xii. Describe payment methods offered.
Windstream accepts the following types of payment for business applications:
- ***Electronic payments (ACH/Wire) if the customer is able to provide the posting data via CTX records.***
 - ***IVR with checking account and credit cards***
 - ***Visa***
 - ***Master Card***
 - ***Amex***
 - ***Discover***
 - ***Windstream Retail Store locations with paper check and credit cards (Visa, Master Card, Amex Discover).***
 - ***Online customer portals with checking account and credit cards.***
 - ***Paper checks***
- xiii. Propose the frequency of updates to the Offeror's pricing structure. Describe any proposed indices to guide price adjustments. If offering a catalog contract with discounts by category, while changes in individual pricing may change, the category discounts should not change over the term of the Contract.
Updates to Windstream's pricing structure will occur at the end of the contract term or as needed based on market conditions.
- xiv. Describe how future product introductions will be priced and align with Contract pricing proposed.
Windstream acknowledges Region 4 ESC's interest in technologies that offer improved performance and more efficient and cost effective ways to meet Region 4 ESC's telecommunications requirements. Windstream agrees to periodically apprise Region 4 ESC of (i) improvements to Windstream's existing technologies and product offerings, and (ii) the expected and actual availability and implementation of new technologies and products by Windstream. Should Region 4 ESC desire to implement new technologies and replace existing services, the parties will negotiate in good faith changes to the existing contract, including pricing.
- xv. Provide any additional information relevant to this section.
<https://news.windstream.com/news/news-details/2021/Kinetic-by-Windstream-Begins-Emergency-Broadband-Signup-Today/default.aspx>

Kinetic Supports COVID Relief Programs for Educators and the Families they Serve

BUSINESS SUPPORT

- ***Cares Act***
 - ***Overview: Cares Act funding, or a generous foundation can help to provide Internet service for families who qualify (low-income) with a \$35/mo. plan inclusive of free modem rental, Kinetic Secure Package, waived installation fees.***
 - ***Who Benefits: Schools are able to help individual families in their district by providing discounted Internet service through CARES ACT funding or a generous foundation donation.***
- ***Emergency Connectivity Fund (ECF)***
 - ***The Federal Government passed \$7B funding for E-Rate to allow schools and libraries to provide Internet funding for their constituents. The FCC released the rules on May 11th with the new Program to be in place June 2021.***

CONSUMER SUPPORT

- ***Emergency Broadband Benefit (EBB)***
 - ***Overview: Government recently approved this fund to help pay \$50/month (\$75/mo. for Tribal) for Internet service for consumer households who qualify. In addition, consumer will be able to purchase a tablet with up to \$100 discount.***
 - ***Who Benefits: Consumers who qualify for low-income related programs or have seen a significant drop in income due to COVID since 2/29/20.***
- ***LifeLine***
 - ***Overview: Government funding to subsidize individual households who qualify with up to \$9.25 towards their Voice service.***
 - ***Who Benefits: Consumers who qualify for low-income programs.***

Not to Exceed Pricing. Region 4 ESC requests pricing be submitted as not to exceed pricing. Unlike fixed pricing, the Contractor can adjust submitted pricing lower if needed but, cannot exceed original pricing submitted. Contractor must allow for lower pricing to be available for similar product and service purchases. Cost plus pricing as a primary pricing structure is not acceptable.

Windstream has read and understands.

PERFORMANCE CAPABILITY

1. Include a detailed response to Appendix D, Exhibit A, OMNIA Partners Response for Cooperative Contract. Responses should highlight experience and describe how volume will be tracked and reported to OMNIA Partners.
Windstream complies.
2. The successful Offeror will be required to sign Appendix D, Exhibit B, OMNIA Partners Administration Agreement prior to Contract award. Offerors should have any reviews required to sign the document prior to submitting a response. Offeror's response should include any proposed exceptions to OMNIA Partners Administration Agreement on Appendix B, Terms and Conditions Acceptance Form.
Windstream has read and understands.
3. Include completed Appendix D, Exhibits F. Federal Funds Certifications.
Windstream complies.
4. Describe the Offeror's understanding of the Scope of Work and the TEA Connect Texas Program requirements. Detail how the Offeror proposes to meet each of the requirements.
Windstream understands Region 4 ESC is seeking providers that have the depth, breadth, and quality of resources necessary to offer a fixed broadband Internet program, with a minimum speed of 25/3, specifically for economically disadvantaged kindergarten through 12th grade households in Texas (TEA Connect Texas).
5. Describe Offeror's broadband data performance standards.
Windstream follows industry standards for Broadband services.
6. Describe each service's network reliability. Include disaster recovery plans and business continuity plans.
The performance of Windstream's IP network is critical to the success for all our customers' business. Windstream's fault-tolerant infrastructure intelligently connects our network for exceptional performance, allowing us to deliver the network capabilities and strength our customers are looking for. Windstream's high-performance network consistently delivers reliable service to all our customers and our customers' customers in turn. Windstream owns and operates an advanced nationwide network with over ~170K fiber route miles and a proprietary, scalable Cloud Core™ architecture. It was designed from the ground up to empower optimal cloud application experiences and to dramatically simplify end-to-end deployment and management of services. Our advanced nationwide Cloud Core™ network architecture provides a secure, reliable, and flexible foundation to meet the constantly growing and evolving demands of the cloud era.
 - ***Extensive Reach: Over 16,000 fiber fed buildings coupled with 17,000+ serving wire centers and Fixed Wireless access supported in more than 50 markets nationwide.***
 - ***Bandwidths ranging from 1.5 Mbps up to 10G. Multiple delivery options in both dedicated and Ethernet-based services over DS-1, EoC, EoF, and Fixed Wireless. Pre-configured CPE with professional installation or customer provided equipment***

- options. Performance SLA available.*
- *Support: Available 24 x 7 x 365, Certified engineer support, State-of-the-art Network Operations Center, Customer Portal Tool and API enable streamline quoting, ordering and service implementation.*
 - *Core Locations: Our 61 core router locations create a robust and protected network across the U.S.*
 - *Low Latency: Low latency is critical to the success of your business. You can Check our real-time IP Network Latency Tool to monitor our commitment to you. [<https://www.windstreamenterprise.com/wholesale/resources/network-latency-tool/>]*

You had requested our Business Continuity Plan/Disaster Recovery Plan (“Plan”); however, as a matter of security, we cannot disclose that Plan since it includes company confidential information. As such, we have included the following summary of our Plan:

- *Windstream’s Plan is maintained for its essential business processes and includes all scenarios (i.e., loss of facility, loss of systems, loss of employees and facilities, and loss of key suppliers) that have the potential to occur in the geographic and political-economic areas in which we operate, including if Windstream has to vacate all places of business for extended periods.*
- *The Plan is reviewed and exercised annually, and Windstream makes updates to accommodate issues and new situations that arise, such as, system enhancements and/or acquisitions.*
- *Windstream's Plan addresses each essential business process or business unit, and Windstream has an overall company Crisis Management and Communication Plan.*
- *A steering committee, comprised of executive management, meets annually to address Windstream's Business Continuity Plan.*

Pursuant to your request for details of our Plan testing, Windstream conducts annual testing. During testing, measures are taken to ensure that customer services are not negatively impacted. After testing is completed, the results are formally documented with any required improvements noted to ensure that the Plan is updated accordingly.

Please refer to Windstream’s 2021 BCP-DR Executive Summary Letter included as an attachment.

7. Describe the security policies, measures and any certifications or standards the Offeror has in place to protect privacy and ensure security of information and data transmitted through the Offerors services and products. Include how Offeror ensures data encryption and protect data. Include a description of how the Offeror protects against outside threats and, if compromised, how the Offeror responds to security breaches.
Windstream can provide our Security Framework document upon receipt of a signed NDA.



8. Describe how planned outages are communicated.

Windstream must perform maintenance throughout the network for network stabilization (aka: break fix emergencies) and network expansion and upgrade activities. In some cases, a maintenance window may result in a temporary service interruption to Windstream customers, but this may be dependent on the types of services provided (i.e., redundancy vs Point to Point facilities). Windstream will perform maintenances to minimize the expected service disruptions in cases where a service impact is expected. Windstream will use all reasonable efforts to provide notification of the network maintenance on the online customer portal. Customers have the option to receive email notification of service impacting planned network maintenance. (Customers also have an option to unsubscribe to the mailing list at the Windstream Web site).

A maintenance window is planned 14 (calendar) or 10 (business) days in advance of service impacting maintenance. A maintenance that is called without at least 10 business days requires additional Executive approvals and is considered to be either a demand or an emergency maintenance. Maintenance notification will include a list of the cities/sites affected, a description of the maintenance and the duration of the maintenance window. The maintenance window is between midnight and 6:00 a.m., local time zone at the affected sites. The planned service impacts for each maintenance are included in the notifications and may not span across the entire maintenance window. For example, an activity may be planned from 1 AM to 5 AM for the entire planned activity by the Windstream teams; however, the planned impact to the Customer would be a 50-millisecond delay. This would be noted in the maintenance notification received by the Customer. A description of the various types of maintenance classifications is provided below. Each maintenance description specifies when notification will be provided prior to the start time of the scheduled maintenance.

Maintenance Classifications

- Normal: A Request for Change (RFC) becomes Normal when it is scheduled within > 14 calendar days of the maintenance start time. (All maintenance types)***
- Demand: An RFC becomes Demand when it is scheduled within 3 to 14 calendar days. These requests are reviewed on a case by case basis for to validate the shortened lead time.***
- Emergency: An RFC becomes an Emergency when it is a break/fix required to stabilize the Windstream network (card replacements, circuit repairs, etc.). These are generally done within 3 calendar days and can be same day activity depending on risk and spare/part availability.***

9. Describe how Offeror responds to emergency requests and orders.

For emergency requests and orders, customers can contact the Windstream Repair Center which is available 24x7.

10. What is Offeror's average on time installation rate? Describe Offeror's history of meeting the installation, shipping, and delivery timelines.

Over the past six months, Windstream's install rate has been 75% in 90 days or less and 90% in 120 days or less. Longer install timeframes can vary based on permit needs,

special construction, pending facilities or other unforeseen issues.

11. Describe Offeror's product return and restocking policy.

The customer must return the leased equipment upon cancellation of service. Windstream will send a return label to the customer so the customer can package the equipment and return, or the customer can return the equipment to a Windstream retail store. If the returned equipment is not received, a \$100 non-return fee will be applied to the customer's bill.

12. Describe Offeror's customer service/problem resolution process. Include hours of operation, number of services, etc.

Windstream's Repair Centers are staffed 24x7x365 to provide repair support for all Windstream products.

The customer is provided a toll-free 800# for the Repair Center to report any service affecting issues. The Repair Center will enter the trouble into our ticketing system, provide the customer with a ticket number, provide status updates during the life of the ticket, and work to resolve the issue to minimize downtime for the customer.

Trouble tickets are typically initiated by a customer call to the Repair Center. Windstream personnel, other carriers, or a customer's vendor can also initiate calls. Trouble tickets can also be submitted via the online customer portal. A trouble ticket is opened for each call with a ticket number assigned. Service Technicians taking trouble calls are highly trained and are familiar with all products. A lead Repair Center technician then analyzes the trouble ticket and initiates action. The lead technician then takes the following steps:

- Performs triage on the issue and may contact the customer to gather more detail as needed.*
- Assigns a Repair Center technician to work the trouble further through resolution.*

Once assigned, the Repair Center technician commences a trouble resolution process based on the nature of the trouble and priority assigned. This process includes some or all of the following steps:

- Circuit testing from the Windstream Central Office to the customer premises*
- Trouble analysis with the Windstream Central Office and other departments*
- Trouble analysis and testing with customer and/or customer's vendor*
- Testing with other carriers and last-mile fiber providers*
- Ongoing circuit monitoring*

Based on the priority assigned, the Repair Center technician must resolve the service issue or commence escalation within the timeframe associated with that priority.

Escalation includes some or all of the following:

- Notification of the lead Repair Center technician as to the status of the trouble*
- Escalation with the involved carrier or vendor – detailed testing and escalation procedures are in place with all carriers utilized by Windstream.*
- Engagement of additional internal resources as may be required*

- *Initiation of conference calls and vendor meets as may be required*
- *Involvement of Windstream senior management based on the severity of the service issue*

On a daily basis, Repair Center management reviews all open trouble tickets to determine what additional corrective action or resources are required. The priority system is utilized as a guideline for escalation and allocation of resources. All service calls, regardless of priority assigned, are addressed within the overall trouble resolution process. Priority assignment drives escalation timeframes and assists the lead Repair Center technician in the allocation of resources.

Throughout the trouble resolution process, customers have access to Windstream personnel for both status and escalation via phone or online in the Windstream customer portal. Follow-up calls into repair can be placed to obtain the current status of a trouble. Customers can also speak directly with the Repair Center technician working on a trouble.

If a customer is not satisfied with the progress or information provided, they are encouraged to utilize the provided escalation list for the Repair Center.

Trouble Definitions

- *Out of Service: Any product line that Windstream provides to a customer that is completely out of service.*
- *Service Affecting: Any degradation of service of a customer purchased Windstream product.*

Repair Center Response and Status Intervals

- *Out of Service: Windstream will review the trouble ticket and our Repair Center's goal is to provide initial status to out of service troubles within thirty minutes (or within agreed upon time with both parties) of the trouble ticket being opened by a customer. Customers experiencing an out of service condition will typically be given status every hour or upon status change. Internal and external escalations will begin within the first hour and continue up every hour.*
- *Service Affecting: Windstream will review the trouble ticket and our Repair Center's goal is to provide initial status to service-affecting troubles within two hours (or within agreed upon time with both parties) of the trouble ticket being opened by a customer. Customers experiencing service-affecting conditions will typically be given status every four hours or upon status change. Internal and external escalations will begin within two hours and continue up every two hours.*

13. Describe Offeror's invoicing process. Include payment terms and acceptable methods of payments. Offerors shall describe any associated fees pertaining to credit cards/p-cards. *Windstream's commercial billing system produces a monthly invoice for each active, billable account that is currently managed by the system. An invoice is comprised of a single billable account and zero or more non-billable child accounts. The invoice itself covers the prior months billing activity and includes any new recurring charges, all usage for the prior month, any credits or adjustments assigned to the customer, and any past-due charges. All invoices have a due-date which your Customer Advocate*

can establish based on your needs and requirements. Invoices not paid by the due date are assessed a late fee.

Windstream invoices can be a) mailed to a customer via USPS, b) be sent to a customer electronically via secure FTP, and c) are available for online viewing through the WE Connect web portal. Invoices are available within two days of your billing cycle date – often they are published within one day. WE Connect maintains a minimum of one year of reporting data.

Windstream provides invoices as PDF files which are human readable. We also have an MS Excel enabled CSV format for automated processing of usage, non-usage, and conference calling data; your Customer Advocate can provide you with the CSV layout format if you desire it. We also support the industry standard EDI data layout for automated processing; Windstream conforms to the telecommunications data layout standards for EDI.

The PDF invoice format supports a number of optional reports which include things such as: Day of Week call analysis; International calling summary; Account Code reporting; and a number of other options. Your Customer Advocate can provide a comprehensive list of all of the imbedded reporting options. In addition, the WE Connect web portal has a number of billing and service-related reports that are available.

Windstream's payment terms are outlined in Section 4 of the Windstream Service Terms and Conditions located on our website at: https://www.windstream.com/Windstream-residential/media/res/pdfs/q4-2020-pdfs/Win-KB-terms-and-conditions_v051920_.pdf.

Windstream accepts the following types of payment:

- Electronic payments (ACH/Wire) if the customer is able to provide the posting data via CTX records.*
- IVR with checking account and credit cards (Visa, Master Card, Amex Discover)*
- WE Connect portal with checking account and credit cards*
- Paper check*

14. Describe Offeror's contract implementation/customer transition plan.

Prior to any acceptance in writing by Customer, Windstream recommends a meeting with the sales representative and the engineering representative along with Customer primary vendor contact to discuss Customer initiatives and timelines in accordance with the project and any/all considerations that can/may impact on service delivery. Prior to and at that time, Windstream recommends a review of the actual service agreement that will be executed. Windstream understands there may be other legal or department steps/reviews in the process and any/all line-items relative to the language of the agreement and product deployment. Upon formal execution, Windstream will in-turn execute and return signed originals to Customer where the initial steps of the implementation process will be addressed and begin.

With offices and facilities throughout Texas, Windstream has an extensive organization in Texas and will utilize those resources to ensure all implementations and ongoing support exceeds the expectations of Region 4 ESC and your constituents.

In order to provide Region 4 ESC an uncomplicated and successful implementation of the proposed products and services, Windstream will develop an individual, detailed Implementation Plan specifically for Region 4 ESC. Windstream assumes all responsibility for coordination with Kinetic and/or the local service provider, circuit ordering and managing the process of implementation from circuit delivery to testing and activation/cutover. Windstream is not, however, responsible for disconnecting Region 4 ESC's existing service with your current carrier.

A Project Manager (PM) will be assigned to account. The PM will be responsible for day to day management of the entire project implementation. Region 4 ESC will be provided with all project management contact information as well as management for escalation purposes.

Project Management is responsible for the tracking, scheduling and coordinating of all aspects of a new customer order and MACD as well as move orders. Project Managers (PM) are responsible for planning and scheduling each customer through the whole life cycle of the provisioning process and handling all of Windstream's product set, including multi-location accounts. The goal for this group is to provide the customers a consistent experience no matter who is involved in the task or what the task is for. The PC will be the single point of contact throughout the entire order.

Key PM Functions:

- 1. Communicate weekly with the customer throughout the implementation.*
 - 2. Coordinate with the customer, equipment vendor, systems integrator, translations, data group, field, provisioning, sales engineering, ILEC/CLEC to ensure the customer's service is cut over efficiently, in a timely manner, with minimal interruption to customer's service.*
 - 3. Works with appropriate departments and staff to coordinate the activity of every job through each stage of order.*
 - 4. Continuously monitors progress of job, including tasks and investigates any deviations from schedule. Keeps all appropriate personnel apprised of status of job, shifts in priorities, existing or perceived problems; deviations from schedule.*
 - 5. Identify, suggest and implement corrective actions to improve quality of coordination process with management involvement.*
15. Describe the financial condition of Offeror.
- Windstream Holdings is a privately held communications and software company. Windstream offers managed communications services, including SD-WAN and UCaaS, and high-capacity bandwidth and transport services to businesses across the U.S. The company also provides premium broadband, entertainment and security services through an enhanced fiber network and 5G fixed wireless service to consumers and small and midsize businesses primarily in rural areas in 18 states. Additional*



information is available at <https://business.windstream.com/#/>. We appreciate your interest in such information and expect the opportunity to discuss further should Windstream be selected as the winning bidder.

Kinetic Business is financially strong and positioned for growth.

- \$2B in capital investment over the next five years means substantial network and software investments*
- 170,000 fiber route miles*
- 325,000 covered business locations over an 18-state footprint*

16. Provide a website link in order to review website ease of use, availability, and capabilities related to ordering, returns and reporting. Describe the website's capabilities and functionality. *Please refer to the WE Connect Fact Sheet and WE Connect Portal Brochure included as an attachment.*

17. Provide any additional information relevant to this section. *In addition to a self-service tool, Kinetic by Windstream has a dedicate Sales and Service team that will provide the level of service that Region 4 needs to provide an amazing customer experience.*



Appendix D



REQUIREMENTS FOR COOPERATIVE CONTRACT TO BE ADMINISTERED BY OMNIA PARTNERS

The following documents are used in evaluating and administering cooperative contracts and are included for Supplier's review and response.

Exhibit A – RESPONSE FOR COOPERATIVE

Exhibit F – FEDERAL FUNDS CERTIFICATIONS

EXHIBIT A
RESPONSE FOR COOPERATIVE CONTRACT

1.0 Scope of Cooperative Contract

Capitalized terms not otherwise defined herein shall have the meanings given to them in the Master Agreement or in the Administration Agreement between Supplier and OMNIA Partners.

Windstream has read and understands.

1.1 Requirement

Region 4 Education Service Center (hereinafter defined and referred to as “Principal Procurement Agency”), on behalf of itself and the National Intergovernmental Purchasing Alliance Company, a Delaware corporation d/b/a OMNIA Partners, Public Sector (“OMNIA Partners”), is requesting proposals for Internet Service Providers for TEA Texas Connect. The intent of this Request for Proposal is any contract between Principal Procurement Agency and Supplier resulting from this Request for Proposal (“Master Agreement”) be made available to other public agencies (“Public Agencies”), through OMNIA Partners’ cooperative purchasing program. The Principal Procurement Agency has executed a Principal Procurement Agency Certificate with OMNIA Partners, an example of which is included as Exhibit D, and has agreed to pursue the Master Agreement. Use of the Master Agreement by any Public Agency is preceded by their registration with OMNIA Partners as a Participating Public Agency in OMNIA Partners’ cooperative purchasing program. Registration with OMNIA Partners as a Participating Public Agency is accomplished by Public Agencies entering into a Master Intergovernmental Cooperative Purchasing Agreement, an example of which is attached as Exhibit C, and by using the Master Agreement, any such Participating Public Agency agrees that it is registered with OMNIA Partners, whether pursuant to the terms of the Master Intergovernmental Purchasing Cooperative Agreement or as otherwise agreed to. The terms and pricing established in the resulting Master Agreement between the Supplier and the Principal Procurement Agency will be the same as that available to Participating Public Agencies through OMNIA Partners.

All transactions, purchase orders, invoices, payments etc., will occur directly between the Supplier and each Participating Public Agency individually, and neither OMNIA Partners, any Principal Procurement Agency nor any Participating Public Agency, including their respective agents, directors, employees or representatives, shall be liable to Supplier for any acts, liabilities, damages, etc., incurred by any other Participating Public Agency. Supplier is responsible for knowing the tax laws in each state.

This Exhibit A defines the expectations for qualifying Suppliers based on OMNIA Partners' requirements to market the resulting Master Agreement to Public Agencies. Each section in this Exhibit A refers to the capabilities, requirements, obligations, and prohibitions of competing Suppliers in order to serve Participating Public Agencies through OMNIA Partners.

These requirements are incorporated into and are considered an integral part of this RFP. OMNIA Partners reserves the right to determine whether or not to make the Master Agreement awarded by the Principal Procurement Agency available to Participating Public Agencies, in its sole and absolute discretion, and any party submitting a response to this RFP acknowledges that any award by the Principal Procurement Agency does not obligate OMNIA Partners to make the Master Agreement available to Participating Procurement Agencies.

Windstream has read and understands.

1.2 Marketing, Sales and Administrative Support

During the term of the Master Agreement, OMNIA Partners intends to provide marketing, sales, partnership development and administrative support for Supplier pursuant to this section that directly promotes the Supplier's products and services to Participating Public Agencies through multiple channels, each designed to promote specific products and services to Public Agencies.

OMNIA Partners will assign the Supplier a Director of Partner Development who will serve as the main point of contact for the Supplier and will be responsible for managing the overall relationship between the Supplier and OMNIA Partners. The Director of Partner Development will work with the Supplier to develop a comprehensive strategy to promote the Master Agreement and will connect the Supplier with appropriate stakeholders within OMNIA Partners including, Sales, Marketing, Contracting, Training, and Operations & Support.

The OMNIA Partners marketing team will work in conjunction with Supplier to promote the Master Agreement Public Agencies through channels that may include:

- A. Marketing collateral (print, electronic, email, presentations)
- B. Website
- C. Trade shows/conferences/meetings
- D. Advertising
- E. Social Media

The OMNIA Partners contracting teams will work in conjunction with Supplier to promote the Master Agreement to both existing Participating Public Agencies and prospective Public Agencies through:

- A. Serving as the subject matter expert for questions regarding joint powers authority and state statutes and regulations for cooperative purchasing
- D. Regular business reviews to monitor program success
- E. General contract administration

Suppliers are required to pay an administrative fee of 3% of the greater of the Contract Sales under the Master Agreement and Guaranteed Contract Sales under this Request for Proposal. Supplier will be required to execute the OMNIA Partners Administration Agreement (Exhibit B).

Windstream has read and understands.

1.3 Estimated Volume

The dollar volume purchased under the Master Agreement is estimated to be approximately \$100 million in the State of Texas. While no minimum volume is guaranteed to Supplier, the estimated annual volume is projected based on the current annual volumes among the Principal Procurement Agency, other Participating Public Agencies that are anticipated to utilize the resulting Master Agreement to be made available to them through OMNIA Partners, and volume growth into other Public Agencies through a coordinated marketing approach between Supplier and OMNIA Partners.

Windstream has read and understands.

1.4 Award Basis

The basis of any contract award resulting from this RFP made by Principal Procurement Agency will, at OMNIA Partners' option, be the basis of award on a through OMNIA Partners. If multiple Suppliers are awarded by Principal Procurement Agency under the Master Agreement, those same Suppliers will be required to extend the Master Agreement to Participating Public Agencies through OMNIA Partners. Utilization of the Master Agreement by Participating Public Agencies will be at the discretion of the individual Participating Public Agency. Certain terms of the Master Agreement specifically applicable to the Principal Procurement Agency (e.g. governing law) are subject to modification for each Participating Public Agency as Supplier, such Participating Public Agency and OMNIA Partners shall agree without being in conflict with the Master Agreement. Participating Agencies may request to enter into a separate supplemental agreement to further define the level of service requirements over and above the minimum defined in the Master Agreement (i.e. invoice requirements, order requirements, specialized delivery, diversity requirements such as minority and woman owned

businesses, historically underutilized business, governing law, etc.) (“Supplemental Agreement”). It shall be the responsibility of the Supplier to comply, when applicable, with the prevailing wage legislation in effect in the jurisdiction of the Participating Agency. It shall further be the responsibility of the Supplier to monitor the prevailing wage rates as established by the appropriate department of labor for any increase in rates during the term of the Master Agreement and adjust wage rates accordingly. In instances where supplemental terms and conditions create additional risk and cost for Supplier, Supplier and Participating Public Agency may negotiate additional pricing above and beyond the stated contract not-to-exceed pricing so long as the added price is commensurate with the additional cost incurred by the Supplier. Any supplemental agreement developed as a result of the Master Agreement is exclusively between the Participating Agency and the Supplier (Contract Sales are reported to OMNIA Partners).

All signed Supplemental Agreements and purchase orders issued and accepted by the Supplier may survive expiration or termination of the Master Agreement. Participating Agencies’ purchase orders may exceed the term of the Master Agreement if the purchase order is issued prior to the expiration of the Master Agreement. Supplier is responsible for reporting all sales and paying the applicable administrative fee for sales that use the Master Agreement as the basis for the purchase order, even though Master Agreement may have expired.

Windstream is willing to agree to extend the provision of services under the resulting contract between Windstream and Customer to any other affiliate of customer of Customer. Each such affiliate must commit to its own term and volume commitment by way of signing a separate service agreement between Windstream and the affiliate. The Windstream Service Terms and Conditions provided as part of this Response shall apply to such affiliate and will be attached by way of an addendum to said separate service agreement. Nothing contained in this Response shall be deemed to be a guarantee that Windstream can feasibly provide the service at such locations proposed by an affiliate or at the same prices provided herein. Determination of pricing and feasibility for servicing such affiliates shall be made on a case-by-case basis.

“Affiliate” is defined for the purposes hereof, as any entity that Customer controls, is controlled by, or is under common control with. “Control” (including the terms controls, controlled by and under common control with) is defined as the power to either directly or indirectly direct the management and policies of an entity, including without limitation, through the ownership of at least 51% of the equity or voting interests of such entity.

1.5 Objectives of Cooperative Program

This RFP is intended to achieve the following objectives regarding availability through OMNIA Partners’ cooperative program:

- A. Provide a comprehensive competitively solicited and awarded agreement offering the Products covered by this solicitation to Participating Public Agencies;
- B. Achieve cost savings for Supplier and Public Agencies through a single solicitation process that will reduce the Supplier's need to respond to multiple solicitations and Public Agencies need to conduct their own solicitation process;
- C. Combine the aggregate purchasing volumes of Participating Public Agencies to achieve cost effective pricing.

Windstream has read and understands.

2.0 REPRESENTATIONS AND COVENANTS

As a condition to Supplier entering into the Master Agreement, which would be available to all Public Agencies, Supplier must make certain representations, warranties and covenants to both the Principal Procurement Agency and OMNIA Partners designed to ensure the success of the Master Agreement for all Participating Public Agencies as well as the Supplier.

Windstream has read and understands.

2.1 Corporate Commitment

Supplier commits that (1) the Master Agreement has received all necessary corporate authorizations and support of the Supplier's executive management, and (2) that the Supplier has read and agrees to the terms and conditions of the Administration Agreement with OMNIA Partners and will execute such agreement concurrent with and as a condition of its execution of the Master Agreement with the Principal Procurement Agency. Supplier will identify an executive corporate sponsor and a separate account manager within the RFP response that will be responsible for the overall management of the Master Agreement.

Windstream complies. The Windstream executive sponsor is Jeff Lowney. The Windstream account manager that will be responsible for the overall management of the Master Agreement will be determined upon award of services to Windstream.

2.2 Pricing Commitment

Supplier commits the not-to-exceed pricing provided under the Master Agreement pricing is its lowest available (net to buyer) to Public Agencies and further commits that if a Participating Public Agency is eligible for lower pricing through a national, state, regional or local or cooperative contract, the Supplier will match such lower pricing to that Participating Public Agency under the Master Agreement.

Windstream complies.

2.3 Sales Commitment

Supplier commits that all Master Agreement sales will be accurately and timely reported to OMNIA Partners in accordance with the OMNIA Partners Administration Agreement.

Windstream complies.

3.0 SUPPLIER RESPONSE

Supplier must supply the following information in order for the Principal Procurement Agency to determine Supplier's qualifications to extend the resulting Master Agreement to Participating Public Agencies through OMNIA Partners.

Windstream complies.

3.1 Company

- A. Brief history and description of Supplier to include experience providing similar products and services.

Windstream's history can be viewed on our website at: <https://news.windstream.com/history/default.aspx>

Kinetic by Windstream is a business unit of Windstream, a privately held communications and software company. Kinetic provides premium broadband, entertainment and security services through an enhanced fiber network and 5G fixed wireless service to consumers and businesses primarily in rural areas in 18 states. The company also offers managed communications services, including SD-WAN and UCaaS, and high-capacity bandwidth and transport services to businesses across the U.S.

Kinetic is accelerating its deployment of symmetrical fiber-backed gigabit broadband service. By the end of 2021, Kinetic will have fiber gigabit connections available to more than 1 million homes and small and medium-sized businesses. The fiber builds are part of a multi-year, \$2 billion expansion of Kinetic's network.

Kinetic has been recognized for their premier solutions, named Gartner Magic Quadrant for UCaaS in 2019 and 2020, and named by Frost & Sullivan as Innovation and Growth Leaders for SD-WAN and UCaaS. In 2021, CNET recognized Kinetic as one of the best high-speed rural internet providers.

- B. Number and location of support centers (if applicable) and location of corporate office.

Windstream's has seven support centers across our footprint and several that are outsourced.

Corporate office: 4001 Rodney Parham Road, Little Rock, AR 72212

C. Annual sales for the three previous fiscal years.
Windstream Holdings is a privately held communications and software company. Windstream offers managed communications services, including SD-WAN and UCaaS, and high-capacity bandwidth and transport services to businesses across the U.S. The company also provides premium broadband, entertainment and security services through an enhanced fiber network and 5G fixed wireless service to consumers and small and midsize businesses primarily in rural areas in 18 states. Additional information is available at <https://business.windstream.com/#/>. We appreciate your interest in such information and expect the opportunity to discuss further should Windstream be selected as the winning bidder.

a. Submit FEIN and Dunn & Bradstreet report.

FEIN: 85-2262564

DUNS: Windstream Services, LLC - 11-771-0484

D. Describe any green or environmental initiatives or policies.

Please refer to Windstream's ESG Report on our website at <https://investor.windstream.com/environmental-social-governance/ESG-Report/default.aspx>.

E. Describe any diversity programs or partners supplier does business with and how Participating Agencies may use diverse partners through the Master Agreement. Indicate how, if at all, pricing changes when using the diversity program. If there are any diversity programs, provide a list of diversity alliances and a copy of their certifications.

Windstream favorably regards companies that are designated as veteran-, service-disabled veteran-, HUBZone-, disadvantaged-, LGBTQ, small business, and women-owned businesses concerns ("Diverse" suppliers) and ensures that Diverse Suppliers shall have the maximum practicable opportunity to participate in providing services and products. It is further the policy of Windstream that its prime contractors establish subcontracting plans with goals.

Windstream has developed and will continue its Supplier Diversity Initiative, publicizing the initiative and its objectives within the company, actively promoting the use of MWDVBE businesses in purchases of goods and services, establishing aggressive diversity targets, providing recognition for successful contracting with diverse companies, maintaining good record keeping processes, and providing supplier diversity training to buyers and purchasing professionals. Windstream will expand its Supplier Diversity database to help identify qualified subcontractor businesses for purchasing opportunities at Windstream. and maintain classifications for MWDVBE businesses. It will identify and collect certifications for small businesses currently being used but not vet identified.

Windstream will seek qualified suppliers through Dynamic Small Business Search and will continue to work together with its local SBA representatives to locate and develop qualified small businesses for purchasing opportunities at Windstream. It will periodically attend SBA meetings and the SBA's development meeting to connect with local small businesses as part of SBA's program. It will attend and actively participate in meetings to meet minority businesses and attend minority business networking events. Windstream will also attend the NMSDC National Business Opportunity Fair and Telecommunications Industry events, including participating in one-on-one matchmaking events with small businesses. Windstream has a dedicated budget in place for our Small Business outreach.

Windstream will work with the regional SBA office to identify subcontracting opportunities with service disabled veteran and HUBZone small businesses.

Windstream utilizes several database tools to identify potential business partners including the SBA Dynamic Small Business Search database and the Women's Business Enterprise National Council Link 2.0 database. Windstream partners with CVM Solutions Comprehensive Vendor Management service to ensure that we are able to track our diversity spending accurately.

Windstream is committed to enhancing business opportunities for small, minority, veteran and women-owned business enterprise subcontractors. Windstream uses commercially reasonable efforts to include and utilize SBE, M/WBE and VOSB firms, provided they are competitive on price, quality, service, and offer the best overall value for goods and services.

Windstream has a dedicated spending budget for small business outreach. For 2021, we will attend outreach events, with some being virtual and budgeted \$14,500.00 for Diversity Council Memberships.

In 2021 Windstream will maintain our Corporate Membership status with following organizations; Women's Business Enterprise National Council and Women's Business Council Southwest. If allowed, Windstream also plans to attend the WBENC National Conference & Business Fair, WBENC Summit and Salute, the Southern Region Minority Supplier Development Council Gateway Summit as well as other regional and local supplier diversity events. The conference activities included various workshops designed to enhance our knowledge base of best in class diversity programs. In addition, Windstream participates in the match making events which are designed to increase our diverse supplier base and assist in identifying possible future business opportunities.

- F. Indicate if supplier holds any of the below certifications in any classified areas and include proof of such certification in the response:
- a. Minority Women Business Enterprise
 - Yes No
 - If yes, list certifying agency: _____
 - b. Small Business Enterprise (SBE) or Disadvantaged Business Enterprise (DBE)
 - Yes No
 - If yes, list certifying agency: _____
 - c. Historically Underutilized Business (HUB)
 - Yes No
 - If yes, list certifying agency: _____
 - d. Historically Underutilized Business Zone Enterprise (HUBZone)
 - Yes No
 - If yes, list certifying agency: _____
 - e. Other recognized diversity certificate holder
 - Yes No
 - If yes, list certifying agency: _____

- G. List any relationships with subcontractors or affiliates intended to be used when providing services and identify if subcontractors meet minority-owned standards. If any, list which certifications subcontractors hold and certifying agency.

If a subcontractor will be needed for the particular service ordered, Windstream can provide the applicable subcontractor information upon award of a service.

- H. Describe how supplier differentiates itself from its competitors.

According to Forrester research, over the past five years, Kinetic has seen an increase of residential and business customers' satisfaction with their phone and internet service, and a fewer report a desire to switch carriers. A majority of residential and plurality of business customers say they are happy with their current Kinetic service and would recommend it to a friend or family member.

NPS research tells us, customers who are subscribed to fiber service tend to the happiest customers, which is why Kinetic is investing \$2 billion in a multi-year project to bring fiber to more customers across its 18-state footprint.

Kinetic has been recognized for their premier solutions, named Gartner Magic Quadrant for UCaaS in 2019 and 2020, and named by Frost & Sullivan as Innovation and Growth Leaders for SD-WAN and UCaaS. In 2021, CNET recognized Kinetic as one of the best high-speed rural internet providers.

- I. Felony Conviction Notice: Indicate if the supplier
- a. is a publicly held corporation and this reporting requirement is not applicable;
 - b. is not owned or operated by anyone who has been convicted of a felony; or
 - c. is owned or operated by and individual(s) who has been convicted of a felony and provide the names and convictions.

Windstream is not owned or operated by anyone who has been convicted of a felony.

- J. Describe any debarment or suspension actions taken against supplier.
- Windstream is a telecommunications provider with thousands of customers, private and public, across the United States. As such, we are engaged in customer disputes from time to time, and customers have requested that contracts be terminated, as this is inherent as to nature of our business. However, no such customer dispute or contract termination poses any material risk to the services we would be providing pursuant to this RFP.*

3.2 Distribution, Logistics

- A. Identify all other companies that will be involved in processing, handling or shipping the products/service to the end user.
- Not applicable to Windstream's proposed services.*

- B. Provide the number, size and location of Supplier's distribution facilities, warehouses and retail network as applicable.
- Windstream has several distribution facilities and warehouses located across our footprint.*

Windstream's interactive network map can be viewed on our website at <https://www.windstreamenterprise.com/wholesale/interactive-map/>.

Windstream's residential coverage map can be viewed on our website at: <https://www.windstream.com/about/windstream-information/coverage-map>.

3.3 Marketing and Sales

- A. Provide a detailed ninety-day plan beginning from award date of the Master Agreement describing the strategy to immediately implement the Master Agreement to include, but not limited to, executive leadership endorsement and sponsorship of the award within first 10 days
- B. Provide a detailed ninety-day plan beginning from award date of the Master Agreement describing the strategy to market the Master Agreement immediately upon award, which may include, but not limited to:

- i. Announcement, Master Agreement details and contact information published on the Supplier's website within first 90 days
- ii. Design, publication and distribution of co-branded marketing materials within first 90 days
- iii. Ongoing marketing and promotion of the Master Agreement throughout its term (case studies, collateral pieces, presentations, promotions, etc.)
- iv. Dedicated OMNIA Partners internet web-based homepage on Supplier's website with:
 - OMNIA Partners standard logo;
 - Copy of original Request for Proposal;
 - Copy of Master Agreement and amendments between Principal Procurement Agency and Supplier;
 - Summary of Products and pricing;
 - Marketing Materials
 - Electronic link to OMNIA Partners' website including the online registration page;
 - A dedicated toll-free number and email address for OMNIA Partners

Windstream will assign a lead account representative to coordinate and administer the OMNIA program. Windstream will be promoting the partnership within the first 90 days with OMNIA including:

- ***30-Day Plan: Announcement & Onboarding***
 - *Assign Executive Leadership sponsor to support and endorse the program*
 - *Announcement published in Kinetic Business website with co-branded messaging*
 - *Distribute Press Release announcing the partnership*
 - *Kinetic Business to onboard OMNIA on ordering process and systems*
- ***30-60 Day Plan: Marketing Launch***
 - *Launch webpage on Kinetic Business website including OMNIA branding and contact information (toll-free number and email address), copy of original Request for Proposal, copy of Master Agreement and amendments, product and pricing summary, and electronic link to OMNIA Partners' website with online registration.*
 - *Design, publication and distribution of downloadable co-branded marketing materials, including but not limited to: case studies, collateral pieces, fact sheets including information for eligible entities to engage OMNIA to be leveraged at industry events, presentations, promotions, rich media, etc.*

- **60-90 Day Plan: Amplification**
 - ***Kinetic will develop additional supporting marketing content and tools showcasing success of program including co-branded case studies, testimonials, video content, etc.***
- C. Include a list of current cooperative contracts (regional and national) Supplier holds.
- ***The Interlocal Purchasing System (TIPS) - Contract ID 180304 Network, Equipment, Software and Services***
 - ***MiCTA - Contract ID MT-TISA 2018 Network, Equipment, Software and Services***
 - ***US Educational Technology Purchasing Alliance (USETPA) - Contract ID 719006 Network, Equipment, Software and Services***
 - ***GSA Schedule 70 (Cavalier Telephone, LLC)***
- D. Acknowledge Supplier agrees to provide its logo(s) to OMNIA Partners and agrees to provide permission for reproduction of such logo in marketing communications and promotions. Acknowledge that use of OMNIA Partners logo will require permission for reproduction, as well.
Windstream complies.
- E. Provide the name, title, email and phone number for the person(s), who will be responsible for:
- i. Executive Support – ***Jeff Lowney, President, Strategic Accounts***
 - ii. Marketing – ***Karli Figueroa, Sr. Principal, Marketing***
 - iii. Sales – ***Vince Marletta, Account Director, Kinetic Business Select***
 - iv. Sales Support – ***TBD upon award of services to Windstream***
 - v. Financial Reporting – ***Assigned account manager***
 - vi. Accounts Payable – ***Corp.Accounts.Payable@windstream.com***
 - vii. Contracts – ***Vickie Shaw, Sr Consultant-Legal***

EXHIBIT F
FEDERAL FUNDS CERTIFICATIONS

FEDERAL CERTIFICATIONS
ADDENDUM FOR AGREEMENT FUNDED BY U.S. FEDERAL GRANT

TO WHOM IT MAY CONCERN:

Participating Agencies may elect to use federal funds to purchase under the Master Agreement. This form should be completed and returned.

DEFINITIONS

Contract means a legal instrument by which a non-Federal entity purchases property or services needed to carry out the project or program under a Federal award. The term as used in this part does not include a legal instrument, even if the non-Federal entity considers it a contract, when the substance of the transaction meets the definition of a Federal award or subaward

Contractor means an entity that receives a contract as defined in Contract.

Cooperative agreement means a legal instrument of financial assistance between a Federal awarding agency or pass-through entity and a non-Federal entity that, consistent with 31 U.S.C. 6302-6305:

- (a) Is used to enter into a relationship the principal purpose of which is to transfer anything of value from the Federal awarding agency or pass-through entity to the non-Federal entity to carry out a public purpose authorized by a law of the United States (see 31 U.S.C. 6101(3)); and not to acquire property or services for the Federal government or pass-through entity's direct benefit or use;
- (b) Is distinguished from a grant in that it provides for substantial involvement between the Federal awarding agency or pass-through entity and the non-Federal entity in carrying out the activity contemplated by the Federal award.
- (c) The term does not include:
 - (1) A cooperative research and development agreement as defined in 15 U.S.C. 3710a; or
 - (2) An agreement that provides only:
 - (i) Direct United States Government cash assistance to an individual;
 - (ii) A subsidy;
 - (iii) A loan;
 - (iv) A loan guarantee; or
 - (v) Insurance.

Federal awarding agency means the Federal agency that provides a Federal award directly to a non-Federal entity

Federal award has the meaning, depending on the context, in either paragraph (a) or (b) of this section:

- (a)(1) The Federal financial assistance that a non-Federal entity receives directly from a Federal awarding agency or indirectly from a pass-through entity, as described in § 200.101 Applicability; or
- (2) The cost-reimbursement contract under the Federal Acquisition Regulations that a non-Federal entity receives directly from a Federal awarding agency or indirectly from a pass-through entity, as described in § 200.101 Applicability.
- (b) The instrument setting forth the terms and conditions. The instrument is the grant agreement, cooperative agreement, other agreement for assistance covered in paragraph (b) of § 200.40 Federal financial assistance, or the cost-reimbursement contract awarded under the Federal

Acquisition Regulations.

(c) Federal award does not include other contracts that a Federal agency uses to buy goods or services from a contractor or a contract to operate Federal government owned, contractor operated facilities (GOCOs).

(d) See also definitions of Federal financial assistance, grant agreement, and cooperative agreement.

Non-Federal entity means a state, local government, Indian tribe, institution of higher education (IHE), or nonprofit organization that carries out a Federal award as a recipient or subrecipient.

Nonprofit organization means any corporation, trust, association, cooperative, or other organization, not including IHEs, that:

- (a) Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;
- (b) Is not organized primarily for profit; and
- (c) Uses net proceeds to maintain, improve, or expand the operations of the organization.

Obligations means, when used in connection with a non-Federal entity's utilization of funds under a Federal award, orders placed for property and services, contracts and subawards made, and similar transactions during a given period that require payment by the non-Federal entity during the same or a future period.

Pass-through entity means a non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program.

Recipient means a non-Federal entity that receives a Federal award directly from a Federal awarding agency to carry out an activity under a Federal program. The term recipient does not include subrecipients.

Simplified acquisition threshold means the dollar amount below which a non-Federal entity may purchase property or services using small purchase methods. Non-Federal entities adopt small purchase procedures in order to expedite the purchase of items costing less than the simplified acquisition threshold. The simplified acquisition threshold is set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 (Definitions) and in accordance with 41 U.S.C. 1908. As of the publication of this part, the simplified acquisition threshold is \$250,000, but this threshold is periodically adjusted for inflation. (Also see definition of § 200.67 Micro-purchase.)

Subaward means an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a Federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract.

Subrecipient means a non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program; but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency.

Termination means the ending of a Federal award, in whole or in part at any time prior to the planned end of period of performance.

The following certifications and provisions may be required and apply when Participating Agency expends federal funds for any purchase resulting from this procurement process. Pursuant to 2 C.F.R. § 200.326, all contracts, including small purchases, awarded by the Participating Agency and the Participating Agency's subcontractors shall contain the procurement provisions of Appendix II to Part 200, as applicable.

APPENDIX II TO 2 CFR PART 200

(A) Contracts for more than the simplified acquisition threshold currently set at \$250,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

Pursuant to Federal Rule (A) above, when a Participating Agency expends federal funds, the Participating Agency reserves all rights and privileges under the applicable laws and regulations with respect to this procurement in the event of breach of contract by either party.

Does offeror agree? YES _____ Initials of Authorized Representative of offeror

(B) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000)

Pursuant to Federal Rule (B) above, when a Participating Agency expends federal funds, the Participating Agency reserves the right to immediately terminate any agreement in excess of \$10,000 resulting from this procurement process in the event of a breach or default of the agreement by Offeror as detailed in the terms of the contract.

Does offeror agree? YES _____ Initials of Authorized Representative of offeror

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 CFR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

Pursuant to Federal Rule (C) above, when a Participating Agency expends federal funds on any federally assisted construction contract, the equal opportunity clause is incorporated by reference herein.

Does offeror agree to abide by the above? YES _____ Initials of Authorized Representative of offeror

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors

on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non -Federal entity must report all suspected or reported violations to the Federal awarding agency.

Pursuant to Federal Rule (D) above, when a Participating Agency expends federal funds during the term of an award for all contracts and subgrants for construction or repair, offeror will be in compliance with all applicable Davis-Bacon Act provisions.

Does offeror agree? YES _____ Initials of Authorized Representative of offeror

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

Pursuant to Federal Rule (E) above, when a Participating Agency expends federal funds, offeror certifies that offeror will be in compliance with all applicable provisions of the Contract Work Hours and Safety Standards Act during the term of an award for all contracts by Participating Agency resulting from this procurement process.

Does offeror agree? YES _____ Initials of Authorized Representative of offeror

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

Pursuant to Federal Rule (F) above, when federal funds are expended by Participating Agency, the offeror certifies that during the term of an award for all contracts by Participating Agency resulting from this procurement process, the offeror agrees to comply with all applicable requirements as referenced in Federal Rule (F) above.

Does offeror agree? YES _____ Initials of Authorized Representative of offeror

(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended— Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non- Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401- 7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251- 1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA)

Pursuant to Federal Rule (G) above, when federal funds are expended by Participating Agency, the offeror certifies that during the term of an award for all contracts by Participating Agency member resulting from this procurement process, the offeror agrees to comply with all applicable requirements as referenced in Federal Rule (G) above.

Does offeror agree? YES _____ Initials of Authorized Representative of offeror

(H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the Executive Office of the President Office of Management and Budget (OMB) guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

Pursuant to Federal Rule (H) above, when federal funds are expended by Participating Agency, the offeror certifies that during the term of an award for all contracts by Participating Agency resulting from this procurement process, the offeror certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency. If at any time during the term of an award the offeror or its principals becomes debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency, the offeror will notify the Participating Agency.

Does offeror agree? YES _____ Initials of Authorized Representative of offeror

(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

Pursuant to Federal Rule (I) above, when federal funds are expended by Participating Agency, the offeror certifies that during the term and after the awarded term of an award for all contracts by Participating Agency resulting from this procurement process, the offeror certifies that it is in compliance with all applicable provisions of the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). The undersigned further certifies that:

(1) No Federal appropriated funds have been paid or will be paid for on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with the awarding of a Federal contract, the making of a Federal grant, the making of a Federal loan, the entering into a cooperative agreement, and the extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying”, in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all covered sub- awards exceeding \$100,000 in Federal funds at all appropriate tiers and that all subrecipients shall certify and disclose accordingly.

Does offeror agree? YES _____ Initials of Authorized Representative of offeror

RECORD RETENTION REQUIREMENTS FOR CONTRACTS INVOLVING FEDERAL FUNDS

When federal funds are expended by Participating Agency for any contract resulting from this procurement process, offeror certifies that it will comply with the record retention requirements detailed in 2 CFR § 200.333. The offeror further certifies that offeror will retain all records as required by 2 CFR § 200.333 for a period of three years after grantees or subgrantees submit final expenditure reports or quarterly or annual financial reports, as applicable, and all other pending matters are closed.

Does offeror agree? YES _____ Initials of Authorized Representative of offeror

CERTIFICATION OF COMPLIANCE WITH THE ENERGY POLICY AND CONSERVATION ACT

When Participating Agency expends federal funds for any contract resulting from this procurement process, offeror certifies that it will comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6321 et seq.; 49 C.F.R. Part 18).

Does offeror agree? YES _____ Initials of Authorized Representative of offeror

CERTIFICATION OF COMPLIANCE WITH BUY AMERICA PROVISIONS

To the extent purchases are made with Federal Highway Administration, Federal Railroad Administration, or Federal Transit Administration funds, offeror certifies that its products comply with all applicable provisions of the Buy America Act and agrees to provide such certification or applicable waiver with respect to specific products to any Participating Agency upon request. Purchases made in accordance with the Buy America Act must still follow the applicable procurement rules calling for free and open competition.

Does offeror agree? YES _____ Initials of Authorized Representative of offeror

CERTIFICATION OF ACCESS TO RECORDS – 2 C.F.R. § 200.336

Offeror agrees that the Inspector General of the Agency or any of their duly authorized representatives shall have access to any documents, papers, or other records of offeror that are pertinent to offeror's discharge of its obligations under the Contract for the purpose of making audits, examinations, excerpts, and transcriptions. The right also includes timely and reasonable access to offeror's personnel for the purpose of interview and discussion relating to such documents.

Does offeror agree? YES _____ Initials of Authorized Representative of offeror

CERTIFICATION OF APPLICABILITY TO SUBCONTRACTORS

Offeror agrees that all contracts it awards pursuant to the Contract shall be bound by the foregoing terms and conditions.

Does offeror agree? YES _____ Initials of Authorized Representative of offeror

Offeror agrees to comply with all federal, state, and local laws, rules, regulations and ordinances, as applicable. It is further acknowledged that offeror certifies compliance with all provisions, laws, acts, regulations, etc. as specifically noted above.

Offeror's Name: _____

Address, City, State, and ZipCode: _____

Phone Number: _____ Fax Number: _____

Printed Name and Title of Authorized Representative: _____

Email Address: _____

Signature of Authorized Representative: _____ Date: _____

FEMA SPECIAL CONDITIONS

Awarded Supplier(s) may need to respond to events and losses where products and services are needed for the immediate and initial response to emergency situations such as, but not limited to, water damage, fire damage, vandalism cleanup, biohazard cleanup, sewage decontamination, deodorization, and/or wind damage during a disaster or emergency situation. By submitting a proposal, the Supplier is accepted these FEMA Special Conditions required by the Federal Emergency Management Agency (FEMA).

“Contract” in the below pages under FEMA SPECIAL CONDITIONS is also referred to and defined as the “Master Agreement”.

“Contractor” in the below pages under FEMA SPECIAL CONDITIONS is also referred to and defined as “Supplier” or “Awarded Supplier”.

Conflicts of Interest

No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a FEMA award if he or she has a real or apparent conflict of interest. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of these parties, has a financial or other interest in or a tangible personal benefit from a firm considered for award. 2 C.F.R. § 200.318(c)(1); See also Standard Form 424D, ¶ 7; Standard Form 424B, ¶ 3. i. FEMA considers a “financial interest” to be the potential for gain or loss to the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of these parties as a result of the particular procurement. The prohibited financial interest may arise from ownership of certain financial instruments or investments such as stock, bonds, or real estate, or from a salary, indebtedness, job offer, or similar interest that might be affected by the particular procurement. ii. FEMA considers an “apparent” conflict of interest to exist where an actual conflict does not exist, but where a reasonable person with knowledge of the relevant facts would question the impartiality of the employee, officer, or agent participating in the procurement. c. Gifts. The officers, employees, and agents of the Participating Public Agency nor the Participating Public Agency (“NFE”) must neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, NFE’s may set standards for situations in which the financial interest is de minimus, not substantial, or the gift is an unsolicited item of nominal value. 2 C.F.R. § 200.318(c)(1). d. Violations. The NFE’s written standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the NFE. 2 C.F.R. § 200.318(c)(1). For example, the penalty for a NFE’s employee may be dismissal, and the penalty for a contractor might be the termination of the contract.

Contractor Integrity

A contractor must have a satisfactory record of integrity and business ethics. Contractors that are debarred or suspended as described in Chapter III, ¶ 6.d must be rejected and cannot receive contract awards at any level.

Public Policy

A contractor must comply with the public policies of the Federal Government and state, local government, or tribal government. This includes, among other things, past and current compliance with the:

- a. Equal opportunity and nondiscrimination laws
- b. Five affirmative steps described at 2 C.F.R. § 200.321(b) for all subcontracting under contracts supported by FEMA financial assistance; and FEMA Procurement Guidance June 21, 2016 Page IV- 7
- c. Applicable prevailing wage laws, regulations, and executive orders

Affirmative Steps

For any subcontracting opportunities, Contractor must take the following Affirmative steps:

1. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

2. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and
5. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

Prevailing Wage Requirements

When applicable, the awarded Contractor (s) and any and all subcontractor(s) agree to comply with all laws regarding prevailing wage rates including the Davis-Bacon Act, applicable to this solicitation and/or Participating Public Agencies. The Participating Public Agency shall notify the Contractor of the applicable pricing/prevailing wage rates and must apply any local wage rates requested. The Contractor and any subcontractor(s) shall comply with the prevailing wage rates set by the Participating Public Agency.

Federal Requirements

If products and services are issued in response to an emergency or disaster recovery the items below, located in this FEMA Special Conditions section of the Federal Funds Certifications, are activated and required when federal funding may be utilized.

2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II, Required Contract Clauses

1. Termination for Convenience:

The right to terminate this Contract for the convenience of the Participating Public Agency is retained by the Participating Public Agency. In the event of a termination for convenience by the Participating Public Agency, the Participating Public Agency shall, at least ten (10) calendar days in advance, deliver written notice of the termination for convenience to Contractor. Upon Contractor's receipt of such written notice, Contractor immediately shall cease the performance of the Work and shall take reasonable and appropriate action to secure and protect the Work then in place. Contractor shall then be paid by the Participating Public Agency, in accordance with the terms and provisions of the Contract Documents, an amount not to exceed the actual labor costs incurred, the actual cost of all materials installed and the actual cost of all materials stored at the project site or away from the project site, as approved in writing by the Participating Public Agency but not yet paid for and which cannot be returned, and actual, reasonable and documented demobilization costs, if any, paid by Contractor and approved by the Participating Public Agency in connection with the Scope of Work in place which is completed as of the date of termination by the Participating Public Agency and that is in conformance with the Contract Documents, less all amounts previously paid for the Work. No amount ever shall be owed or paid to Contractor for lost or anticipated profits on any part of the Scope of Work not performed or for consequential damages of any kind.

2. Equal Employment Opportunity:

The Participating Public Agency highly encourages Contractors to implement Affirmative Action practices in their employment programs. This means Contractor should not discriminate against any employee or applicant for employment because of race, color, religion, sex, pregnancy, sexual orientation, political belief or affiliation, age, disability or genetic information.

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or

transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: *Provided*, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

3. "During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor

agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
- (3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States."

4. Davis Bacon Act and Copeland Anti-Kickback Act.

- a. Applicability of Davis-Bacon Act. The Davis-Bacon Act only applies to the emergency Management Preparedness Grant Program, Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant Program, Port Security Grant Program, and Transit Security Grant Program. **It does not apply to other FEMA grant and cooperative agreement programs, including the Public Assistance Program.**

- b. All prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. §§ 3141-3144 and 3146-3148) as supplemented by Department of Labor regulations at 29 C.F.R. Part 5 (Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction)). See 2 C.F.R. Part 200, Appendix II, ¶ D.
- c. In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once aweek.
- d. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
- e. In contracts subject to the Davis-Bacon Act, the contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations at 29 C.F.R. Part 3 (Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States). The Copeland Anti- Kickback Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to FEMA.
- f. The regulation at 29 C.F.R. § 5.5(a) does provide the required contract clause that applies to compliance with both the Davis-Bacon and Copeland Acts. However, as discussed in the previous subsection, the Davis-Bacon Act does not apply to Public Assistance recipients and subrecipients. **In situations where the Davis-Bacon Act does not apply, neither does the Copeland "Anti-Kickback Act."** However, for purposes of grant programs where both clauses do apply, FEMA requires the following contract clause:

"Compliance with the Copeland "Anti-Kickback" Act.

- (1) Contractor. The contractor shall comply with 18 U.S.C. § 874, 40U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
- (2) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses
- (3) Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12."

5. Contract Work Hours and Safety Standards Act.

- a. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.

- b. Where applicable (see 40 U.S.C. § 3701), all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations at 29 C.F.R. Part 5. See 2 C.F.R. Part 200, Appendix II, ¶ E.
- c. Under 40 U.S.C. § 3702, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the workweek.
- d. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- e. The regulation at 29 C.F.R. § 5.5(b) provides the required contract clause concerning compliance with the Contract Work Hours and Safety Standards Act:

“Compliance with the Contract Work Hours and Safety Standards Act.

- (1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- (3) Withholding for unpaid wages and liquidated damages. The (write in the name of the Federal agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

- (4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.”

6. Rights to Inventions Made Under a Contract or Agreement.

- a. Stafford Act Disaster Grants. This requirement **does not apply to the Public Assistance, Hazard Mitigation Grant Program, Fire Management Assistance Grant Program, Crisis Counseling Assistance and Training Grant Program, Disaster Case Management Grant Program, and Federal Assistance to Individuals and Households – Other Needs Assistance Grant Program**, as

FEMA awards under these programs do not meet the definition of “funding agreement.”

- b. If the FEMA award meets the definition of “funding agreement” under 37 C.F.R. § 401.2(a) and the non-Federal entity wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the non-Federal entity must comply with the requirements of 37 C.F.R. Part 401 (Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements), and any implementing regulations issued by FEMA. See 2 C.F.R. Part 200, Appendix II, ¶ F.

- c. The regulation at 37 C.F.R. § 401.2(a) currently defines “funding agreement” as any contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the Federal government. This term also includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as defined in the first sentence of this paragraph.

7. Clean Air Act and the Federal Water Pollution Control Act. Contracts of amounts in excess of \$150,000 must contain a provision that requires the contractor to agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251-1387). Violations must be reported to FEMA and the Regional Office of the Environmental Protection Agency. See 2 C.F.R. Part 200, Appendix II, ¶ G.

- a. The following provides a sample contract clause concerning compliance for contracts of amounts in excess of \$150,000:

“Clean Air Act

- (1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- (2) The contractor agrees to report each violation to the (name of the state agency or local or Indian tribal government) and understands and agrees that the (name of the state agency or local or Indian tribal government) will, in turn, report each violation as required to assure notification to the (name of recipient), Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

- (3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

Federal Water Pollution Control Act

- (1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- (2) The contractor agrees to report each violation to the (name of the state agency or local or Indian tribal government) and understands and agrees that the (name of the state agency or local or Indian tribal government) will, in turn, report each violation as required to assure notification to the (name of recipient), Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.”

8. Debarment and Suspension.

- a. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.
- b. Non-federal entities and contractors are subject to the debarment and suspension regulations implementing Executive Order 12549, *Debarment and Suspension* (1986) and Executive Order 12689, *Debarment and Suspension* (1989) at 2 C.F.R. Part 180 and the Department of Homeland Security’s regulations at 2 C.F.R. Part 3000 (Non procurement Debarment and Suspension).
- c. These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs and activities. See 2 C.F.R. Part 200, Appendix II, ¶ H; and *Procurement Guidance for Recipients and Subrecipients Under 2 C.F.R. Part 200 (Uniform Rules): Supplement to the Public Assistance Procurement Disaster Assistance Team (PDAT) Field Manual* Chapter IV, ¶ 6.d, and Appendix C, ¶ 2 [hereinafter *PDAT Supplement*]. A contract award must not be made to parties listed in the SAM Exclusions. SAM Exclusions is the list maintained by the General Services Administration that contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. SAM exclusions can be accessed at www.sam.gov. See 2 C.F.R. § 180.530; *PDAT Supplement*, Chapter IV, ¶ 6.d and Appendix C, ¶ 2.
- d. In general, an “excluded” party cannot receive a Federal grant award or a contract within the meaning of a “covered transaction,” to include subawards and subcontracts. This includes parties that receive Federal funding indirectly, such as contractors to recipients and subrecipients. The key to the exclusion is whether there is a “covered transaction,” which is any non-procurement transaction (unless excepted) at either a “primary” or “secondary” tier. Although “covered transactions” do not include contracts awarded by the Federal Government for purposes of the non-procurement common rule and DHS’s implementing regulations, it does include some contracts awarded by recipients and subrecipient.

- e. Specifically, a covered transaction includes the following contracts for goods or services:
- (1) The contract is awarded by a recipient or subrecipient in the amount of at least \$25,000.
 - (2) The contract requires the approval of FEMA, regardless of amount.
 - (3) The contract is for federally required audit services.
 - (4) A subcontract is also a covered transaction if it is awarded by the contractor of a recipient or subrecipient and requires either the approval of FEMA or is in excess of \$25,000.
- d. The following provides a debarment and suspension clause. It incorporates an optional method of verifying that contractors are not excluded or disqualified:

“Suspension and Debarment

- (1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- (2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- (3) This certification is a material representation of fact relied upon by (insert name of subrecipient). If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to (name of state agency serving as recipient and name of subrecipient), the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- (4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.”

9. Byrd Anti-Lobbying Amendment.

- a. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.
- b. Contractors that apply or bid for an award of \$100,000 or more must file the required certification. See 2 C.F.R. Part 200, Appendix II, ¶ I; 44 C.F.R. Part 18; *PDAT Supplement*, Chapter IV, 6.c; Appendix C, ¶ 4.
- c. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. § 1352. Each tier must also disclose any

lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award. See PDAT Supplement, Chapter IV, ¶ 6.c and Appendix C, ¶ 4.

d. The following provides a Byrd Anti-Lobbying contract clause:

“Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31

U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.”

APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements (To be submitted with each bid or offer exceeding \$100,000)

The undersigned [Contractor] certifies, to the best of his or her knowledge, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form- LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 et seq., apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date

10. Procurement of Recovered Materials.

- a. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.
- b. A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, Pub. L. No. 89-272 (1965) (codified as amended by the Resource Conservation and Recovery Act at 42 U.S.C. § 6962). See 2 C.F.R. Part 200, Appendix II, ¶ J; 2 C.F.R. § 200.322; *PDAT Supplement*, Chapter V, ¶ 7.
- c. The requirements of Section 6002 include procuring only items designated in guidelines of the EPA at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- d. The following provides the clause that a state agency or agency of a political subdivision of a state and its contractors can include in contracts meeting the above contract thresholds:

“(1) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA- designated items unless the product cannot be acquired—

- (i) Competitively within a timeframe providing for compliance with the contract performance schedule;
- (ii) Meeting contract performance requirements; or
- (iii) At a reasonable price.

(2) Information about this requirement, along with the list of EPA- designate items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.”

11. Additional FEMA Requirements.

- a. The Uniform Rules authorize FEMA to require additional provisions for non- Federal entity contracts. FEMA, pursuant to this authority, requires or recommends the following:

b. Changes.

To be eligible for FEMA assistance under the non-Federal entity's FEMA grant or cooperative agreement, the cost of the change, modification, change order, or constructive change must be allowable, allocable, within the scope of its grant or cooperative agreement, and reasonable for the completion of project scope. FEMA recommends, therefore, that a non-Federal entity include a changes clause in its contract that describes how, if at all, changes can be made by either party to alter the method, price, or schedule of the work without breaching the contract. The language of the clause may differ depending on the nature of the contract and the end-item procured.

c. Access to Records.

All non-Federal entities must place into their contracts a provision that all contractors and their successors, transferees, assignees, and subcontractors acknowledge and agree to comply with applicable provisions governing Department and FEMA access to records, accounts, documents, information, facilities, and staff. See DHS Standard Terms and Conditions, v 3.0, ¶ XXVI (2013).

d. The following provides a contract clause regarding access to records:

"Access to Records. The following access to records requirements apply to this contract:

(1) The contractor agrees to provide (insert name of state agency or local or Indian tribal government), (insert name of recipient), the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

(2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(3) The contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract."

12. DHS Seal, Logo, and Flags.

a. All non-Federal entities must place in their contracts a provision that a contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval. See DHS Standard Terms and Conditions, v 3.0, ¶ XXV (2013).

b. The following provides a contract clause regarding DHS Seal, Logo, and Flags: "The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval."

13. Compliance with Federal Law, Regulations, and Executive Orders.

a. All non-Federal entities must place into their contracts an acknowledgement that FEMA financial assistance will be used to fund the contract along with the requirement that the contractor will comply with all applicable federal law, regulations, executive orders, and FEMA policies, procedures, and directives.

- b. The following provides a contract clause regarding Compliance with Federal Law, Regulations, and Executive Orders: “This is an acknowledgement that FEMA financial assistance will be used to fund the contract only. The contractor will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.”

14. No Obligation by Federal Government.

- a. The non-Federal entity must include a provision in its contract that states that the Federal Government is not a party to the contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.
- b. The following provides a contract clause regarding no obligation by the Federal Government: “The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.”

15. Program Fraud and False or Fraudulent Statements or Related Acts.

- a. The non-Federal entity must include a provision in its contract that the contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to its actions pertaining to the contract.
- b. The following provides a contract clause regarding Fraud and False or Fraudulent or Related Acts: “The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor’s actions pertaining to this contract.”

Additional contract clauses per 2 C.F.R. § 200.325

For applicable construction/reconstruction/renovation and related services: A payment and performance bond are both required for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor’s obligations under such contract. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided in the contract.

Offeror agrees to comply with all terms and conditions outlined in the FEMA Special Conditions section of this solicitation.

Offeror’s Name: _____

Address, City, State, and Zip Code: _____

Phone Number: _____ Fax Number: _____

Printed Name and Title of Authorized Representative: _____

Email Address: _____

Signature of Authorized Representative: _____ Date: _____

April 13, 2021

Subject: Business Continuity/DR Plans

To Whom It May Concern,

Windstream Business Continuity Plans, Cyber Security Incident Response Plan, and Windstream Disaster Recovery Plans (collectively "Plans") are confidential documents within our company. Windstream cannot disclose the full Plans, as they include detailed proprietary and personnel information, including IP addresses, system host names, private bridge numbers for emergency situations, known vulnerable aspects of our company, and personal information of Windstream executives and employees. Therefore, we have prepared the following summary of the Plans:

Windstream's Business Continuity Plan is maintained by the company and includes various scenarios that may occur in the geographic and political-economic areas in which Windstream operates, including if Windstream has to vacate any or all places of business for extended periods. The Plan is reviewed and tested annually, and Windstream makes updates to accommodate issues, acquisitions, and new situations that arise. The business continuity readiness is reported to the company's executive management annually.

Windstream conducts annual testing on each Plan throughout the year. Management conducts annual testing of the Plan utilizing table top and scenario testing to ensure that Windstream can maintain customer support during a business continuity event and to determine whether any tools, processes or risks should be reevaluated or remediated. In addition to customer support activities, regular facility preventative maintenance activities are performed on utility power and redundant power infrastructure and cooling infrastructure components.

Windstream's Cyber Security Incident Response Plan covers all high-risk security events, suspected incidents and incidents discovered by internal alerts, reports, unusual activity, external alerts, advisories or communications. It is tested and updated at least annually; and regularly updated to the extent necessary to remediate risks or to remain consistent with industry best practices.

Windstream's Disaster Recovery Plans are designed to enable a rapid response to, and successful recovery from, a disruption of operations at one of the Windstream IT Data Center facilities. Implementation of these plans would minimize disruption to service, mitigate financial losses, and allow a timely resumption of operations. These plans are written for a worst-case scenario and may be adapted to any situation in which operations are disrupted, including but not limited to:

- Physical damage to the facility such as fire, smoke, water, or structural damage
- Lack or restriction of access to the facility due to an emergency building evacuation or during a natural disaster or other hazardous situation
- Technical failure such as a power outage, loss of telecommunications service, or hardware or software failure
- Human interference, accidental or deliberate, including sabotage, theft, and strikes.

Windstream conducts an annual recovery exercise to provide experience to recovery teams and to validate the completeness and effectiveness of the recovery plan, hardware, off-site software, and off-site data backups.

Windstream's BC Program Manager is certified by the Business Continuity Institute and participates in continuing education programs. The Manager also conducts an annual review of all documents and meets annually with Windstream executives.

Sincerely,



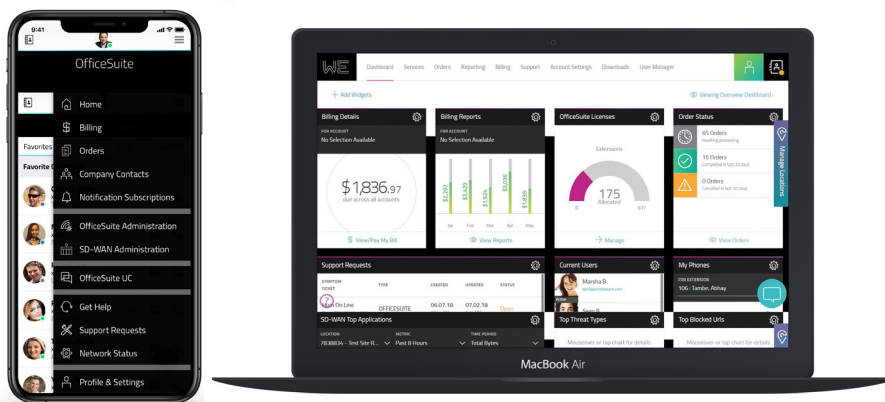
Gregory Weill
Interim Chief Compliance Officer, Windstream Corporation

The WE Connect Experience

Where best-in-class services come together into a unified, online experience, providing the unique ability to manage and configure your services from any device.

The WE Connect customer portal delivers a revolutionary digital experience, combining service management, network analytics, reporting, location visibility and customer support features into a single view to help you quickly and easily execute your digital transformation strategy.

The sophisticated and intuitive interface enables administrators and end-users alike to control the critical features of your individual services.



Advanced features and capabilities

Real-time visibility and control of all your services from any device, 24/7

Mobile-first design delivers the same features across mobile devices, tablets and PCs (applications for iOS and Android available in app stores)

Personalized to your preferences with customizable dashboards, reports and notification settings

Security features protect your personal information such as multi-factor authentication, PCI compliance and identity management

Service and feature management tools

Billing and payment tools

Built-in reporting and performance metrics

SD-WAN Insight Engine aggregates network health, status and performance into one screen

Multiple support channels available, including live chat, chatbot, online requests and community forums

NOTE: WE Connect availability is dependent on location, products and services for each customer account. Not all tools and features are available to every customer.

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One site to manage it all

Introducing WE Connect for OfficeSuite UC®

A revolutionary online, customer portal that centralizes all of your communications and hosted services into one user-friendly site.

WINDSTREAM ENTERPRISE

Online management unlike any other

Unlike other customer portals, both administrators and employees can make changes to the system and their individual accounts in real time, from a single, intuitive dashboard that features an easy-to-use, widget-based architecture and integrates you with all of your OfficeSuite UC services and Windstream Enterprise support.

Administrators can create unlimited user profiles based on different employee's roles in the company to confidently allow self-management of the features you want and need them to control.

The WE Connect portal's user-focused, sleek and modern design and anytime, anywhere controls delivers unlimited flexibility that allows you to scale on demand, mobilize your entire workforce and ensure full business continuity no matter what takes place.

Unifies powerful communications services

OFFICESUITE HD MEETING

Launch HD video, audio and web conferences and online meetings

COLLABORATION

See co-worker presence, and chat or click-to-call them on any device

ADVANCED PHONE FEATURES

Route calls, check voicemail, record greetings and more

FAX

Send and receive faxes right from the portal

Designed with the user in mind

Benefits

A single platform to manage it all from any device

Make company-wide changes at once, in seconds

Fully scalable – add and remove users with ease

No IT support required

One-click access to trouble tickets, live help, videos and our online community

Built-in disaster avoidance – re-route calls, listen to voicemail, and more from absolutely anywhere

Create unlimited user profiles to enable employees to access only the features you want

Customize user profiles based on employee's roles and needs

Empower users to self-manage their own preferences so you don't have to

Personalize dashboard displays to improve productivity

Advanced features and functionality:

Online Presence

View the availability of coworkers and set your own availability status.

User to User and Group Chat

Chat live with individuals or groups of employees right from the portal.

Video Conferencing

Launch or join a video conference instantly from the portal.

Apps for iPhone®, Android™ and Windows®

Click-to-call contacts, listen and respond to voicemail messages and make real-time changes directly from your smartphone or desktop.

Voicemail

View when you receive new voicemail messages and listen to voicemail online.

Quick Contacts Pop-out

Close out of the portal, but keep the presence pop-out up to interact with coworkers.

Customizable Dashboards

Arrange widget display based on your role and preference for optimal productivity.

Music on Hold

Upload your own or select custom on-hold music and recordings.

Unmatched control and visibility

View and manage everything:

Call Routing

Re-route calls and set up call forwarding rules from anywhere.

Auto Attendants

Upload or record unlimited auto attendant greetings on the fly using our text-to-speech feature.

Billing

Quickly view and pay your balance, review payment history or print invoices.

Trouble Tickets

Open, view and track the status of trouble tickets.

Call History

View call history by company, employee, date or extension.

User Profiles

Create custom user profiles and grant access to services based on employee's roles.

User Manager

Add new users, extensions and services to any user's account at anytime.

Order Status

View the status of your order in real time.

Online Community

View FAQ's, how-to instructions and even post questions.

How-to Videos

Watch how-to videos and get information on how each widget and feature works.

Built-in business intelligence

Utilize a one-of-a-kind business intelligence and reporting tool for actionable insight about your business.

WE Connect's Call History feature helps identify staffing inefficiencies, improves productivity, boosts customer satisfaction and provides greater visibility into marketing and sales efforts.

Utilize built-in reports to analyze critical call data

View which calls are the longest to see where employee's are investing their time.

See which numbers call in the most so you can identify customer issues.

Track the number of outbound calls made by department and employee to better evaluate performance.

Instantly view the effectiveness of your marketing campaigns.

Sort and filter call data to build customized reports

View the call history of your entire company by department, employee and extension.

Narrowly mine actionable data with more than 16 real-time filters.

Real-time slider functionality to quickly sort and view by date range.

Group employees by departments for granular analysis.

Save reports with one click for future use.

About Windstream Enterprise

Windstream Enterprise collaborates with businesses across the U.S. to drive digital transformation by delivering solutions that solve today's most complex networking and communication challenges.

To learn more about OfficeSuite UC, visit windstreamenterprise.com

QUALIFICATIONS AND EXPERIENCE

1. Provide a brief history of the Offeror, including year it was established and corporate office location.

*Windstream's company history can be viewed on our website at:
<https://news.windstream.com/history/default.aspx>*

Windstream was incorporated in Delaware in 2005.

*Headquarters:
4001 Rodney Parham Road
Little Rock, AR 72212
501-748-7000
info@windstream.com
www.windstreambusiness.com*

2. Describe Offeror's reputation in the marketplace.
According to Forrester research, over the past five years, Kinetic has seen an increase of residential and business customers' satisfaction with their phone and Internet service, and fewer report a desire to switch carriers. A majority of residential and plurality of business customers say they are happy with their current Kinetic service and would recommend it to a friend or family member.
3. Describe Offeror's reputation of products and services in the marketplace.
Kinetic has been recognized for their premier solutions, named Gartner Magic Quadrant for UCaaS in 2019 and 2020, and named by Frost & Sullivan as Innovation and Growth Leaders for SD-WAN and UCaaS. In 2021, CNET recognized Kinetic as one of the best high-speed rural Internet providers.
4. Describe the experience and qualification of key employees.
Windstream has employees in every business unit with extensive experience in implementing the services requested in this RFP, and we will be happy to provide experience levels and qualifications for the key players upon award of contract based on the services awarded. At a minimum, the team will consist of members from:
 - *Sales*
 - *Customer Advocacy*
 - *Solution Engineering*
 - *Service Delivery*
 - *Field and Switch Technicians*
5. Describe Offeror's experience working with public school districts.
Windstream has been successfully participating in the E-rate program since the inception of the program. During that time, our trained staff has assisted schools and libraries to identify eligible services; provided guidance for questions from USAC and followed the rules and regulations as set out by USAC. Windstream has over 2,000 E-rate customers with both Priority 1 and Priority 2 services.

Windstream is a full-service telecommunications provider serving customers in 48 states and the District of Columbia. We provide a wide range of services from Local to Fiber, SD-WAN, Unified Communications and more.

6. Describe in detail what level of assistance will be provided under the Federal Communication Commissions E-rate discount program. Identify how much effort will be required in obtaining this funding. Specify the services available to the agency for project planning, specialized program assistance, and other services provided to the agency dealing with the E-rate program.

FCC rules for government funded programs prohibit Windstream from preparing and submitting a Customer's 470. However, Windstream can provide support and strategize during the off season for E-Rate eligible and ineligible products and services for all of your telecommunication needs. Upon award of service to Windstream, we can provide guidance on your 471, E-Rate questions, billing, and account management.

Windstream also has a dedicated K-12/E-Rate team that provides support to our sales organization. The account teams are subject matter experts across the country and are available to assist with understanding new funding programs as well as E-Rate. The dedicated K-12/E-Rate team also handles any E-Rate specific questions and the SPI billing method if this is selected as your preferred billing option.

The Windstream Service Delivery team will work with your selected point of contact directly to schedule the install and ensure you are prepared for the services awarded to Windstream.

7. Describe past litigation, bankruptcy, reorganization, state investigations of entity or current officers and directors.

Windstream has been involved in litigation involving services and products, as have all service providers. This is a risk inherent in our business. However, we are not currently involved in any dispute or lawsuit which would have a material impact on our ability to provide services under this RFP.

On February 25, 2019, Windstream Holdings, Inc. and its subsidiaries ("Windstream") filed a voluntary petition for reorganization under Chapter 11 of the U.S. Bankruptcy Code for the Southern District of New York (the "Court"). On June 26, 2019, Windstream's Plan of Reorganization was approved by the Court, and Windstream emerged from Chapter 11 as a private company on September 21, 2020.

8. Provide a minimum of 10 customer references relating to the products and services within this RFP. Include entity name, contact name and title, contact phone and email, city, state, years serviced, description of services and annual volume.

Windstream respects the privacy of our customers. Contractual details between Windstream and its customers are Proprietary and Confidential. If down selected, Windstream can coordinate a meeting with the respective contacts.

- ***Region 5 Education Service Centers, Texas***
- ***Region 6 Education Service Centers, Texas***
- ***Region 7 Education Service Centers, Texas***



- *Region 16 Education Service Centers, Texas*
- *City of Sugarland, Texas*
- *Fort Bend Independent School District, Texas*
- *Appalachian Regional Healthcare (ARH), KY (case study included)*
- *University of Kentucky, KY*
- *Midwestern University (case study included)*
- *Espanola Public Schools, Espanola, NM*

In addition, please refer to the attached case studies.

9. Provide any additional information relevant to this section.

Kinetic Business by Windstream is an advanced network communications and technology solution provider that offers award-winning communications and connectivity solutions for businesses.

Kinetic Business is financially strong and positioned for growth.

- *\$2B in capital investment over the next five years means substantial network and software investments*
- *170,000 fiber route miles*
- *325,000 covered business locations over an 18-state footprint*

As business needs have evolved, so has Kinetic Business.

- *GIG Internet Service - Provides an enhanced fiber network and 5G fixed wireless to small and midsize businesses in 18 states*
- *OfficeSuite UC® - Cloud-based communication and collaboration platform uniting VoIP, presence, chat and mobility*
- *SD-WAN - Provides unprecedented visibility into bandwidth utilization, dynamically routes traffic, improves performance of applications while reducing bandwidth usage*
- *Enhanced LAN and Wi-Fi - Cloud-based network management reduces burdens on business resources while maintaining control of your network and Wi-Fi*

Kinetic Business offers an exceptional & diverse product portfolio.

<i>Internet</i>	<i>Voice</i>	<i>Security & Network</i>	<i>Cloud Applications</i>	<i>Business TV</i>
<i>Business Class Internet</i>	<i>OfficeSuite UC®</i>	<i>Managed Network Security</i>	<i>HD Meeting Conferencing</i>	<i>DIRECTV for Business</i>
<i>Fiber Internet</i>	<i>Dynamic IP</i>	<i>DDoS Mitigation & Assurance</i>	<i>Raydiant Digital Signage</i>	<i>Kinetic TV for Business</i>
<i>Dedicated Internet</i>	<i>Basic Business Lines</i>	<i>MPLS/L3VPN & VLS</i>	<i>Remote IT Support</i>	
<i>Wireless Internet Backup</i>		<i>Managed Router</i>	<i>Web & Email Hosting</i>	
		<i>SD-WAN</i>	<i>Fax-to-Email</i>	
		<i>Enhanced LAN & Wi-Fi</i>	<i>Professional Web Design</i>	



We offer a full suite of products to solve critical business challenges.

- *Business Internet - Connect with boundless products and potential with a reliable fiber-based connection.*
- *Security - Stop cyber threats before they stop your business with robust security solutions.*
- *Cloud Applications - Manage your network, improve collaboration and enjoy technology that allows you to work from anywhere.*

Kinetic Business SD-WAN and OfficeSuite UC® are recognized industry leaders.

- *Kinetic Business SD-WAN, an industry leader in business network and security, has been recognized for its award-winning management portal and partnership with VMware to deliver small and midsize businesses the same control and confidence as major corporations.*
- *OfficeSuite UC® was recognized in Gartner's Magic Quadrant for Unified Communications as a Service, Worldwide in 2019 and 2020.*
- *OfficeSuite UC® won a gold Stevie Award in telecommunications in the 18th Annual American Business Awards in 2020.*

Kinetic Business SD-WAN delivers a game-changing feature set.

- *Private Network - Abstracted overlay creates a VPN across connection points.*
- *Dynamic Path Selection - Business policies automatically prioritize and de-prioritize traffic.*
- *Centralized Management - MyWIN Business offers deep visibility, delivering a 'single pane of glass' view of the network.*
- *Software-based - Converges voice, data and video apps with low-touch provisioning*
- *Dual Active Links - Redundant and/or diverse connections at each site increase resiliency*
- *Expert Support - Kinetic Business provides expert installation and configuration, as well as continued dedicated business support.*

Case Study

A Master's Degree in Communications



This Midwestern university has a long legacy of educational excellence. Over its 150-year history, the university has continued to evolve and adapt, always striving to stay ahead in a changing world. When they found its antiquated communications system unable to keep up with the growing demands of a thriving university, they decided it was time to brush-up on technology that would keep pace in an increasingly digital world.

The Challenge

The university Assistant Director and his team are responsible for the university's entire IT network, security operations, business continuity and cyber security. In addition to those duties, the team takes their core mandate, which parallels the university's mission statement, very seriously: innovate and explore new technology options that can make life easier for people in an educational environment. An opportunity to demonstrate their commitment was waiting for them.

More than 400 old analog phones and a premises-based PBX—carryover technology from the days when the school was required to use the state's purchasing system—comprised the school's communications system. They were fixtures on every desk across campus that were expensive to maintain with a high fixed-cost per line regardless of its use. Any time there was a change in a number or placement of lines, a technician had to physically come to campus to provision it, a process that could take two to three days. Adding to the urgency, the only employee with the skillset to maintain the old PBX was retiring.

“It was a wake-up call for us. With high monthly operating costs and no cost-effective way to replace our end-of-life PBX, it was time for a change. We needed a fully-managed, flexible, intuitive and cost-effective IP-based solution that I could confidently propose to the university's president—and would meet the needs of end-users.”

Customer at a glance

Customer Description

Based in the Midwest
1,700+ students
250+ full-time faculty/staff; 50+ part-time
National award winner for innovation

Industry

Higher Education

Challenges

Outdated analog phone system
Difficult/time-consuming to manage
Lacked failover protection
High cost

Solutions

Mitel UCaaS
Internet/voice services

Results

Ease of management/flexibility
Fully supported
Increased productivity
Opportunities for collaboration
Cost effective



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The Solution

The state had lifted the requirement that institutions had to purchase communications from the state, so they were free to explore options outside the system. Another big driver in the decision-making process was to partner with a communications provider who shared the same innovative DNA.

The Assistant Director was immediately attracted to the features and flexibility that cloud-based UCaaS provides. UCaaS provides greater customization options and allows staff to handle service changes more cost-effectively in house. When an employee changes offices on campus, UCaaS seamlessly ‘follows’ them, keeping their number intact regardless of location.

The Results

The university’s overall network reliability has improved, uptime and call quality are now superior to that of old analog phones, and provisioning time has significantly reduced. Gone are the days of waiting for a technician to provision services when needs change.

An unexpected benefit of UCaaS is that the university has been able to better leverage resources, leading to greater efficiency and employee satisfaction. When they decommissioned their centralized switchboard, they replaced the person with an Alexa device from Amazon. Guests speak to ‘Alexa’ and are routed directly to the department they want to reach. The switchboard operator is now performing more strategic duties than just answering calls.

Looking ahead, the Assistant Director notes the technology evolution he’s seen just over the last several years. “Most students and faculty bring their own devices, and as an innovative institution, we are ready to provide services where users can leverage these devices—or be able to issue smart or mobile devices to enable better communication on the campus.” While he anticipates that desk phones on campus will probably become a secondary way of communication over the next few years, the university is ready to adapt and innovate with the technology changes ahead.



“We knew we had a communications solution that matched the school’s commitment to innovation and a technology that would make life easier for our users.”

To learn more about Kinetic Business, visit kineticbusiness.com



Case Study

How Appalachian Regional Healthcare Nursed Their Network Back to Health



Operating a network of more than 100 hospitals and clinics—as well as retail pharmacies, home durable medical equipment stores and home health operations—located in very rural areas of Kentucky and West Virginia has made Appalachian Regional Healthcare (ARH) indispensable for the 400,000 lives that depend on this not-for-profit health system. The organization required a redundant network that would guarantee high-speed connectivity and zero downtime. ARH wanted a partner that would be with them every step of the way—from the server room to the emergency room—to maintain uninterrupted experiences for their physicians and patients.

The Challenge

ARH has always been first to respond to the changing demands of rural healthcare. As the largest provider of care and single largest employer in southeastern Kentucky, as well as the third largest private employer in southern West Virginia, ARH has continuously invested in new technology and medical capabilities to carry out its mission of improving the health and well-being of all people within their surrounding community.

The rural nature of ARH's hospitals and clinics had contributed to a discernible challenge of acquiring consistent connectivity and network redundancy to support their employees and patients. So, when ARH began implementing an Electronic Medical Records (EMR) application into their network, the organization knew network connections at many locations would not support new high-bandwidth demands. Because locations were single-threaded and lacked the redundancy of having a second connection, outages were not uncommon.

On top of that, ARH was lacking the visibility necessary to monitor networks proactively, resulting in reactive responses to outages and network issues. They needed a solution stat—one that encompassed monitoring and maintenance from a Network Operating Center (NOC) to ensure all locations were always up and running. ARH knew they wanted a solution that would integrate all of their facilities into a single network to streamline infrastructure management moving forward.

“Kinetic Business is unlike a typical telco provider. They are easy to connect with, understand our business and help us think outside the box.”

— Mike Roberts
CTO, ARH

Customer at a glance

Industry

Healthcare

Customer Description

100+ hospitals and clinics

Locations in Kentucky and West Virginia

6,000+ employees

Challenges

Insufficient bandwidth

Inadequate resiliency

Lack of network visibility

Solutions

SD-WAN

Wavelength Services

High Bandwidth Ethernet Fiber

Cable Broadband

Results

Greater network diversity

High bandwidth and reliability

Reduced network outages

More time for strategic initiatives



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The Solution

ARH had already diagnosed the geographic problems impeding its network's ability to deliver high-speed connectivity on a single connection. When they chose to reach out for help, Kinetic Business was quick to answer the call and start laying the groundwork for a healthy, connected future.

Working closely with ARH's IT team, Kinetic Business implemented Wavelengths Services, a solution with point-to-point connections that would deliver virtually unlimited bandwidth between their 13 primary hospitals and the offices in the surrounding campuses.

Kinetic Business deployed High Availability SD-WAN at 37 additional locations, including two data centers and two system centers. All SD-WAN locations were provisioned with two diverse access connections, Ethernet as primary and cable broadband as secondary, in an active/active configuration. Not only would the dual access connection deliver the additional bandwidth and reliability to support ARH's new EMR application, the automated failover of active/active would prevent any life-threatening network outages. And because many of the rural locations lacked options for fast, reliable Ethernet, Kinetic Business had also agreed to build out fiber into multiple locations to expand their network footprint.

To complement these other services, the Kinetic Business Professional Services team created a NOC to monitor their network and provide help desk support during the early days of implementation. Since then, ARH operates under Kinetic

Business's Elite NOC—a world-class service upheld by highly experienced analysts—as part of a fully monitored and managed solution.

Quickly after Kinetic Business provided this tailored prescription for ARH's network obstacles, the company started noticing improvements. Even more promising was that the technology was easy to use, providing confidence and accuracy into their network's bandwidth and uptime.

From there, ARH became heavy users of the customizable customer portal that provides total visibility and control for the SD-WAN network. ARH's IT team utilized the portal to identify issues by location and regularly analyze the utilization of circuits.

The Results

Ever since administering a strong, reliable network foundation through Kinetic Business's SD-WAN services, ARH has experienced a significant reduction in outages across their locations nestled amongst the Appalachian Mountains. When any circuit goes down at any of the locations, the second circuit kicks in to keep the location running to prevent disruption.

The additional bandwidth and resiliency provided by Wavelength Services and High Availability SD-WAN solutions has significantly improved the experience for the ARH medical team and their patients. Doctors can get to EMR records quicker; less wait time translates to less frustration and chaos for doctors and patients alike.

ARH's IT team has been thrilled with the level of accountability and support provided by the Kinetic Business account and Elite NOC teams. "Kinetic Business has been a true business partner to us. They have local presence, are always accessible and highly responsive to our needs," said Patterson. "They were willing to invest in our future."

Support for ARH's success came at every level. "It has been extremely beneficial to have Kinetic Business executive sponsor, CEO, Tony Thomas engaged in our business," said Mike Roberts, CTO, ARH. "When we have any issues, he is easy to engage, quick to respond and gets us the resources we need."

"The Customer Portal and Insight Engine is a powerful, easy-to-use tool that keeps us informed on network performance and helps us troubleshoot issues." "

**— Troy Patterson,
Telecommunications
Manager, ARH**

Backed by a resilient and reliable network solution—and with a leading team of experts for 24/7 support—ARH's network is fully alive and kicking. The promise of providing an unparalleled experience as the most trusted home for healthcare is undoubtedly being fulfilled.



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To learn more about Kinetic Business, visit kineticbusiness.com

Case Study

Customer Experience Tops the Menu at Casual Eatery



When network outages and data security concerns threatened to damage a highly-recognizable casual dining brand's reputation, they knew that serious changes were necessary to bring the digital experience to life within their restaurants.

The Challenge

As successful restaurants today know, it's not just about the food anymore. Ultimately, people are going to the establishment to eat or drink, but more and more, customers view a restaurant's digital offerings as an appetizer to the overall guest experience.

The company's top priorities were protecting the brand, providing technology that would enhance the customer experience, and driving revenue. The responsibility for making these improvements fell to the IT team. With hundreds of locations across the country, the network consisted of multiple vendors and different technology that often lacked redundancy.

“Network outages became more frequent, consuming staff time and requiring expensive repairs. Moreover, dealing with multiple vendors made it nearly impossible for the help desk to assist employees or franchisees with any level of consistency.”

— IT Team
Casual Dining Restaurant Chain

The company had a vision to improve the guest experience by deploying a network that would enable real-time order entry and credit card transactions via servers' tablets, while also providing guest WiFi service. The solution had to include performance, security and resiliency to maximize uptime.

Customer at a glance

Industry

Casual dining restaurant

Customer Description

U.S. corporation/global franchise
300+ U. S. locations

Challenges

Frequent network outages
Multiple vendors
WiFi not meeting CX needs

Solutions

SD-WAN
Secure WiFi
Professional Services
MPLS & Broadband
Managed Network Security
UCaaS
Managed Switches

Results

Single-source provider
Increased network reliability and productivity
Improved performance, visibility and reporting



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The Solution

The IT team saw the answer in a streamlined, unified network managed by a single provider in which every restaurant was configured the same way. High-availability SD-WAN with dual access, MPLS and broadband was installed at each location with cloud-based firewalls to protect both WAN connections. The new network they now have is an active/active configuration with dynamic failover that virtually eliminates downtime. The SD-WAN solution also supports UCaaS (unified communications as a service) for a complete phone solution and Secure WiFi service.

In addition to the benefits that the actual technology and solution provided, the customer also was able to take advantage of our Professional Services offering. The Professional Services team took the time to understand business priorities before implementing a solution that included installation and cabling for phones and WiFi. Improvements to the customer's WiFi system have been critical to improving the guest experience. With WiFi, the restaurant captures important information and preferences about the guest by leveraging marketing analytics technology and can use that data to offer future rewards programs such as discounts and other perks for high-value customers.

The Results

The restaurant achieved the goal of one service provider to manage everything network related including issue management and ancillary equipment including switches and CPE. Having a single service provider ensured every restaurant was configured the same way, and the help desk now provides a consistent level of support.

The IT team is very pleased with the results. "SD-WAN has outperformed our expectations. Since implementing SD-WAN, we've seen network performance uptime improve dramatically, and we estimate that repair tickets have been reduced by about 90%." At the same time, the improved network function has freed the IT staff to shift from emergency network management and repairs to now focusing on strategic enhancements that utilize the new SD-WAN and WiFi capabilities to drive revenue and retain customers. They are also increasing their use of the cloud, with about 25% of their applications now cloud-based, and more are planned as they decommission collocated applications.



"SD-WAN has outperformed our expectations. Since implementing SD-WAN, we've seen network performance uptime improve dramatically, and we estimate that repair tickets have been reduced by about 90%."

— IT Team
Casual Dining Restaurant Chain

To learn more about Kinetic Business, visit kineticbusiness.com



Case Study

Credit Union Invests In Their Future



A Michigan-based credit union made it their mission to assist hard-working members in reaching their financial goals. With increased membership and new service offerings like online and phone banking, person-to-person payments and remote deposit capture, the credit union knew it was time to prepare the organization for the future. When their single-threaded MPLS network lacked the resiliency and bandwidth to support their innovation plans, the search was on to find a cost-effective solution.

The Challenge:

Like other financial institutions, our credit union customer counts on 100% network uptime to serve their customers in an efficient, always-on manner. So, when their network was down, they were effectively out of business at the affected locations. Although complete outages didn't happen often, the prospect of keeping their customers waiting for a fix—especially when finances are involved—was a major concern.

What's more, the organization had multiple IT and network vendors that made managing and fixing issues a real struggle for their small, six-member IT team. They needed a strong vendor to be their single point of contact to better streamline issues management.

Finally, the high-performing team had plans to introduce innovative new solutions, but knew they lacked the bandwidth to implement them.

“We were looking for a single point of contact for proven, cutting-edge technology. Their holistic solution fit the bill.”

— Chief Information Officer
Credit Union

Customer at a glance

Customer

Michigan-based credit union

Industry

Banking

Challenges

Lack of resiliency
Limited bandwidth
Multi-vendor management

Solutions

SD-WAN
Dual fiber & broadband connections
MNS Cloud solution

Results

Reduced network outages
Enhanced application performance
Single point of contact
Remote access for work from home employees



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The Solution:

After careful consideration of their options, the customer team decided to go with an SD-WAN solution in an active/active configuration, thanks to new dual fiber and broadband connections. Not only would the system reduce outages, but it would provide the bandwidth needed to support cloud-based applications and other new innovations the team had in the works.

Besides having access to the customer portal to monitor network performance, reporting and trouble ticketing, the customer also opted to deploy the MNS (Managed Network Security), which includes a remote access solution.

The Results:

The team reports that the SD-WAN solution has been extremely flexible and easy to deploy across their 15-location network. Furthermore, the customer is pleased that it enables them to get newly acquired branches up and running very quickly. When the credit union recently had a branch shut down, we were able to move the SD-WAN device to another branch, which had them up and running in less than 24 hours.

The new solution not only improves bandwidth and connectivity, but also provides a single point of contact within the organization to streamline issues management. Additionally, the customer portal allows their team to monitor and manage the network easily, and the MNS Cloud helped move the network security off their teams, allowing them to focus on other projects to improve customer experience.

As an added benefit, the solution performed well when the COVID-19 pandemic forced many members of the credit union to work from home.

The SD-WAN solution enabled their four open branches to stay connected as others worked remotely, and they were able to add video meetings without impacting bandwidth. The customer was also pleased with the VPN connection security powered by the MNS Cloud firewall protection.



“The SD-WAN solution provided the resiliency and bandwidth we needed to deliver a better customer experience.”

— Chief Information Officer
Credit Union

To learn more about Kinetic Business, visit kineticbusiness.com



Case Study

Empowering People Through Employment



When an outdated MPLS connection and constant network outages threatened to derail a Virginia-based multi-faceted enterprise's operations, they quickly realized new solutions were needed to continue empowering their employees.

The Challenge

To say this retail thrift store has a lot going on is an understatement: they are a large retail operation that sells donated items across several stores and regions, operates multiple employee centers, and runs training and support hubs across all of these locations.

The challenge for such a wide-reaching organization is to keep all their locations — including those with point-of-sale (POS) systems, time clock systems, video security and alarm systems, job training classrooms and traditional offices — up and running at acceptable speeds. A single-threaded MPLS network connection just wasn't cutting it. Frequent heavy traffic and "bandwidth starvation" meant unreliable service and outages across the network, resulting in lost sales, missed revenue, theft of products and no room for growth.

The Solution

To address their needs with their limited non-profit budget, the customer first looked at expanding their MPLS network to handle a heavier load. As expected, the solution was far too costly to implement, which led to his investigation of other solutions.

"Our network was suffering from bandwidth starvation. Performance of apps was lacking, and we were unable to support our innovation plans."

— VP Enterprise Support,
Non-profit retail chain

Customer at a glance

Industry

Retail

Customer Description

Virginia-based non-profit retail chain

Challenges

Limited bandwidth

Lack of resiliency

High costs

Solutions

SD-WAN

Dual fiber & broadband connections

MNS Cloud solution

Dynamic IP voice

Results

Expanded bandwidth

Improved resiliency

Reduced network outages

Enhanced application performance

Reduced costs



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We provided an SD-WAN solution, with dual broadband connections in an active/passive configuration, to replace the customer's legacy T1 MPLS network across 30+ retail locations, primary and secondary headquarter locations, and a community employment center.

The SD-WAN solution and dual broadband circuits help protect business-critical applications against outages. Many mission-critical apps were moved from their headquarters to cloud service provider, Azure, and our Cloud Connect was added for reliable and high-performance connectivity to these apps. The customer found the solution affordable, especially when compared to adding bandwidth to their old system.

The Results

The result gives the retail chain ample bandwidth to keep their existing apps running at peak performance while enabling many new apps. For example, they've now employed new distance learning via video that wouldn't have been possible with the previous MPLS network. Network outages are rare, and the customer portal allows their IT team to proactively monitor the system. However, at the end of the day, the customer is most impressed with the resiliency, reporting and cost savings.

Training for the future

Managed Network Security (MNS) continues to provide network security for the customer. Newly increased bandwidth allowed the remote VPN capabilities to support record numbers of employees working from home during the COVID-19 pandemic.

And while Dynamic IP continues to provide the organization's telephone services, the customer reports that an eventual migration to our Unified Communications solution (UCaaS) is a future roadmap item.



“Their solution has delivered the bandwidth and performance we need to efficiently run our business. And the accountability and responsiveness of the support team has been excellent.”

— VP, Enterprise Support,
Non-profit retail chain

To learn more about Kinetic Business, visit kineticbusiness.com



VALUE ADD

Provide any additional information related to products and services Offeror proposes to enhance and add value to the Contract.

Windstream has a significant solution portfolio and will work directly with the Key Stakeholders to determine which products and/or services are needed by the Texas community of customers. Pricing will be determined based on volume commitment, with a “Not to Exceed Pricing” rate.

Solution Offerings:

Network & Connectivity

- *SD-WAN*
- *Hybrid Networking*
- *Cloud Connect*
- *Switched Ethernet*
- *Internet*
- *Wavelength Services*
- *Fixed Wireless*
- *LAN Services*

UC & Voice

- *OfficeSuite UC*
- *OfficeSuite HD Meeting*
- *UCaaS*
- *CCaaS*
- *Voice Services*

Security & Compliance

- *Firewall Services*
- *DDoS Mitigation Service*
- *PCI Compliance*

Professional Services

- *Network, Security & Compliance*
- *Installation Support*
- *PCI Lifecycle Management*
- *Retail IT & Business Consulting*
- *Cloud Vendor Selection*

OfficeSuite UC[®]



Empower IT and employees to **manage communications and collaboration services** via our intuitive WE Connect portal



Improve employee productivity with cloud-based tools and integration with business-critical applications like SFDC and Microsoft Teams



Enable employees with flexibility to work anywhere by connecting with voice, video and content sharing using any device



Ensure performance and continuity with a redundant, high-availability platform supported by our Cloud-Core™ network architecture



Future-proof your communications with a flexible solution that scales to support growth with continuous upgrades



Secure communications to help you meet business compliance requirements, including SOC Type 2 and HIPAA

Gartner.

2020/2019 Gartner Magic Quadrant for Unified Communications as a Service, Worldwide

With OfficeSuite UC[®], Windstream continues to show our commitment to innovation and enterprise capabilities. For the second consecutive year, Gartner has included Windstream in the Magic Quadrant for Unified Communications as a Service, Worldwide report.

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Windstream is also including in the Value Add, our very own Unified Communications solution called OfficeSuite UC, which has HD video meeting for a “Virtual Classroom” experience for one low cost.

Nationwide Cloud-Optimized Network

Next Generation Network purpose built to support Cloud services and applications

- + Nationwide, cloud-enabled architecture—Cloud Core™—delivers maximum application visibility and control, optimizing the end-user experience:
- + From the customer's location to the applications source
- + Dynamic programmable network leverages SDN
- + ~170K+ fiber route miles
- + 50+ fixed wireless markets
- + 16K+ lit buildings
- + Last mile access throughout the U.S. and Canada either directly connected to network or through "blended" solutions



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Windstream is powering our users to move to the Cloud, with major Internet Point of Presense (POP) in the State of Texas. We enable direct connectivity to the educational and application content providers throught the United States with our Nationwide Cloud-Optimized Network. Cloud Service Providers (CSP) with Highly secure, private access to all leading CSPs such as Amazon Web Services (AWS), Microsoft Azure, IBM Cloud, Google Cloud, Oracle and Salesforce.

Moving business to the Cloud



WE Connect/My WIN

- + Centralized management
- + Real-time visibility
- + Any time, anywhere, any device digital experience
- + Single sign-on



Professional Services

- + Network and security assessments
- + Compliance audits
- + PCI lifecycle management
- + Project management
- + Structured cabling



SD-WAN

- + Application optimization
- + Next-gen security
- + Flexible connectivity
- + Network diversity and redundancy
- + Concierge managed service
- + Cloud Connect



OfficeSuite UC, UCaaS/CCaaS

- + Seamless collaboration any time, anywhere, on any device
- + Easy to use and manage
- + Reliable and scalable cloud-based UC offerings
- + HD video conferencing



Managed Security

- + Comprehensive firewall solutions
- + Unified Threat Management (UTM)
- + SIEM threat monitoring and log retention
- + Secure Remote Access
- + DDoS Mitigation
- + PCI Compliance



Managed WAN/LAN

- + MPLS VPN and Internet with multiple access options
- + Managed Router and Advanced Application Reporting (AAR)
- + Managed WiFi access points, switches and cameras

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2020/2019 Gartner Magic Quadrant for Unified Communications as a Service, Worldwide **Gartner**

Industry recognition



UC/Voice

- + 2021 TMC Product of the Year Award for Unified Communications
- + 2021 Cloud Computing Product of the Year Award: OfficeSuite UC®
- + 2021 TMC Product of the Year Award for Contact Center as a Service (CCaaS)
- + 2021 TMC INTERNET TELEPHONE Product of the Year Award: OfficeSuite UC®
- + 2020 MWA Partner of the Year Americas
- + 2020 TMC INTERNET TELEPHONE Excellence Award for OfficeSuite UC® with OfficeSuite HD Meeting®
- + 2020 TMC INTERNET TELEPHONE Excellence Award for IP Communications Solutions
- + 2020 GOLD STEVE® Telecommunications Service: OfficeSuite UC®
- + 2020 MWA Service Provider of the Year Award for Continued UCaaS Leadership
- + 2020 TMC Customer of the Year Award for Contact Center as a Service (CCaaS)
- + 2020/2019 Gartner Magic Quadrant for Unified Communications as a Service, Worldwide
- + 2020/2019 TMC INTERNET TELEPHONE OfficeSuite UC® Product of the Year Award
- + 2019 Recognized as "A Leader" on the IHS Markit UCaaS Scorecard
- + 2019/2018 TMC INTERNET TELEPHONE Unified Communications Excellence Award
- + 2019/2018 TMC Unified Communications Product of the Year Award

Network Solutions

- + 2021 SILVER STEVE® Software Defined Infrastructure: SD-WAN
- + 2021 TMC INTERNET TELEPHONE Product of the Year Award: SD-WAN
- + 2020 Frost & Sullivan SD-WAN Innovation and Growth Leader
- + 2020 MET 3.0 SD-WAN Services Certification
- + 2020 TMC INTERNET TELEPHONE Product of the Year: SD-WAN
- + 2019 Forrester Partner of the Year
- + 2019 MET SD-WAN Provider of the Year Award: North America
- + 2019 TMC INTERNET TELEPHONE Product of the Year: Switched Ethernet DDoS Mitigation
- + 2019/2018 TMC INTERNET TELEPHONE SD-WAN Concierge™ Product of the Year

Digital Experience

- + 2021 BRONZE STEVE® Mobile Operations Management Solution: WE Connect
- + 2020 SILVER STEVE® IT Service Management Solution: WE Connect Insight Engine
- + 2019 GOLD STEVE® IT Service Management Solution: WE Connect

Corporate/Partner

- + 2021 TMC Chief Remote Worker Pioneer Award
- + 2020 ChannelVision Visionary Spotlight Award
- + 2019/2018 Always Innovation Partner of the Year



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OfficeSuite UC[®]



Empower IT and employees to **manage communications and collaboration services** via our intuitive WE Connect portal



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2020/2019 Gartner Magic Quadrant for Unified Communications as a Service, Worldwide

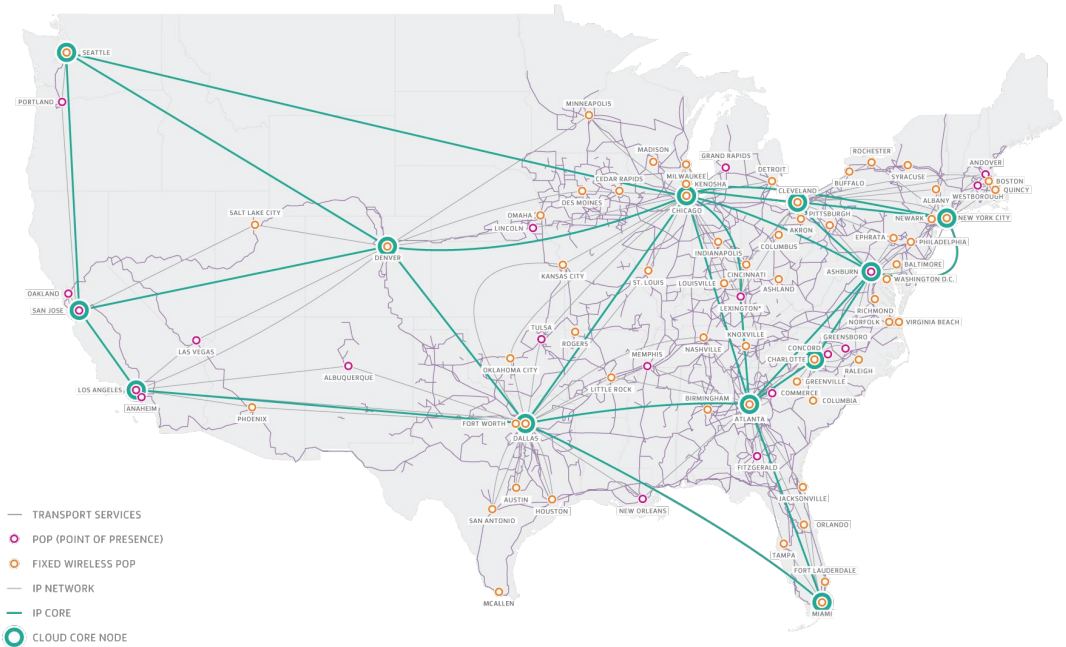
With OfficeSuite UC[®], Windstream continues to show our commitment to innovation and enterprise capabilities. For the second consecutive year, Gartner has included Windstream in the Magic Quadrant for Unified Communications as a Service, Worldwide report.



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Moving business to the Cloud

WE Connect/My WIN



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SD-WAN

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- + Next-gen security
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- + Concierge managed service
- + Cloud Connect



OfficeSuite UC, UCaaS/CCaaS

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- + 2020 Mitel Partner of the Year Americas
- + 2020 TMC INTERNET TELEPHONY Excellence Award for OfficeSuite UC® with OfficeSuite HD Meeting®
- + 2020 TMC INTERNET TELEPHONY Excellence Award for IP Communications Solutions
- + 2020 GOLD STEVIE® Telecommunications Service: OfficeSuite UC®
- + 2020 Mitel Service Provider of the Year Award for Continued UCaaS Leadership
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Network Solutions

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- + 2020 Frost & Sullivan SD-WAN Innovation and Growth Leader
- + 2020 MEF 3.0 SD-WAN Services Certification
- + 2020 TMC INTERNET TELEPHONY Product of the Year: SD-WAN
- + 2019 Fortinet Partner of the Year
- + 2019 MEF SD-WAN Provider of the Year Award, North America
- + 2019 TMC INTERNET TELEPHONY Product of the Year: Switched Ethernet, DDoS Mitigation
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Digital Experience

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- + 2020 SILVER STEVIE® IT Service Management Solution: WE Connect Insight Engine
- + 2019 GOLD STEVIE® IT Service Management Solution: WE Connect

Corporate/Partner

- + 2021 TMCnet Remote Worker Pioneer Award
- + 2020 ChannelVision Visionary Spotlight Award
- + 2019/2018 Avaya Innovation Partner of the Year



INTERNET SECURITY



KINETIC SECURE

Kinetic Secure by Windstream is award-winning Internet security that lets your family surf safely at home or on the go. Plus, you can take control of your Wi-Fi network and create a healthy online environment for children with content filters and online time limits. It's total protection for all of your family and all of your devices.

Features include:

- **Enhanced Internet Security** with parental controls and device protection at home and on the go
- **MyWin App** to easily manage your home Wi-Fi
- **Premium Technical Support** for enhanced connectivity and technical support
- **Identity Theft Protection** with monitoring of personal info and credit

AND MUCH MORE



Be connected and protected with Kinetic Secure by Windstream.
It's total protection for all your family and all your devices.



BLOCK

Dangerous viruses, malware and ransomware



SECURE

Your online identity, data and transactions



DEFEND

Your family from cybercrime



MANAGE

Wi-Fi usage and content in your home



SUPPORT

Your devices and connectivity with your very own virtual personal IT department



connect
secure

\$9.99

- Internet security
- Internet Security On-The-Go
- Premium Technical Support



self
secure

\$11.99

- Identity Theft Protection
- Premium Technical Support

BEST VALUE



total
secure

\$14.99

- Internet Security
- Internet Security On-The-Go
- Identity Theft Protection
- Premium Technical Support
- In Home Wire Maintenance Protection

All packages include:



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Kinetic SECURE Packs: Must subscribe to select plans to qualify. Additional restrictions may apply. **Premium Technical Support:** Requires a valid, licensed copy of Windows XP SP2 or higher. Customer's computer must have a minimum 256 MB RAM and minimum 500Mhz processor. **Identity Theft Protection:** Windstream works with Credit Guard to provide this service. Windstream reserves the right to alter or discontinue this plan at any time. Other conditions may apply. Subject to Windstream terms and conditions and any terms and conditions from Credit Guard provided to customer. **Internet Security:** Requires installation, registration and access to MyWIN mobile app. **Internet Security on the Go:** Requires installation, registration and access to Internet Security on the Go mobile app. Windstream partners with F-Secure for Internet Security. Visit https://www.f-secure.com/en_US/web/legal/terms/software for all terms and conditions and https://www.f-secure.com/en_US/web/legal/privacy/safe for the privacy policy. Windstream reserves the right to alter the services in any way, including but not limited to changing the third-party vendor, or discontinuing the services at any time. Contact a Windstream representative for details. © 2020 Windstream Services, LLC. All rights reserved. Kinetic and Windstream are registered service marks or trademarks of Windstream Services, LLC. and/or its affiliates. All other marks are the property of their respective owners.

KINSEC 09/20

Keep your family's internet experience a safe one. Count on Kinetic.



Stay Safe Online

Technology and the Internet have drastically changed how we interact with the world. We have a wealth of knowledge and entertainment at our fingertips, 24 hours a day and 7 days a week. This is especially true for children and teens. While the Internet is a fantastic tool for learning, gaming and connecting with friends, it does come with some risks. Here are some suggestions on how to keep your kids' Internet usage fun, educational and safe.

Cyberbullying – Cyberbullying is bullying or harassment that happens online. It can happen by email, text message, games or social networking. It's important to talk to kids about cyberbullying and let them know not to respond to rude messages or comments. If the harassment is via email or social media, help your child to block bullies or create new accounts. If it is via text or phone messages, work with your provider to change phone numbers or block specific numbers.

Online predators – All children, even those from supportive and involved families, are at risk for being victimized. Parents should encourage children to come forward immediately if anyone makes him or her feel uncomfortable online or makes overtures about meeting in person. Parents should also watch for signs that an online predator may be connecting with your child, such as the child becoming withdrawn, receiving gifts from unknown people or finding any inappropriate materials on the computer.

Revealing personal information – Identity theft can happen to anyone, even a child. Social security numbers can be used to apply for benefits, open credit card accounts, apply for a loan or even rent a place to live. It's important for parents to warn children about sharing information such as social security numbers, debit/credit card numbers and even passwords and account numbers. Parents may want to periodically check credit reports to ensure that a child's information is not being misused.

Exposure to inappropriate material – Children do not have to look very hard to find inappropriate material online. It's as simple as typing a word into a search bar. Adult supervision and monitoring is key to ensuring that children do not come into contact with inappropriate materials. Installing blocking software is important, but certainly cannot overcome everything that a child may find online. Above all, parents should start with having open and honest conversations with children about what content they are allowed to access.

Regardless of what children are using the Internet for, there are some basic tips that can help to protect them from these risks.

- ✓ Keep the computer in a high-traffic area of the home
- ✓ Establish limits for which sites to visit and for how long
- ✓ Remember to monitor mobile devices
- ✓ Participate in online surfing with your children to monitor what they are doing
- ✓ Know who your children are interacting with online by monitoring social media

By staying aware of the risks and having open conversations about these risks with the children in your home, you can ensure that your family stays safe. Kinetic by Windstream has solutions for staying secure and protected online. Visit Windstream.com/Secure to learn more.

Stay SAFE Online

At Kinetic by Windstream we care about your safety. Below are some terms and tips to help you stay safe on the Internet.

Cybercrime

Cybercrime is when someone steals your information, money or identity.



Passwords

Passwords are used to protect you from Cybercrime. Keep your password safe. Don't tell anyone what your password is other than a trusted adult.

Social Media

Social Media can be fun. Apps like Facebook, Instagram, Twitter, Pinterest, Tic Toc and Snapchat allow you to talk with friends, share photos and play games.

Don't share information like your name or address with anyone you don't know.






Don't accept "friend" requests from someone you don't know.

Don't share photos with strangers. And make sure you would be okay with everyone seeing the photos you post. Once it's on the Internet, there is no getting it back.







Cyberbullying

Cyberbullying can be very hard to deal with if you are the target of the bully. Some examples are below:

-  Sending mean or threatening emails, instant messages, text messages or comments in social media
-  Excluding someone from a group chat or group text for no reason other than to be mean
-  Tricking someone into revealing embarrassing information and sending it to others
-  Breaking into someone else's email account and pretending to be them while sending cruel or untrue messages
-  Creating a website that makes fun of others such as a classmate or teacher



Do NOT respond to a Cyberbully. They want you to respond. Don't give them the satisfaction. And don't become a cyberbully yourself, instead do the following:

-  Save the evidence of the cyberbullying and report them to parent or teacher.
-  Be relentless. Keep reporting each and every bullying incident until it stops.
-  Prevent communication from the cyberbully, by blocking their email address, cell phone number, and deleting them from social media contacts.
-  Don't blame yourself. It is not your fault. No matter what a cyberbully says or does, you should not be ashamed of who you are or what you feel. The cyberbully is the person with the problem, not you.

For More Safety Tips Go To:

netsmartzkids.org

sos.fbi.gov

Be Safe. Have Fun.

Draw a line to SAFE or UNSAFE for these activities.

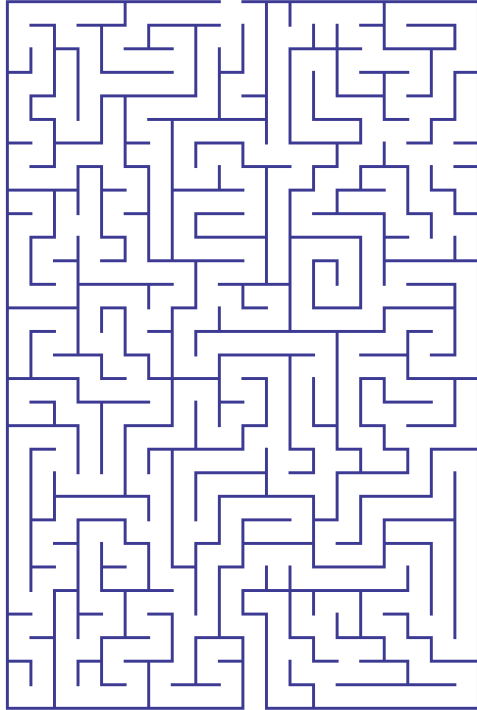


- I can look up information for my homework
- I can tell people where my house is located
- I can tell people online that I have a dog named Tiger
- I can share that I like to play soccer
- I can share my first and last name online
- I can chat with people I don't know
- I can tell an adult if I feel uncomfortable online
- I can use a nickname instead of my own name
- I can help my family and friends learn about technology
- I can go to websites adults have said I can go to
- I can tell people that I am 9 years old
- I can let my friends use my username and password to sign online



"LIKE" THE PHOTOS MAZE

START



FINISH



INTERNET SAFETY PERMIT

- I will not share my personal information with others online
- I will not ask others for their personal information
- I will not click on inappropriate pop ups or ads
- If anything inappropriate comes up on my electronic device or computer, i will turn it off and get an adult
- I know that anything i put online will never go away
- I know that what i read online is not always true
- I know that my parents can see everything i access online
- I will not cyber bully or encourage cyber bullying. i will tell an adult if myself or someone else is a victim of cyber bullying
- I will be responsible and make good choices while using electronic devices, computers, and the internet

SIGNATURE



Appendix C
ADDITIONAL REQUIRED DOCUMENTS

- DOC #1 Acknowledgment and Acceptance of Region 4 ESC's Open Records Policy
- DOC #2 Antitrust Certification Statements (Tex. Government Code § 2155.005)
- DOC #3 Implementation of House Bill 1295 Certificate of Interested Parties (Form 1295)
- DOC #4 Texas Government Code 2270 Verification Form

ACKNOWLEDGMENT AND ACCEPTANCE
OF REGION 4 ESC's OPEN RECORDS POLICY

OPEN RECORDS POLICY

All proposals, information and documents submitted are subject to the Public Information Act requirements governed by the State of Texas once a Contract(s) is executed. If an Offeror believes its response, or parts of its response, may be exempted from disclosure, the Offeror must specify page-by-page and line-by-line the parts of the response, which it believes, are exempt and include detailed reasons to substantiate the exemption. Price is not confidential and will not be withheld. Any unmarked information will be considered public information and released, if requested under the Public Information Act.

The determination of whether information is confidential and not subject to disclosure is the duty of the Office of Attorney General (OAG). Region 4 ESC must provide the OAG sufficient information to render an opinion and therefore, vague and general claims to confidentiality by the Offeror are not acceptable. Region 4 ESC must comply with the opinions of the OAG. Region 4 ESC assumes no responsibility for asserting legal arguments on behalf of any Offeror. Offeror is advised to consult with their legal counsel concerning disclosure issues resulting from this procurement process and to take precautions to safeguard trade secrets and other proprietary information.

Signature below certifies complete acceptance of Region 4 ESC's Open Records Policy, except as noted below (additional pages may be attached, if necessary).

Check one of the following responses to the Acknowledgment and Acceptance of Region 4 ESC's Open Records Policy below:

- We acknowledge Region 4 ESC's Open Records Policy and declare that no information submitted with this proposal, or any part of our proposal, is exempt from disclosure under the Public Information Act.
- We declare the following information to be a trade secret or proprietary and exempt from disclosure under the Public Information Act.

(Note: Offeror must specify page-by-page and line-by-line the parts of the response, which it believes, are exempt. In addition, Offeror must include detailed reasons to substantiate the exemption(s). Price is not confident and will not be withheld. All information believed to be a trade secret or proprietary must be listed. It is further understood that failure to identify such information, in strict accordance with the instructions, will result in that information being considered public information and released, if requested under the Public Information Act.)

May 13, 2021

Date

President - Strategic Accounts
Authorized Signature & Title

ANTITRUST CERTIFICATION STATEMENTS
(Tex. Government Code § 2155.005)
Attorney General Form

I affirm under penalty of perjury of the laws of the State of Texas that:

1. I am duly authorized to execute this Contract on my own behalf or on behalf of the company, corporation, firm, partnership or individual (Company) listed below;
2. In connection with this proposal, neither I nor any representative of the Company has violated any provision of the Texas Free Enterprise and Antitrust Act, Tex. Bus. & Comm. Code Chapter 15;
3. In connection with this proposal, neither I nor any representative of the Company has violated any federal antitrust law; and
4. Neither I nor any representative of the Company has directly or indirectly communicated any of the contents of this proposal to a competitor of the Company or any other company, corporation, firm, partnership or individual engaged in the same line of business as the Company.

Company

Windstream Services, LLC
on behalf of itself and its
Affiliates

Contact

Signature

Vince Marletta

Printed Name

Account Director, Kinetic Business Select
Position with Company

Address

130 W New Circle Road, Ste. 170
Lexington, KY 40505

**Official
Authorizing
Proposal**

Signature

Jeff Lowney

Printed Name

President - Strategic Accounts
Position with Company

Phone

859-357-6040 office
859-229-5600 mobile

Fax

Implementation of House Bill 1295

Certificate of Interested Parties (Form 1295):

In 2015, the Texas Legislature adopted House Bill 1295, which added section 2252.908 of the Government Code. The law states that a governmental entity or state agency may not enter into certain contracts with a business entity unless the business entity submits a disclosure of interested parties to the governmental entity or state agency at the time the business entity submits the signed contract to the governmental entity or state agency. The law applies only to a contract of a governmental entity or state agency that either (1) requires an action or vote by the governing body of the entity or agency before the contract may be signed or (2) has a value of at least \$1 million. The disclosure requirement applies to a contract entered into on or after January 1, 2016.

The Texas Ethics Commission was required to adopt rules necessary to implement that law, prescribe the disclosure of interested parties form, and post a copy of the form on the commission's website. The commission adopted the Certificate of Interested Parties form (Form 1295) on October 5, 2015. The commission also adopted new rules (Chapter 46) on November 30, 2015, to implement the law. The commission does not have any additional authority to enforce or interpret House Bill 1295.

Filing Process:

Starting on January 1, 2016, the commission made available on its website a new filing application that must be used to file Form 1295. A business entity must use the application to enter the required information on Form 1295 and print a copy of the completed form, which will include a certification of filing that will contain a unique certification number. An authorized agent of the business entity must sign the printed copy of the form. The completed Form 1295 with the certification of filing must be filed with the governmental body or state agency with which the business entity is entering into the contract.

The governmental entity or state agency must notify the commission, using the commission's filing application, of the receipt of the filed Form 1295 with the certification of filing not later than the 30th day after the date the contract binds all parties to the contract. This process is known as acknowledging the certificate. The commission will post the acknowledged Form 1295 to its website within seven business days after receiving notice from the governmental entity or state agency. The posted acknowledged form does not contain the declaration of signature information provided by the business.

A certificate will stay in the pending state until it is acknowledged by the governmental agency. Only acknowledged certificates are posted to the commission's website.

Electronic Filing Application:

https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm

Frequently Asked Questions:

https://www.ethics.state.tx.us/resources/FAQs/FAQ_Form1295.php

Changes to Form 1295: <https://www.ethics.state.tx.us/data/filinginfo/1295Changes.pdf>

Texas Government Code 2270 Verification Form

House Bill 89 (85R Legislative Session), which adds Chapter 2270 to the Texas Government Code, provides that a governmental entity may not enter into a contract with a company without verification that the contracting vendor does not and will not boycott Israel during the term of the contract.

Furthermore, Senate Bill 252 (85R Legislative Session), which amends Chapter 2252 of the Texas Government Code to add Subchapter F, prohibits contracting with a company engaged in business with Iran, Sudan or a foreign terrorist organization identified on a list prepared by the Texas Comptroller.

I, Jeff Lowney, President - Strategic Accounts, as an authorized representative of

Windstream Services, LLC on behalf of itself and its Affiliates, a contractor engaged by

Insert Name of Company

Region 4 Education Service Center, 7145 West Tidwell Road, Houston, TX 77092, verify by this writing that the above-named company affirms that it (1) does not boycott Israel; and (2) will not boycott Israel during the term of this contract, or any contract with the above-named Texas governmental entity in the future.

Also, our company is not listed on and we do not do business with companies that are on the Texas Comptroller of Public Accounts list of Designated Foreign Terrorists Organizations found at <https://comptroller.texas.gov/purchasing/docs/foreign-terrorist.pdf>.

I further affirm that if our company's position on this issue is reversed and this affirmation is no longer valid, that the above-named Texas governmental entity will be notified in writing within one (1) business day and we understand that our company's failure to affirm and comply with the requirements of Texas Government Code 2270 et seq. shall be grounds for immediate contract termination without penalty to the above-named Texas governmental entity.

I swear and affirm that the above is true and correct.

Signature of Named Authorized Company Representative

May 13, 2021
Date



7145 West Tidwell Road ~ Houston, Texas 77092
(713)-462-7708
www.esc4.net

NOTICE TO OFFEROR

ADDENDUM NO. 1

Solicitation Number 21-08

Request for Proposal (“RFP”)
by

Region 4 Education Service Center (“ESC”)
for

Internet Service Provider for TEA Connect Texas Program

SUBMITTAL DEADLINE: Tuesday, May 18, 2021, 10:00 AM CENTRAL TIME

This Addendum No. 1 amends the Request for Proposals (RFP) for Internet Service Provider for TEA Connect Texas Program (“Addendum”). To the extent of any discrepancy between the original RFP and this Addendum, this Addendum shall prevail.

Region 4 Education Service Center (“Region 4 ESC”) requests proposals from qualified suppliers with the intent to enter into a Contract for Internet Service Provider for TEA Connect Texas Program. Addendum No. 1 is hereby issued as follows:

1. **Question Deadline:** The question submittal deadline for this RFP is hereby changed from April 21, 2021 to be extended as indicated below:
 - Wednesday, May 5, 2021

Questions regarding this RFP must be submitted in writing to Crystal Wallace, Business Operations Specialist, at questions@esc4.net no later than May 5, 2021. All questions and answers will be posted to <https://www.esc4.net/services/purchasing/region-4-omnia-solicitations>. Offerors are responsible for viewing the website to review all questions and answers prior to submitting proposals. Oral communications concerning this RFP shall not be binding and shall in no way excuse an Offeror of the obligations set forth in this proposal.

2. **Submittal Deadline:** The submittal deadline for this RFP is hereby changed from Tuesday, May 4, 2021 @ 10:00 AM Central Time and extended as indicated below and above:
 - Tuesday, May 18, 2021 @ 10:00 AM Central Time

RECEIPT OF ADDENDUM NO.1 ACKNOWLEDGEMENT

Offeror shall acknowledge this addendum by signing below and include in their proposal response.

Company Name Windstream Services, LLC on behalf of itself and its Affiliates

Contact Person Vince Marletta

Signature

April 22, 2021

Date

DocuSigned by:
Vince Marletta
CEF4294956F34AF...

Crystal Wallace
Region 4 Education Service Center
Business Operations Specialist

KINETIC BUSINESS BY WINDSTREAM SERVICE TERMS AND CONDITIONS

Together with the Service Agreement and any document incorporated by reference herein, these terms (“Agreement”) apply to all telecommunications and related services (“Services”) provided to Customer by the Windstream affiliate billing Customer (“WIN”).

1. **Term and Renewal.** This Agreement is effective on the date identified on the Service Agreement (“Effective Date”) and will continue for the term set forth in the Service Agreement from the last date that Services are installed (the “Term”). Upon expiration of the Term, this Agreement will automatically renew for successive one-year terms (each, a “Renewal Term”) and WIN reserves the right to increase rates to its then-current rates. If this Agreement is a renewal, it may take one to two billing periods for the rates herein to become effective.
2. **Charges for Services.** Charges are set forth on the Service Agreement or assessed as Services are used by Customer (i.e., features, installation/repair, including after-hours installation, long distance (rounded up to next cent), etc.). Customer is responsible for all permissible taxes, surcharges, fees, and assessments that apply to Services, including how those may change in the future, and regardless of whether such charges are identified in the Agreement. Customer shall pay all charges if WIN or a third party provider is required to extend the demarcation point, delay installation due to Customer, or undertake special construction. **WIN RESERVES THE RIGHT TO INCREASE OR DECREASE MONTHLY RECURRING CHARGES (“MRCS”) ON AT LEAST THIRTY (30) DAYS’ NOTICE AND OTHER RATES AT ANY TIME.**
3. **Installation.** Customer must provide an environment that is suitable for the Services, including equipment that is compatible with WIN’s network. Unless otherwise agreed in writing by WIN, Customer is responsible for obtaining access to Customer’s premises for WIN to install Services/perform maintenance and WIN will not enter into any agreements with Customer’s landlord or other third parties to obtain same. Customer is solely responsible for disconnecting Services with its current service provider to avoid duplicated charges after Service installation. For fixed wireless Services, unless otherwise agreed in writing by WIN, Customer has the additional material obligations to: (a) obtain "roof rights" and make available all evidence of same to WIN; (b) provide space for WIN equipment at the Service locations, no further than three hundred (300) feet from Customer's router or switch interface; and, (c) provide internal building conduit to allow WIN the ability to rod/rope to the point of demarcation. WIN shall not be liable for any reasonable alterations or necessary work to the Service locations that are required for installation and removal of WIN equipment.
4. **Billing and Payment; Disputes.** Installation occurs and billing at a location begins on the earlier of (i) the date WIN makes Services available to Customer for its use (which may be the date administrative access to certain software-based Services is granted to Customer); or (ii) the date that Service would have been available for use by Customer if Customer had fulfilled its obligations required to provision and install the Service. Bills are issued monthly and are late if not paid by the due date reflected on the invoice. Customer is responsible for paying all costs and fees WIN incurs as a result of collecting Customer's unpaid and resolved disputed charges. WIN may choose to bill in full monthly increments with no proration for partial service periods when Service either starts or ends in the middle of a billing cycle. WIN may accept payments marked “payment in full” or being in settlement of any dispute without waiving any rights it has to collect in full. If full payment is not received for undisputed charges in immediately available funds, WIN will add collection and late fees. In certain service areas, paper bills are available only upon request and for a monthly charge. WIN reserves the right to charge a fee for payments made by credit card. To dispute charges, Customer must do so in good faith and deliver to WIN in writing the specific basis for such dispute within sixty (60) days after the date on the invoice or the dispute shall be deemed waived.
5. **Credit and Deposits.** Customer authorizes WIN to ask credit-reporting agencies for Customer’s credit information. WIN may either refuse to serve Customer based on such credit information or require Customer to submit an initial security deposit and/or advance payment or if Customer increases Services, is late on payment, or its credit rating changes. Any deposit will be refunded if not applied by WIN to any unpaid amount.
6. **Moves.** If Customer moves, it must provide at least ninety (90) days’ advance written notice and pay applicable installation charges and increased monthly service charges for the new location. If WIN cannot serve the new location, cannot install Service at the new location due to Customer’s failure to provide enough notice, or Customer terminates due to the move, cancellation charges or liquidated damages pursuant to Sec. 11 shall apply.
7. **WIN-Provided and Owned Equipment; Customer Equipment Compatibility.** Any equipment owned and installed by WIN on Customer’s premises remains the property of WIN. Equipment shall remain in good condition and be reasonably protected by Customer from theft and damage, less normal wear and tear. WIN shall be responsible for the maintenance and repair of the equipment unless it is damaged as a result of the action or inaction of Customer or its employees or agents, in which case Customer shall reimburse WIN for the cost of any necessary repairs. WIN reserves the right to refuse to perform any installation or repair work and may, when necessary, charge Customer for interior or exterior cable or wiring to complete the installation or repairs at WIN’s then current hourly rates. Customer shall provide WIN reasonable access to the equipment for purposes of repair, maintenance, removal or otherwise. If WIN does not have access to Customer’s premises within thirty (30) days after Customer terminates this Agreement, or if WIN requires Customer to return the equipment and Customer does not return the equipment to WIN within thirty (30) days of termination or it is returned damaged (during shipping or otherwise), Customer shall reimburse WIN for the replacement cost of the equipment plus processing and shipping fees, as well as any attorney’s fees and costs to collect. Customer’s equipment, software, cables or hardware attached to WIN equipment or WIN’s network is solely the responsibility of Customer and must be compatible with and not cause any interference on WIN’s network.
8. **WIN-Provided Software.** Software and its documentation provided as part of Services and Equipment or otherwise provided by WIN to Customer shall be used by Customer solely as part of the Services and for no other purpose and Customer acknowledges and agrees that the Software is the exclusive property of WIN or a third-party licensor. Customer may be required to provide WIN with evidence that its use of the software is in compliance with this Agreement and/or third-party software licensor's terms. Customer agrees it will not: (i) use or make any copies of the software, or install the software on more than one computer at a time; (ii) reverse engineer, decompile, or disassemble the software; (iii) sell, resell, transfer, license, sublicense, distribute the software or otherwise allow third parties to access to use the software; or (iv) create, write, or develop any derivative software or other software program that is based on such software.
9. **Use of Services; Restricted Calling Services; HIPAA Compliance.** Customer and/or anyone acting through it may not resell Services or use Services for: (a) traffic aggregation; (b) its own end users and/or customers as a telecommunications or any other kind of provider; (c) sending WIN calls that originate from a location other than the local calling area associated with the Customer’s service location; or (d) sending WIN large

volumes of calls from or to areas that are high-cost (areas with access costs greater than regional Bell operating company access costs) or to a toll-free number. Additionally, no more than ten percent (10%) of Customer's calls may be six (6) seconds or less and/or no more than forty percent (40%) of call attempts may be uncompleted per trunk group and/or DS0/DS0 equivalent. For violations of this Section, WIN may: (w) immediately terminate Services; (x) charge Customer long-distance charges and an additional price per minute; (y) charge Customer any additional amounts necessary to recoup WIN's administrative costs and charges from other carriers; and/or, (z) require Customer to pay for the excessive use immediately and make a deposit.

a. Restricted Calling Services. WIN will restrict international long distance and 900/976 calling functionality ("Restricted Calling Services") from Customer's account originating on the WIN-provided Service and will only restore such functionality upon request by an authorized representative of Customer. In the event Customer requests restoration of such functionality, Customer agrees and acknowledges that it is liable for all charges associated with the Restricted Calling Services dialed from Customer's premises or through the use of Customer's WIN account access and/or calling card codes, regardless of whether such use is: (i) authorized by Customer management, (ii) initiated by Customer employees or third parties, or (iii) constitutes or involves frequent activity of any nature. Customer agrees that WIN assumes no liability of any kind with respect to its providing access to Restricted Calling Services via connections from Customer premises and locations where Customer uses WIN Services. Customer shall indemnify, defend and hold harmless WIN against any and all claims made by the third party provider of Restricted Calling Services. Customer acknowledges that, pursuant to government regulation, failure to make proper payment to third party vendors of Restricted Calling Services could result in suspension or interruption of long distance and/or local services provided by WIN, and WIN assumes no liability of any kind with respect to such potential service suspensions or interruptions.

b. HIPAA Compliance. Customer is responsible for informing WIN in writing if: (i) Customer is a Covered Entity or Business Associate (both as defined in the Health Insurance Portability and Accountability Act of 1996 ("HIPAA")); and (ii) Customer Content includes Protected Health Information ("PHI") (as defined in HIPAA). If Customer notifies WIN that it is a Covered Entity or Business Associate and that Customer Content includes PHI, and WIN determines that, based on such notification, it is rendered a Business Associate, then the parties will execute WIN's Business Associate Agreement. If Customer does not so notify WIN, then WIN will have no obligation to provide the Services in compliance with HIPAA.

10. Termination. Either party may terminate this Agreement by providing at least forty-five (45) days' notice prior to the end of the initial Term or a Renewal Term, or if the other party is in breach of any material provision of this Agreement and fails to cure within forty-five (45) days after written notice (or after ten (10) days' notice for nonpayment). Customer's right to terminate for breach applies to the affected location and/or Services only. WIN may limit, interrupt, suspend or terminate Services IMMEDIATELY if Customer or others acting through Customer: (a) use the Services in violation of Sec. 9; (b) use the Services in a manner that affects WIN's network or other customers, (c) use the Services fraudulently or unlawfully; (d) use the Services in an excessive, abusive, or unreasonable manner that is not customary for the type of Services; or, (e) use the Services in a manner that may cause or is causing an imminent and significant operational, financial, or security risk; or, (f) impersonates another person, uses obscene or profane language or is abusive to or harassing WIN representatives and fails to stop such behavior after receiving a written or verbal warning. After termination due to breach, WIN may restore Service if Customer corrects any breach and pays all outstanding amounts owed, including restoration charges. In addition to these termination rights, if WIN determines that providing Services is not economically or technically feasible or because underlying facilities leased from third parties are no longer available to WIN due to legal/regulatory changes, WIN has the right to terminate this Agreement either prior to installation or on sixty (60) days' notice after installation. Windstream 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.

11. Effect of Termination.

a. Pre-Installation- If Customer terminates this Agreement due to any reason other than WIN's material breach or if WIN terminates this Agreement due to Customer's material breach after the Effective Date but prior to the installation of Service(s), Customer will pay WIN a Pre-Installation Cancellation Charge ("Cancellation Charge") equal to three (3) months of MRCs except that if WIN's costs to other providers are greater than this amount, Customer shall also reimburse WIN for such additional costs. Customer agrees that the Cancellation Charge is a reasonable measure of the administrative costs and other fees incurred by WIN to prepare for installation. The Cancellation Charge set forth in this Section is in lieu of the charges set forth in 11(b).

b. Post-Installation- **IF CUSTOMER TERMINATES THIS AGREEMENT OR PART OR ALL SERVICES PROVIDED HEREUNDER AFTER INSTALLATION DURING THE INITIAL OR RENEWAL TERM FOR ANY REASON OTHER THAN FOR WIN'S MATERIAL BREACH OR IF WIN TERMINATES THIS AGREEMENT DUE TO CUSTOMER'S MATERIAL BREACH, CUSTOMER SHALL PAY TO WIN AS LIQUIDATED DAMAGES, AND NOT AS A PENALTY, AN AMOUNT EQUAL TO ONE HUNDRED PERCENT (100%) OF THE MRCs APPLICABLE TO THE SERVICES THAT WERE TERMINATED MULTIPLIED BY THE NUMBER OF MONTHS REMAINING IN THE THEN-CURRENT TERM OR RENEWAL TERM. IF WIN'S COSTS TO OTHER PROVIDERS ARE GREATER THAN THIS AMOUNT, CUSTOMER SHALL ALSO REIMBURSE WIN FOR SUCH ADDITIONAL COSTS. IF THE CUSTOMER PARTIALLY CANCELS AND HAS A MINIMUM MONTHLY FEE ("MMF"), THEN THE CUSTOMER SHALL CONTINUE TO BE BILLED THE MMF ("LIQUIDATED DAMAGES"). CUSTOMER ACKNOWLEDGES THAT ACTUAL DAMAGES WOULD BE DIFFICULT TO DETERMINE AND SUCH LIQUIDATED DAMAGES REPRESENT A FAIR AND REASONABLE ESTIMATE OF THE DAMAGES WHICH MAY BE INCURRED BY WIN.**

12. Limitation of Liability; Indemnity. FOR PURPOSES OF SECTIONS 12 AND 13, "WIN" INCLUDES ITS OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, AGENTS, SUBCONTRACTORS, VENDORS, AND ANY ENTITY ON WHICH BEHALF WIN RESELLS SERVICES. EXCEPT FOR WILLFUL MISCONDUCT, WIN'S LIABILITY FOR SERVICES AND INSTALLATION WILL NOT EXCEED ANY CREDITS OFFERED BY WIN FOR OUTAGES PURSUANT TO WIN'S THEN-EFFECTIVE CREDIT POLICY. IN NO EVENT WILL WIN BE LIABLE FOR INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES (SUCH AS LOST PROFITS, LOST BUSINESS OPPORTUNITIES, BUSINESS INTERRUPTION, LOSS OF BUSINESS DATA), ANY PUNITIVE OR EXEMPLARY DAMAGES, THE COST OF ALTERNATIVE SERVICE, OR ATTORNEY'S FEES. CUSTOMER IS RESPONSIBLE FOR ALL USAGE, CHARGES, AND LIABILITY INCURRED DUE TO THEFT OR FRAUD OVER THE SERVICES WHILE IN CUSTOMER'S CONTROL, REGARDLESS OF WHETHER/WHEN WIN NOTIFIES CUSTOMER OF INCREASED USAGE. PRICING OF SERVICES

REFLECTS THE INTENT OF THE PARTIES TO LIMIT WIN'S LIABILITY AS PROVIDED HEREIN. **CUSTOMER INDEMNITY:** CUSTOMER SHALL INDEMNIFY, DEFEND, AND HOLD WIN HARMLESS IF CUSTOMER'S USE OF THE SERVICES CAUSES A THIRD PARTY TO MAKE A CLAIM AGAINST WIN.

13. **Disclaimer of Warranties.** EXCEPT AS OTHERWISE PROVIDED HEREIN, SERVICES, EQUIPMENT, AND THE DESIGNATED CUSTOMER AREA ON WIN'S PREMISES, IF APPLICABLE, ARE PROVIDED ON AN "AS IS" AND "AS-AVAILABLE" BASIS WITHOUT WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE OR NON-INFRINGEMENT OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WARRANTY ARISING BY COURSE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE INCLUDING, BUT NOT LIMITED TO, BROADBAND SPEEDS, UNINTERRUPTED OR ERROR-FREE SERVICE, TRANSMISSION QUALITY, AND WIN'S ABILITY TO PROVIDE, AND ACCURACY OF, ANY DIRECTORY LISTINGS. EXCEPT AS EXPRESSLY PROVIDED IN WIN'S PRIVACY POLICY AND BY LAW, WIN HAS NO OBLIGATION TO PROVIDE SECURITY OR PROTECTION FOR CUSTOMER'S PRIVACY, CONFIDENTIAL INFORMATION OR DATA. NO ORAL OR WRITTEN ADVICE OR INFORMATION BY WIN'S EMPLOYEES, AGENTS OR CONTRACTORS SHALL CREATE A WARRANTY, AND CUSTOMER MAY NOT RELY ON ANY SUCH INFORMATION.
14. **Force Majeure.** WIN shall have no liability, including service credits, for any delay or failure to perform caused by any event beyond its reasonable control or during any maintenance periods necessary on WIN's network or equipment, including but not limited to delays or failures caused by third parties' or Customer's actions or failure to act or permit WIN access.
15. **Documents Incorporated by Reference; Entire Agreement; Counterparts; Execution.** THIS AGREEMENT IS SUBJECT TO AND INCORPORATES THE FOLLOWING BY REFERENCE, AS THEY MAY CHANGE FROM TIME TO TIME: (I) THE TERMS AND CONDITIONS OF THE TARIFFS FILED WITH STATE PUBLIC SERVICE COMMISSIONS; (II) THE FCC OR STATE SERVICE PUBLICATIONS POSTED AT <https://www.windstream.com/legal/>; (III) FOR INTERNET, THE "ACCEPTABLE USE POLICY" POSTED AT <https://www.windstream.com/legal/use-policy/> AND THE "PRIVACY POLICY" POSTED AT <https://www.windstream.com/legal/privacy-policy/>; (IV) FOR CERTAIN VALUE-ADDED SERVICES (I.E., ONLINE BACK UP SERVICES, TECH HELP, ETC), THE CLICK-THROUGH AGREEMENTS RELATED TO THOSE SERVICES REQUIRED PRIOR TO ACCESSING THEM; (V) THIRD PARTY SOFTWARE TERMS, IF APPLICABLE; AND (VI) ANY PRODUCT-SPECIFIC TERMS AND CONDITIONS SCHEDULES POSTED AT <https://www.windstream.com/about/legal/kinetic-business-terms-and-conditions>. This Agreement constitutes the parties' entire agreement. In the event of any conflict between the terms of this document and any of the documents incorporated by reference, the terms of this document control followed (in order) by any click-through agreements for applicable Services, the Tariffs and the FCC or state Service Publications, and then the Acceptable Use and Privacy policies.
16. **Miscellaneous.** (a) **Signatures and Amendments:** This Agreement may be signed in counterparts, and facsimile or electronic scanned copies may be treated as original signatures. WIN also may execute this Agreement via a verifiable electronic signature. This Agreement may be amended only in a writing signed by authorized representatives of each party. This Agreement and its incorporated documents supersede any and all statements or promises made to Customer by any WIN employee or agent; (b) **Notices and Electronic Communications:** Any notice pursuant to this Agreement must be in writing and will be deemed properly given if hand delivered or mailed to Customer at the address populated on Customer's Service Agreement or to WIN at WIN, Attn: Correspondence Division, 1720 Galleria Blvd., Charlotte, NC 28270, windstream.business.support@windstream.com or at such other address provided to the other party. Customer disconnection requests must be initiated by accessing the online portal at www.windstreamonline.com, or by calling 1-800-600-5050. Any other means of providing notice of disconnection is void and has no effect, even if actually received by WIN. CUSTOMER AGREES THAT WIN MAY SEND ELECTRONIC MESSAGES TO CUSTOMER CONCERNING WIN'S SERVICES; (c) **Compliance with Laws; Applicable Law:** Each party shall comply with all laws and regulations applicable to this Agreement. This Agreement is subject to applicable federal law and the laws of the state in which the Services are provided or, if provided in multiple states, then Delaware law, both of which shall be without regard to that state's conflict of laws principles; (d) **Waiver of Jury Trial:** EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT; (e) **Statute of Limitations:** Other than billing disputes subject to shorter time periods in Sec. 4, no claim may be asserted by either party more than two (2) years after the occurrence that is the basis of the claim; (f) **Assignment:** On written notice, either party may assign this Agreement (for WIN, such assignment may be in whole or in part), to an affiliate or acquirer of all or substantially all of its assets without any advance consent from the other party, but Customer must complete all paperwork necessary to effectuate such assignment or any change in ownership.; (g) **Third Party Beneficiaries:** No third party shall be deemed a beneficiary of this Agreement; (h) **Waiver:** Either party's failure to enforce any right or remedy available under this Agreement is not a waiver; (i) **Severability:** If any part of this Agreement is held invalid or unenforceable, the remainder of this Agreement shall remain in full force and effect; (j) **Survival:** Sections 7, 12 and 13 survive after this Agreement ends; (k) **Handwritten Changes:** Handwritten changes are not binding on either party; (l) **Use of Products in U.S.:** Customer acknowledges that the transfer and use of products, services and technical information outside the United States are subject to U.S. export laws and regulations. Customer shall not use, distribute, transfer, or transmit the products, services or technical information (even if incorporated into other products) except in compliance with U.S. export laws and regulations. At WIN's request, Customer shall sign written assurances and other export-related documents as may be required for WIN to comply with U.S. export regulations; (m) **Publicity and Confidentiality:** Customer agrees that WIN may publicly disclose that WIN is providing Services to Customer and may include Customer's name in promotional materials and press releases. Except when this Agreement is required to be filed with a governmental authority, this Agreement is confidential and shall not be disclosed publicly to any third party except the such dealer(s) or agent(s) of WIN.

For Managed CPE Firewall Services only:

Authorization to Perform Testing. Customer grants WIN the authority to access Customer's networks and computer systems solely for the purpose of providing the Managed CPE Firewall Service ("Firewall"). Customer agrees to notify WIN and obtain any third party service provider's ("Host") consent to provide the Firewall on Host's computer systems, which includes acknowledgement of the risks and acceptance of the conditions set forth herein and to facilitate any necessary communications and exchanges of information between WIN and Host in connection with the Firewall.

Customer agrees to indemnify, defend and hold WIN and its suppliers harmless from and against any and all claims, losses, liabilities and damages, including reasonable attorney's fees that arise out of Customer's failure to comply with this Section and from any and all third party claims that arise out of the testing and evaluation of the security risks, exposures, and vulnerabilities of the IP Addresses that Customer provides. Customer acknowledges that the Firewall entails certain risks including the following possible negative impacts: (i) excessive log file disk space may be consumed due to the excessive number of log messages generated by the Firewall; (ii) performance and throughput of networks and associated routers and firewalls may be temporarily degraded; (iii) degradation of bandwidth; and (iv) Customer computer systems may hang or crash resulting in temporary system unavailability and/or loss of data.

For Managed Network Security Cloud Firewall only:

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

Security Compliance Audits:

Unless stated otherwise in writing by WIN via an addendum to this Agreement, any Services or equipment provided by WIN are outside the scope of any security audits performed by Customer or its agents. While WIN Sales representatives can help Customer with incorporating our Services and equipment as component parts of a compliant overall security strategy, WIN makes no representations that its Services or equipment are compliant with industry-specific guidelines, regulations, or laws including, but not limited to, Payment Card Industry Standards, the Health Insurance Portability and Accountability Act, and/or Sarbanes-Oxley.

For OfficeSuite UC® Fax Services only:

The following conditions apply: (i) if a fax line goes over its allotted number of fax pages in a given month, each additional page above the bundle level purchased will be billed at the overage rate per fax page sent or received, as identified within bundle selection. For OfficeSuite® Fax Measured package, each domestic page sent and received will be billed at \$0.065 per page; (ii) international faxing is not supported; (iii) only one (1) email address may be associated with each fax number for sending or receiving; (iv) only one (1) bundle package applies per email address. A bundle limit may not be shared across multiple email addresses; (v) unused fax pages will not rollover to the next month's billing; and (vi) a copy of faxes sent and received will be stored for ninety (90) days in the MyOfficeSuite™ portal and then deleted. It is recommended that Customer download or forward faxes to store locally.

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

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

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

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

BEN: _____

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

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

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

___ **YES** ___ **NO**

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

In the event USAC funding is denied after first having been approved, and WIN has then installed the Services, Customer shall be obligated to pay 100% of the charges for the Services; however, if such funding is denied wholly and directly due to WIN’s actions or inactions, Customer may continue to pay the discounted rate for the remainder of the applicable funding year. Prior to the end of that funding year, the Parties will renegotiate pricing and Customer will have the option to either continue under the Agreement with the renegotiated pricing or re-bid the Services and re-apply for funding with USAC. WIN reserves the right to terminate for non-payment in accordance with Section 10 of the Agreement if Customer fails to pay the full amount owed for the Services.

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

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

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

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

Customer

By: _____

Name:

Title:

Date:

Windstream

By: _____

Name:

Title:

Date:

FIBER BUILD ADDENDUM TO
WINDSTREAM SERVICE TERMS AND CONDITIONS

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

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

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

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

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

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

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

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

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

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

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

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

Customer

By: _____

Name:

Title:

WIN

By: _____

Name:

Title: