

IN THE COMMON PLEAS COURT OF FRANKLIN COUNTY, OHIO

CIVIL DIVISION

irth Solutions, LLC
5009 Horizons Drive
Columbus, Ohio 43220

Plaintiff,

vs.

Windstream Communications, LLC
4001 Rodney Parham Road
Little Rock, Arkansas 72212

Defendant.

CASE NO.:

JUDGE:

MAGISTRATE:

COMPLAINT

The Plaintiff, irth Solutions, LLC (“Plaintiff”), for its claims against Defendant Windstream Communications, LLC (“Defendant”) states as follows:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff is a duly organized Ohio Limited Liability Company, registered with the Ohio Secretary of State (Ohio Registration Number 2157992) with its principal place of business located at 5009 Horizons Drive, Columbus, Franklin County, Ohio 43220.

2. Plaintiff was a duly licensed Domestic For-Profit Corporation, registered with the Secretary of the State of Ohio and having its principal place of business at 5009 Horizons Drive, Columbus, Ohio 43220. (Ohio Registration Number 654415)
3. Effective December 14, 2012, Plaintiff converted its corporate form to its present limited liability company with the Secretary of the State of Ohio.
4. Defendant Windstream Communications, LLC is a duly organized Delaware Limited Liability Company with its principal place of business located at 4001 Rodney Parham Road, Little Rock, Arkansas 72212. (Delaware File Number 4055100) Maintaining its statutory agent as Corporation Trust Company, located at Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801.
5. Defendant Windstream Communications, LLC is a duly licensed Foreign Limited Liability Company with the Secretary of the State of Ohio and having offices at 245 North Main Street, Hudson, Ohio 44236. (Ohio Registration Number 1587581) Maintaining its statutory agent as CT Corporation System, located at 1300 East 9th Street, Cleveland, Ohio 44114.
6. Defendant Windstream Communications, LLC is a duly licensed Foreign Limited Liability Company with the Secretary of State of Arkansas. (State of Arkansas Filing Number 811076954) Maintaining its registered agent as The Corporation Company, located at 124 West Capital Avenue, Suite 1900, Little Rock, Arkansas 72201.
7. PaeTec Communications, LLC is a duly organized Delaware Corporation with its principal place of business located at 4001 Rodney Parham Road, Little Rock, Arkansas 72212. (Delaware File Number 2898388) Maintaining its statutory

agent as Corporation Trust Company, located at Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801.

8. PaeTec Communications, LLC is a duly licensed Foreign Limited Liability Company with the Secretary of State of Ohio. (Registration Number 1013713) Maintaining its statutory agent as CT Corporation System, located at 1300 East 9th Street, Cleveland, Ohio 44114.
9. PaeTec Communications, LLC is a duly licensed Foreign Limited Liability Company with the Secretary of State of Arkansas. (State of Arkansas Filing Number 811076951) Maintaining its registered agent as The Corporation Company, located at 124 West Capital Avenue, Suite 1900, Little Rock, AR 72201.
10. This Court possesses jurisdiction in this matter pursuant to Ohio Revised Code Sections 2305.01, 2305.06, 2307.382(A)(1), (3), (4), (6), and (7) , 2307.382(B), and Ohio Rules of Civil Procedure 4.3(1), (4), (9), and (10).
11. Venue in this Court is appropriate pursuant to Ohio Rules of Civil Procedure 3(B)(3) and (6).

FACTS

12. Plaintiff incorporates herein by reference each and every allegation set forth above.
13. In an effort to avoid damages and injury, every state requires any and all excavators to make notification to a protection service ("the 811/One Call Center"), prior to any and all potential subsurface excavating or digging of

the intended location and the date of its planned excavation before commencing the excavation. (See O.R.C. 3781.28 as a local example)

14. Following an excavators required notification, the 811/One Call Center then generates and sends a notification to all subsurface utility, pipeline, and any other subsurface asset owners that may have its assets present in the general location of the excavation area.
15. The 811/One Call Center notice to the utility or asset owner serves as a work order requiring the utility or asset owner to physically mark the location of its utility or asset at the excavation site so the excavator can avoid injury or damage to the utility or asset. The notice or work order generated and sent to the utility or asset owner is typically referred to as a “dig ticket,” or “ticket” by the industry.
16. Once the utility or asset owner has marked the location of its subsurface utility or asset at the general location of the excavation site, the subsurface utility or asset owner then closes the dig ticket as a time stamped confirmation that its utility line or asset has been marked and as a result, notices and allows the excavator to proceed with its planned excavation.
17. Plaintiff is in the business of publishing and providing software to its subscribers, who are state protection services, owners of subsurface utilities, and subsurface assets, so that subscribers can manage, among other things; its dig tickets’ costs effectively and efficiently comply with each of its local state requirements.
18. The Plaintiff’s software generates an accurate and unique documentation, and keeps a record of, every individual ticket for each of its subscribers, including Defendant.

19. Defendant is a telecom utility owner with extensive multi-state subsurface assets.
20. Defendant has been a subscriber to Plaintiff's software since 2007 so that it could manage, among other things; its millions of annual dig tickets' costs effectively and efficiently comply with each of its state requirements.
21. Effective 2008, Defendant announced to Plaintiff it had merged with Mcleod Communications, Inc., following an acquisition earlier in the year.
22. Effective December 2011, Defendant announced that it had merged with PaeTec Communications, Inc., following an acquisition earlier in the year.
23. McCleod Communications, Inc. had been a subscriber to Plaintiff 's software continuously since 2006.
24. PaeTec Communications, Inc. had been a subscriber to Plaintiff 's software since 2008.
25. On or about July 19, 2012, Defendant began negotiating the renewal terms of the Master Service Agreement and its dependent Statement of Service ("the Agreement") to continue its subscription and associated licenses with Plaintiff's "software as a service" (SaaS) version of the Plaintiff's software. (See Ex. A1 – A2)
26. On or about July 19, 2012, Defendant negotiated and proposed its terms including "redlining" the eventual acceptance and final Agreement, including all of its terms, which in particular, articulated their negotiated, and limits to, Defendant's annual "ticket volumes." (See attached email correspondence between Plaintiff's Sales Agent and Defendant dated July 19, 2012 in Ex.B)

27. The terms, which Defendant specifically negotiated with Plaintiff, were reflected in the unambiguous language of the Agreement, which Defendant agreed to on August 8, 2012.
28. Effective August 8, 2012, Defendant executed a three (3) year contract with Plaintiff to provide three (3) years SaaS defined under the Master Service Agreement (Ex. A1), which included the parties specifically negotiated and dependent terms in a subordinate agreement titled the Statement of Service. (Ex A2)
29. Effective August 8, 2012, Defendant agreed to a volume of “Total tickets 1,220,000 annually with base systems and options” and “Total logins.” (Ex. A2)
30. Defendant had first hand knowledge and was well aware that the volume of annual locate tickets was, and is still, one of the key factors in pricing the annual subscription costs to this particular industry’s software as a service. (Ex. B)
31. Defendant Windstream Communications, Inc. was invoiced \$239,031.00 on August 9, 2012, for the first year of the three-year subscription Agreement at issue. (Ex. C1 & C2: which reflects adjustments made to the original invoice to accommodate credits derived from the PaeTec acquisition referenced earlier in this Complaint at ¶ 22)
32. Defendant did not have any ticket overages for the first year of the three-year Agreement and was invoiced \$239,031.00 on August 1, 2013 for the second year of the three-year subscription Agreement at issue. (Ex D)
33. One function of Plaintiff’s software subscription to the Defendant allowed them the immediate ability, at any time throughout Defendant’s subscription to Plaintiff

's software, and through Defendant's own access or independent control and or "dashboard," to monitor and know precisely its company-wide, minute-by-minute, volume of tickets, cumulative tickets, or aggregated total of its tickets, on any 24-hour basis, seven days a week, each and every day or week of the year ("24-7-365") for the entire time that Defendant subscribed to Plaintiff's software during the Agreement period.

34. The volume of tickets generated and sent to Defendant by any state 811/One Call Center is determined by the number of requests made by excavators requiring the Defendant to comply and mark its subsurface asset.
35. On August 1, 2014, Defendant was invoiced Fifty one Thousand and no/100 Dollars (\$51,000.00) for 339,025 ticket overages that were above and beyond their negotiated terms or "total tickets" for the second year of the three-year agreement. (Ex. E) Plaintiff invoiced Defendant at the same per ticket pricing for the overages at the same unit rate equal to the per-ticket pricing of the Agreement. (Ex. F)
36. Also on August 1, 2014, Defendant was invoiced Two Hundred Thirty Nine Thousand, Thirty One and 00/100 Dollars (\$239,031.00) on August 1, 2014 for the third year of the three-year subscription Agreement at issue. (Ex F)
37. Defendant did not make written dispute of the overages for the August 1, 2014 invoice in a timely manner. (See Ex. A1 §5.1(c))
38. Despite having ticket overages in the second year of the three-year Agreement and despite having received an invoice for its ticket overages, Defendant did not

increase their “total tickets” for the final year of the three-year agreement with Plaintiff.

39. On July 31, 2015, Defendant was invoiced Forty Six, One Hundred Sixty Three and 70/100 Dollars (\$46,163.70) for 307,758 ticket overages that were above and beyond their negotiated terms or “ticket volumes” for the third year of the three-year agreement. (Ex. E) Plaintiff invoiced Defendant at the same per ticket pricing for the overages at the same unit rate equal to the per-ticket pricing of the overall Agreement. (Ex.G)

40. On or about July 2014, Defendant initiated negotiations with Plaintiff to renew its subscription to Plaintiff’s SaaS under the color of good faith with certain conditions including that Plaintiff “forgive” contract overages for year two and three of the Agreement as consideration for extending its subscription with Plaintiff for a new 8 month period.

41. On or about July 2015, Plaintiff extended Defendant’s three-year subscription to the software beyond the original Agreement’s termination date of July 31, 2015, in order to effectuate the negotiations to renew Defendant’s subscription, based solely on their good faith representations, and on Plaintiff’s reliance thereof, that Defendant’s intent was to renew its subscription to Plaintiff’s SaaS.

42. Upon information and belief, Defendant had already initiated plans to have a competitor’s software installed during these negotiations with Plaintiff and used the extended time to mislead the Plaintiff into relying on Defendant’s bad faith overtures that they would fully pay the Plaintiff for the ticket overages in one form of consideration or another.

43. On or about September 1, 2015, Defendant abruptly, and contrary to the Defendant's representations and written terms of the contract, canceled Plaintiff's SaaS. And Plaintiff invoiced Defendant for the additional one-month service beyond Agreement's termination in the amount of Eighteen Thousand Nine Hundred Seventy Three and 03/100 Dollars (\$18,973.05). (Ex. H)
44. Defendant has not fully paid Plaintiff for all services rendered by the Plaintiff and which the Defendant accepted the full benefit thereof. This amount includes the ticket overages for two years of the three-year Agreement, and for the tickets (only) derived from the extended month of service.
45. As of the filing of this Complaint, Defendant's remaining balance owed to Plaintiff is One Hundred Thousand Sixteen, One Hundred Thirty Six and 80/100 Dollars (\$116,136.80) for services rendered by the Plaintiff and which the Defendant accepted the full benefit thereof.
46. Plaintiff has made multiple efforts to collect Defendant's account balance prior to the instant Complaint.
47. No other client has ever disputed and then not paid for their annual ticket overages in the 15 year history of Plaintiff providing damage prevention software to the oil, gas, electric, water, utilities and telecom industries.

FIRST CAUSE OF ACTION – BREACH OF CONTRACT

48. Plaintiff incorporates the previous paragraphs of this Complaint as if fully written.

49. Plaintiff has fully performed all of its obligations according to the unambiguous negotiated terms of the Agreement, and all conditions precedent have occurred to Plaintiff's recovery of the foregoing outstanding amount.
50. Defendant has breached the Agreement by refusing to fully pay for the services provided by Plaintiff and for the benefits accepted by Defendant.
51. Defendant's breach of these overages is the only breach of like overages in the Plaintiff's 15-year history performing precisely the same software to the oil, gas, electric, and telecom industry.
52. Plaintiff is entitled to recover from Defendant the sum of One Hundred Thousand Sixteen, One Hundred Thirty Six and 80/100 Dollars (\$116,136.80), plus interest from the date of the breach, post-judgment interest, attorney fees, and costs.
53. Defendant remains in breach of the Agreement with Plaintiff by having still failed to timely notice Plaintiff in writing ninety days prior to canceling service as required under the terms of the Agreement. (See Ex. A1 §10.1)

SECOND CAUSE OF ACTION - ACCOUNT

54. Plaintiff incorporates the previous paragraphs of this Complaint as if fully written.
55. Plaintiff has made repeated requests for payment of their invoices but Defendant has refused to make payments.
56. As of January 28, 2016, Plaintiff has received no payments from Defendant for ticket overages and extended service, despite repeated requests.

57. As of January 28, 2016, Defendant owes Plaintiff the sum One Hundred Thousand Sixteen, One Hundred Thirty Six and 80/100 Dollars (\$116,136.80), on an open account for the services furnished to Defendant.

58. Plaintiff is entitled to recover from Defendant the sum of One Hundred Thousand Sixteen, One Hundred Thirty Six and 80/100 Dollars (\$116,136.80), plus interest from the date of the breach, post-judgment interest, attorney fees, and costs.

THIRD CAUSE OF ACTION- UNJUST ENRICHMENT

59. Plaintiff incorporates the previous paragraphs of this Complaint as if fully written.

60. Defendant received a benefit when they accepted Plaintiff's services.

61. Defendant knew Plaintiff had conferred a benefit upon them when they received un-paid services from Plaintiff.

62. Defendant would be unjustly enriched if allowed to keep the benefit of Plaintiff's services.

63. Under these circumstances, Defendant and its retention of the benefits conferred by Plaintiff in the amount of One Hundred Thousand Sixteen, One Hundred Thirty Six and 80/100 Dollars (\$116,136.80), without payment would be unjust.

64. Plaintiff is entitled to recover from Defendant the sum of One Hundred Thousand Sixteen, One Hundred Thirty Six and 80/100 Dollars (\$116,136.80), plus interest from the date of the breach, post-judgment interest, and attorney fees, and costs.

FOURTH CAUSE OF ACTION- PROMISSORY ESTOPPEL

65. Plaintiff incorporates the previous paragraphs of this Complaint as if fully written.

66. Defendant clearly and unambiguously knew that Plaintiff fully expected that Defendant would pay for the services rendered.
67. Defendant clearly and unambiguously promised to repay Plaintiff for the services furnished to Defendant at their request.
68. Defendant began negotiating the renewal of its SaaS with Plaintiff under the color of good faith and particularly leveraging Defendant's motivation to retire the obligation of past due overages as a part of the over-all negotiations and the associated mutual considerations thereof.
69. In reliance on Defendant's color of good faith and their promise to repay, in some form of consideration to retire past due overages, Plaintiff agreed to continue and provide services to and for Defendant beyond the Agreement period.
70. On or about this precise time, Plaintiff was re-capitalizing its company for a value derived as a function of their earnings before interest taxes and depreciation.
71. Upon information and belief, Defendant had knowledge that Plaintiff was recapitalizing its company.
72. It was reasonable and foreseeable that Plaintiff would render services to and for Defendant based on such representations and its long history with Defendant and various otherwise associated subsidiaries.
73. Plaintiff was injured by its reliance upon Defendant's promise to repay Plaintiff for the services rendered in actual damages of Three Million, Eight Hundred, Forty Two Thousand, Nine Hundred, Seventy-Three Dollars and No/100 (\$3,842,973.00).

74. Plaintiff is entitled to recover from Defendant, the sum of Three Million, Eight Hundred Forty Two Thousand, Nine Hundred Seventy Three Dollars and No/100 (\$3,842,973.00), plus interest from the date of filing, post-judgment interest, attorney fees, and costs.

FIFTH CAUSE OF ACTION- FRAUD

75. Plaintiff incorporates the previous paragraphs of this Complaint as if fully written.

76. Defendant made material misrepresentations to Plaintiff that they would repay Plaintiff for services and “overages” already rendered in some form of consideration.

77. Defendant made material misrepresentations to Plaintiff that they would continue to subscribe to Plaintiff’s software and pay for the services already rendered in some form of consideration, when in fact Defendant’s intention was to utilize the negotiation time to secure and install competitive software.

78. Defendant made its misrepresentations with knowledge of their falsity or with utter disregard and recklessness regarding their truth or falsity.

79. Defendant made its misrepresentations with the intent to mislead Plaintiff into continuing to provide services to and for Defendant beyond the Agreement’s termination date so that under this cloud of good faith, Defendant could simultaneously secure a competitor to install replacement software.

80. In reliance on Defendant’s misrepresentations and their promise to repay, in some form of consideration to retire past due overages, Plaintiff justifiably relied

on the Defendant' misrepresentations by continuing to provide services to and for Defendant beyond the Agreement's termination date.

81. On or about this precise time, Plaintiff was re-capitalizing their company for a value derived as a function of their earnings before interest taxes and depreciation.

82. Upon information and belief, Defendant had knowledge that Plaintiff was recapitalizing its company.

83. Plaintiff was proximately injured as a result of its reliance on Defendants misrepresentations.

84. Plaintiff is entitled to recover from Defendant, the actual damages in the amount of Three Million, Eight Hundred, Forty Two Thousand, Nine Hundred, Seventy Three Dollars and No/100 (\$3,842,973.00), plus interest since the date of filing, post-judgment interest, attorney fees, punitive damages, and costs.

85. Plaintiff is entitled to recover treble damages.

SIXTH CAUSE OF ACTION- VIOLATION OF LICENSE AGREEMENT

86. Plaintiff incorporates the previous paragraphs of this Complaint as if fully written.

87. Upon information and belief, Defendant and or associated subsidiaries, made plans to intentionally defraud Plaintiff.

88. Upon information and belief, Defendant and or associated subsidiaries, has communicated the intentional and malicious misuse of individual licenses and the violation of their contractually limited use. (See Ex. A §4.3)

89. Upon information and belief, Defendant and or associated subsidiaries, made malicious plans to enter into agreements with Plaintiff for products and services knowing that Defendant had the intention of misusing individual licenses and the violation of their contractually limited use. (See Ex. B)
90. Upon information and belief, Defendant' scheme to defraud plaintiff were made willfully and with reckless disregard for the Plaintiff's contractual rights.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Defendant on its claim for relief in a sum that is in excess of \$25,000, plus statutory interest from the date of the breach, post judgment statutory interest, attorney fees, punitive damages, the cost of this action, court costs, and any other such relief to which it may be entitled.



Patrick D. McCarthy (0092947)
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Dublin, Ohio 43017
Office: 614.376.0266
pat@veshalawfirm.com
Attorney for Plaintiff irth Solutions,
LLC

Exhibits

| | |
|--|--------|
| Master Service Agreement (the “Agreement”) | Ex. A |
| Statement of Service (subordinate of the Agreement) | Ex. A2 |
| Sales Agent’s email to Defendant | Ex. B |
| 8/9/2012 Invoice for First Year of Agreement Service | Ex. C1 |
| 8/9/2012 Adjusted Invoice for First Year of Agreement Service | Ex. C2 |
| 8/1/2013 Invoice for Second Year of Agreement Service | Ex. D |
| Total Windstream Tickets Generated by Each Month of Agreement | Ex. E |
| 8/1/2014 Invoice for Third Year of Agreement Service including Second Year Overages | Ex. F |
| 7/31/2015 Invoice for Year Three Overages | Ex. G |
| 9/1/2015 Invoice for Extended Month of Agreement | Ex. H |

CERTIFICATE OF SERVICE

I hereby certify that on January 29, 2016, I submitted the foregoing *Complaint of Plaintiff irth Solutions LLC* for filing in the Civil Division of the Common Pleas Court of Franklin County, Ohio, and will serve the same upon the following via email and/or First-Class U.S. Mail:

CT Corporation System
1300 East 9th Street
Cleveland, Ohio 44114

Courtesy Copy to:

Kendra Jones
Director-Senior Counsel
Windstream Communications LLC
4001 Rodney Parham Rd.
Little Rock, Ar. 72212

Kendra.jones@windstream.com

Attorney for Defendant



Patrick D. McCarthy (0092947)
Vesha Law Firm, LLC
38 South High Street
Dublin, Ohio 43017
Office: 614.376.0266
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Attorney for Plaintiff irth Solutions, LLC



#10046 MSA

MASTER SERVICES AGREEMENT

This Master Services Agreement ("Agreement"), is made and entered into as of 8/9/2012 (the "Effective Date") by and between

| "IRTH" | "Subscriber" or "Windstream" |
|----------------------|---------------------------------|
| irth Solutions, Inc. | Windstream Communications, Inc. |
| 5009 Horizons Drive | 4001 Rodney Parham Road |
| Columbus, OH 43220 | Little Rock, AR 72212 |

WHEREAS, IRTH owns and operates UtiliSphere™, a system through which IRTH provides certain services that, among other things, collect, correlate, analyze and report on data entered into its system;

WHEREAS, Subscriber desires to obtain from IRTH a nonexclusive, non-assignable, non-transferable right to use those services identified in the applicable Statements of Service attached hereto and incorporated herein (collectively, the "Services") pursuant to the terms and conditions of this Agreement; and

WHEREAS, IRTH desires to provide Subscriber such Services pursuant to the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the parties hereto agree as follows:

1. DEFINITIONS. Unless otherwise stated in this Agreement, all of the capitalized terms in this Agreement shall have the following meanings:

- 1.1 "Agreement" means this Agreement and any amendment, Statement of Service or exhibit executed in accordance with the terms hereof.
- 1.2 "Authorized Users" means Subscriber employees and other third parties representing Subscriber and under Subscriber's control, with the written approval of IRTH.
- 1.3 "Confidential" means information pertaining to the duties and obligations of IRTH and Subscriber with respect to confidential information as agreed to by and between IRTH and Subscriber in a Mutual Non-Disclosure Agreement executed December 17, 2007.
- 1.4 "Party or Parties" means IRTH or Windstream and collectively IRTH and Windstream.
- 1.5 "Unscheduled Downtime" shall mean any interruption of one (1) minute or more in the availability of the Services to Subscriber (as measured by IRTH on the server side), wherein said interruption is not due to scheduled software or hardware upgrades as set forth in Section 7.3 below.
- 1.6 "Fees" means the fees, charges and amounts Subscriber shall pay to IRTH for the Services, as set forth in each applicable Statement of Service.
- 1.7 "Intellectual Property" means (i) all inventions and all patents, patent applications, and patent disclosures, (ii) all copyrightable works, all copyrights, and all applications and registrations, (iii) all trade secrets and confidential business information; (iv) all trademarks, service marks, trade dress, logos, and trade names, and all goodwill associated therewith, and all applications, registrations, and renewals in connection therewith, and (v) all copies and tangible embodiments thereof (in whatever form or medium); together with remedies against infringements thereof, and rights to protection of interests therein under the laws of

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all jurisdictions including the right to sue for, collect damages, settle and release claims for past, present, and future infringement, including without limitation, the right to sue to enjoin infringement.

- 1.8 "Maintenance Release" means a new release of Software to incorporate error corrections or to otherwise modestly enhance existing capabilities of Software.
- 1.9 "Service Credit" means:
 - 1.6.1 If the Uptime Percentage is less than 99.9% but greater than or equal to 99.0%, Subscriber shall be eligible for a monetary credit equal to the value (as determined by the Fees) of three (3) days of Service.
 - 1.6.2 If the Uptime Percentage is less than 99.0% but greater than or equal to 95.0%, Subscriber shall be eligible for a monetary credit equal to the value (as determined by the Fees) of seven (7) days of Service.
 - 1.6.3 If the Uptime Percentage is less than 95.0%, Subscriber shall be eligible for a monetary credit equal to the value (as determined by the Fees) of fifteen (15) days of Service.
- 1.10 "Site" means that certain internet website associated with the Services and through which the Services may be obtained.
- 1.11 "Software" means the software and database(s) described on a Statement of Service, including the documentation and/or specifications related to the use, implementation and/or architecture and modifications, updates and revisions or enhancements thereto.
- 1.12 "Statement of Service" means any schedule attached hereto and incorporated herein which IRTH and Subscriber may execute from time to time as described in Section 2.1.
- 1.13 "Upgrade" means a new version of Software which provides major enhancements or significant new functionalities.
- 1.14 "Uptime Percentage" means the total number of minutes in a Term minus the number of minutes of Unscheduled Downtime suffered in a Term, divided by the total number of minutes in a Term.

2. STATEMENTS OF SERVICE

- 2.1 Services. During the term of this Agreement, IRTH agrees to provide those Services, including a nonexclusive, non-assignable, non-transferable right to use the Software included with such Services, required by and described in each statement of service (each, a "Statement of Service" and collectively, the "Statements of Service") attached hereto or incorporated herein by reference to this Agreement, which IRTH and Subscriber may execute from time to time. Each Statement of Service shall contain the following:
 - 2.1.1 A description of any Services to be provided by IRTH including the Software;
 - 2.1.2 A description of the Fees;
 - 2.1.3 The period of time over which the Services will be provided;
 - 2.1.4 Performance, delivery and/or installation dates; and
 - 2.1.5 Any other relevant terms and conditions as may be agreed by the parties in writing.
- 2.2 Conflicting Terms. Each individual project assignment under this Agreement will be defined on a numbered Statement of Service. Each Statement of Service is to be separately executed and when so executed is incorporated by reference and shall become a part of this Agreement. Terms and conditions in said Statement(s) of Service shall control any conflicting terms and conditions in this Agreement for only the specific project assignment defined in said Statement(s) of Service. Each Statement of Service shall be a part of and governed by the terms and conditions of this Agreement.

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3. USE OF SERVICES

- 3.1 Use. Subscriber shall use the Services in accordance with the terms and conditions of this Agreement and Statement(s) of Service.
- 3.2 Restrictions on Services. Subscriber will not use the Services and will not permit others (including Authorized Users) to use the Services to:
 - 3.2.1 Modify, copy, or otherwise reproduce the Services in whole or in part;
 - 3.2.2 Reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code form or structure of the Software used in the Services;
 - 3.2.3 Distribute, sublicense, assign, share, timeshare, sell, rent, or lease the Services;
 - 3.2.4 Remove any proprietary notices or labels displayed by the Services;
 - 3.2.5 Use the Services to store or transmit infringing, libelous or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights;
 - 3.2.6 Interfere with or disrupt the integrity or performance of the Services or third-party data contained therein;
 - 3.2.7 Use the Service in violation of any other restriction or limitation set forth in a Statement of Service; or
 - 3.2.8 Use the Services for any unlawful purpose.
- 3.3 Subscriber's Responsibilities. Subscriber acknowledges and agrees that it shall:
 - 3.3.1 Be responsible for Subscriber Representative's compliance with this Agreement;
 - 3.3.2 Be responsible for the accuracy, quality and legality of Subscriber Data and the means by which Subscriber acquired the Subscriber Data;
 - 3.3.3 Use commercially reasonable efforts to prevent unauthorized access to or use of the Services, and promptly notify IRTS of any such unauthorized access or use;
- 3.4 Reservation of Rights. IRTS retains all right, title, and interest in and to the Services, including all Intellectual Property rights. Except for the grants specifically provided in this Agreement on the terms contained herein, nothing in this Agreement shall be construed as a transfer of any right, title, or interest in or to the Service, Software or any Intellectual Property rights therein to Subscriber.
- 3.5 Protected Services. Subscriber is on notice that certain Services are protected intellectual property, including under the copyright laws. Copyright notices and other proprietary rights notices in or on such Services shall not be deleted or modified. If the Service, or any part thereof, has been developed by a third party that holds copyright or other proprietary rights, Subscriber may be held responsible by such third party for any infringement of such rights by Subscriber.
- 3.6 Services Limited to Certain Number of Authorized Users. The Services may only be accessed by that number of Authorized Users specified in a Statement of Services. Unless otherwise approved by IRTS in writing, the Services may not be shared with or used by anyone else and the number of Authorized Users accessing the Services shall not exceed that number specified in the Statement of Services.

4. DATA

- 4.1 Subscriber Data. Subscriber is solely responsible for the content of any comments, information, questions, data, ideas, description of processes, or other information submitted to IRTS by or through the Software or the Services ("Subscriber Data"). For any and all Subscriber Data, Subscriber shall obtain any and all

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licenses thereto, or releases of Intellectual Property or proprietary rights subsisting in that Subscriber Data, consistent with the uses described in this Agreement, before delivery to IRTH. Further, Subscriber will make reasonable efforts to ensure that the Subscriber Data will not contain content that is libelous, obscene, excessively violent, scandalous or defamatory, and that the Submitted Information will not contain content that violates the personal, proprietary, or Intellectual Property rights of any third party.

- 4.2 Ownership of Subscriber Data. Except as otherwise set forth in this Agreement, all Subscriber Data shall remain owned or licensed by Subscriber. Nothing in this Agreement shall be construed as a transfer to IRTH or any third party of ownership of, or title to, the Subscriber Data.
- 4.3 Limited License of Subscriber Data. Subject to the restrictions set forth in this Agreement, Subscriber hereby grants IRTH a non-exclusive, royalty-free license to use, copy, display and distribute Subscriber Data as necessary to provide the Services to Subscriber.
- 4.4 Commingling of Data. Subscriber understands and acknowledges that due to the nature of the Services, Subscriber Data may be commingled with data of third parties.
- 4.5 Distribution and Access to Data. IRTH will not intentionally distribute Subscriber Data to any third party or intentionally permit a third party to access or use Subscriber Data. Similarly, IRTH shall not intentionally distribute or intentionally permit Subscriber to access or use third party data.
- 4.6 Protection of Subscriber Data. IRTH will implement and maintain commercially reasonable backup procedures and other safeguards against the destruction, loss, or alteration of Subscriber Data, as well as against the unauthorized or improper access to Subscriber Data by any third party. The backup procedures and other safeguards employed shall, at a minimum, be comparable to those IRTH uses in connection with protection of its own data, or shall comply with those required under applicable law. Subscriber agrees to hold IRTH harmless for any lost, corrupt, or destroyed Subscriber Data, when the loss, corruption, or destruction is caused, in part or in whole, by goods, services, actions, or events outside of IRTH's reasonable control.
- 4.7 Security of Subscriber Data. IRTH will take reasonable measures, including encryption and firewalls, to ensure that only Authorized Users can enter, edit, and use Subscriber Data, and IRTH will take reasonable steps to secure Subscriber Data through reasonable and prudent technical and administrative measures. Notwithstanding the foregoing, because the internet is an open system, IRTH cannot and does not warrant or guarantee that third parties cannot or will not intercept or modify Subscriber Data, or defeat technical measures and obtain access to such Subscriber Data; accordingly, Subscriber agrees to hold Subscriber harmless for any unauthorized or improper access to Subscriber Data by any third party when such access is caused, in part or in whole, from goods, services, actions, or events outside of IRTH's reasonable control.
- 4.8 Data Recovery. IRTH will make commercially reasonable efforts to create and maintain back-up copies of Subscriber Data stored with IRTH. Should Subscriber identify a need for data recovery, it will immediately provide IRTH with written notice of the same and IRTH will use commercially reasonable efforts to recover Subscriber Data from available back-up copies. Failure by IRTH to recover such data shall not be deemed a material breach of this Agreement and Subscriber agrees to hold IRTH harmless for any such unsuccessful recovery efforts.
- 4.9 Availability of Subscriber Data after Termination. Upon termination of this Agreement, IRTH will secure the Subscriber Data as it existed on the date of termination and will make such Subscriber Data available to Subscriber in a standard data file format for up to one hundred-twenty (120) days after termination; provided, however, IRTH shall have no obligation to make available the Subscriber Data unless all Fees are paid in full and Subscriber delivers a valid written request for such Subscriber Data before the expiration of such period. Such request shall be deemed valid if the request: (i) provides suitable information about the Subscriber Data to enable IRTH to process the request; (ii) provides IRTH a commercially reasonable period of time to process the request and deliver the Subscriber Data; and (iii) provides suitable information to enable delivery of Subscriber Data. IRTH reserves the right to charge Subscriber for processing and delivery of Subscriber Data.
- 4.10 Use of Subscriber Data. Subscriber hereby grants IRTH a royalty-free license to use Subscriber Data for statistical and data mining purposes, which includes the identification of Subscriber trends, industry trends, industry best practices, training protocols, enhancements and other improvements to the Services. Any identified trends, practices, protocols, enhancements, improvements and other statistical or data

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mining results (collectively, "IRTH Data") shall be deemed to be distinct from Subscriber Data and ownership of the IRTD Data shall vest solely in IRTD. Subscriber shall have no rights in or to IRTD Data. IRTD may make IRTD Data available to Subscriber, third parties, or both, in IRTD's sole discretion, provided that any IRTD Data disclosed to third parties shall not specifically identify Subscriber.

- 4.11 Third Party Data. IRTD may from time to time acquire data from third parties (collectively, "Third Party Data") that may enhance or otherwise supplement the Services. IRTD does not guaranty or otherwise warrant the accuracy, integrity, content or performance of Third Party Data delivered to Subscriber as part of the Services. Subscriber agrees that IRTD shall be held harmless for any damages incurred by Subscriber as a result of Third Party Data, except for damages caused by IRTD's gross negligence in selecting the Third Party Data provider.

5. FEES AND PAYMENTS

- 5.1 (a) Fees. Subscriber shall pay to IRTD for the Services those annual fees set forth on an invoice describing the fees, charges or amounts due and owing in accordance with each applicable Statement of Service (collectively, the "Fees"). IRTD will invoice Subscriber for the Fees upon execution of this Agreement. All invoices submitted by IRTD must set forth the following information: the contract number of this Agreement and number(s) of the particular Statement(s) of Service being billed and if necessary, the Purchase Order number(s). Subscriber shall be entitled to return without payment any incomplete invoices and invoices containing errors. Fees for any additional years of service will be invoiced Forty Five (45) days prior to the anniversary of the Effective Date. All invoices shall be due and payable within Forty Five (45) days after receipt of IRTD's invoice therefore. In all cases, the amount of the Fees shall be paid in full. The Fees are non-refundable and payment obligations are non-cancelable. The Fees are based on Services purchased, not actual usage.
- (b) IRTD agrees that Subscriber shall receive a one percent (1%) prompt payment discount for any payments postmarked within ten (10) days after Subscriber's receipt of the applicable invoice. Any prompt payment discount shall be deducted by Subscriber from the invoice to which such prompt payment applies.
- (c) Disputed Amounts. Should Windstream reasonably and in good faith dispute all or any portion of the amount due on any invoice, Windstream shall notify Supplier in writing, prior to the due date of that invoice, of the nature and basis of the dispute and/or adjustment as soon as possible. The Parties each shall use commercially reasonable efforts to resolve the dispute prior to the payment due date. Windstream may dispute and withhold invoiced amounts while the Parties diligently negotiate to resolve the dispute. Billing disputes shall not be cause for Supplier's non-performance under this Agreement.

5.2 Other Charges and Taxes. Unless otherwise specified herein or in a Statement of Service:

- 5.2.1 Subscriber is completely responsible for all charges, fees, and taxes arising out of Subscriber's use of the Services;
- 5.2.2 Subscriber is solely responsible for all expenses and charges associated with accessing the Internet and obtaining the Services, any service fees associated with such access and connection, and for providing all equipment necessary for Subscriber to make the connection;
- 5.3 Late Payments. If any Fees remain unpaid after forty five (45) days from the invoice date, IRTD reserves the right to terminate Subscriber's use of the Services. Subscriber agrees to pay a late charge of one percent (1%) per month or the maximum lawful rate, whichever is less, for all amounts not paid within forty five (45) days of the invoice date. Amounts that are disputed in good faith shall be paid within forty five (45) days of resolution.

6. CONFIDENTIALITY

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6.1 Confidentiality. This Agreement is a confidential agreement between IRTH and Subscriber. Without the prior written consent of the other Party, this Agreement may not be shown to any third party other than government officials having appropriate jurisdiction and power to require disclosure of this Agreement, IRTH's or Subscriber's legal counsel and accountants, and IRTH's and Subscriber's authorized employees or agents. Notwithstanding the foregoing, this Agreement may be disclosed as necessary by reason of regulatory requirements beyond the reasonable control of IRTH or Subscriber, as the case may be, in which event IRTH and Subscriber agree to exercise diligence in limiting such disclosure to the minimum amount necessary under the particular circumstances.

6.2 No Ability to Disable Subscriber Access to Services. IRTH shall not be responsible for, nor does IRTH have the capability to, remotely lockdown or otherwise disable any device used by Subscriber to access the Services. Subscriber acknowledges and understands that Subscriber is solely responsible for maintaining a policy or obtaining a third party application that adequately protects unauthorized access to Subscriber Data or the Services.

6.3 Password. As part of the registration process, Subscriber will select a password. Subscriber is responsible for maintaining the confidentiality of the password, and acknowledges and agrees that IRTH has no duty or ability to prevent the use of such password by third parties. Subscriber is responsible for any and all activities in Subscriber's account enabled by the use of Subscriber password(s). Subscriber agrees to notify IRTH immediately if Subscriber has any reason to believe that the security of Subscriber's account has been compromised.

7. AVAILABILITY AND UPGRADES

7.1 Uptime Commitment. IRTH will use commercially reasonable efforts to maintain availability of the Services to Subscriber at least 99.9% of the time during any continuous twelve (12) month period throughout the Term ("Uptime Commitment"). If IRTH does not meet the Uptime Commitment, and if Subscriber meets all of its obligations under this Agreement, Subscriber will be eligible to receive a Service Credit and such Service Credit shall be Subscriber's sole and exclusive remedy for any failure by IRTH to meet the Uptime Commitment. The maximum Service Credit to be issued by IRTH to Subscriber for all Unscheduled Downtime that occurs in a one-year Term shall not exceed the monetary credit equal to the value of fifteen (15) days of Service. In order to receive any of the Service Credits, Subscriber must notify IRTH in writing within thirty (30) days after expiration of each Term. Failure to comply with this requirement will forfeit Subscriber's right to receive a Service Credit. The Uptime Commitment does not apply to any performance issues: (i) caused by factors described in the "Force Majeure" clause of this Agreement; (ii) caused by performance issues with the Internet; (iii) that resulted from Subscriber's equipment, third party equipment, or both; or (iv) resulting from software or hardware upgrades as set forth in Section 7.3 below. If IRTH fails to meet the Uptime Commitment for any four (4) months during a one year period of the Agreement (whether or not consecutive), Subscriber may terminate this Agreement upon thirty (30) days written notice to IRTH without providing any further opportunity to cure. Subscriber will be entitled to receive a full refund for remaining months of service of all fees paid to IRTH under a Statement of Service.

7.2 Software Upgrades and Maintenance Releases. In accordance with its release schedule, IRTH will provide Subscriber with Upgrades, Maintenance Releases, or both, for software associated with the Services. Subscriber agrees to timely implement and use the most recent Upgrade provided by IRTH. IRTH shall not be liable to Subscriber for any Service interruption, any destruction, loss, or alteration of Subscriber Data; or any unauthorized or improper access to Subscriber Data by any third party when such interruption, destruction, loss, alteration, or access is caused, in part or in whole, by Subscriber's failure to timely implement and use the most recent Upgrade provided by IRTH. Any Maintenance Releases and Upgrades provided to Subscriber shall be considered to be part of the Services and subject to the terms and conditions of this Agreement. Subscriber acknowledges and accepts that it may not be possible for IRTH to solve all problems or to correct all errors with a Maintenance Release or Upgrade and agrees to hold IRTH harmless for failure to remedy any such problems and errors.

7.3 Scheduling of Upgrades. Normal software or hardware upgrades are scheduled for nights and weekends, Eastern Standard Time, and designed to minimize interruption to the Service. Subscriber will be notified of such interruptions in advance. In the event that an unscheduled interruption occurs, IRTH will apply the appropriate use of internal and external resources to resolve the problem and return the Service to availability as soon as reasonably possible. During these scheduled and unscheduled interruptions, Subscriber may be unable to transmit and receive data. Subscriber agrees to cooperate with IRTH during

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the scheduled and unscheduled interruptions. IRTH reserves the right to modify, suspend, or discontinue the Services or any portion thereof at any time, including the availability of any functional area of the Services. IRTH may also impose limits on certain features and services or restrict Subscriber's access to parts of the Services without notice or liability.

8. SUPPORT

IRTH provides support to Subscriber through a variety of systems, including on-line help, FAQ, and templates and the use of Live Help. IRTH strives to make the Service easy to implement and use and also strives to make such support tools error-free and readily available. IRTH does not warrant or guarantee that the online materials will be without typographical or functional errors or always available, or that Live Help will be available at the specified times. Subscriber agrees to hold IRTH harmless for such errors and unavailability of Live Help.

9. WARRANTIES AND DISCLAIMERS OF LIABILITY

9.1 Warranty. IRTH warrants that the Service will function in accordance with the specifications, as described in the documentation provided at the Site.

9.2 Disclaimer. IRTH HEREBY EXPRESSLY DISCLAIMS AND EXCLUDES ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED BY OPERATION OF LAW, COURSE OF DEALING, TRADE USAGE, REPRESENTATION, STATEMENT, OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

9.3 Limitation on Liability. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, OR INCIDENTAL DAMAGE, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY ARISING IN ANY WAY OUT OF THIS AGREEMENT, EVEN IF NOTIFIED OF THE POSSIBILITY OF SUCH DAMAGE. AGGREGATE LIABILITY FOR EITHER PARTY FOR DAMAGES UNDER THIS AGREEMENT, REGARDLESS OF THE FORM OF THE ACTION AND WHETHER IN CONTRACT OR IN TORT, INCLUDING NEGLIGENCE, SHALL BE LIMITED TO 1.5x THE AMOUNT OF FEES PAID TO IRTH FOR THE SERVICE DURING THE PRIOR TWELVE (12) MONTHS OF THE TERM.

9.4 Indemnification. Each party shall indemnify, defend and hold harmless the other party, including its owners, managers, employees, agents, successor and assigns from and against any and all actions, suits, proceedings, claims, judgments, losses, damages, liabilities, costs and expenses (including, without limitation, attorneys' fees) arising out of or relating to any breach of this Agreement by either party or a Party Representative.

10. TERM AND TERMINATION

10.1 Term. This Agreement shall begin as of the Effective Date, and shall run in accordance with section 3 of the Statement of Service; and shall renew unless terminated by either party with ninety (90) days written notice (certified mail) prior to the end of each renewal period within section 3 of the Statement of Service. Notwithstanding the foregoing, either party may suspend or terminate this Agreement before the completion of the Services should either party materially breach this Agreement and fail to cure such breach to the reasonable satisfaction of the non-breaching party within thirty (30) days after receipt of written notice from either party requesting the same ("Breach Termination").

10.2 Survival. The provisions of Sections 3, 4, 5, 6, 9 and 11 shall survive the termination of this Agreement.

11. GENERAL PROVISIONS

11.1 Independent Contractor Relationship. The relationship between IRTH and Subscriber is that of independent contractor. Nothing in this Agreement is intended as, or will be construed as, creating a relationship of joint ventures, partners, employer-employee, franchiser-franchisee or agent. Neither party has the authority to create any obligations for the other, or to bind the other to any representation or document.

11.2 Governing Law and Venue. The validity, construction and interpretation of this Agreement and the rights and duties of the parties hereto shall be governed by the internal laws of the State of Delaware, excluding its

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principles of conflict of laws. Litigation respecting the terms or enforcement of this Agreement shall only be brought in a court of competent jurisdiction situated in Kent County, Delaware.

- 11.3 Headings. Headings in this Agreement are for reference purposes only and shall not affect the interpretation or meaning of this Agreement.
- 11.4 Assignment. Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party which will not be unreasonably withheld or conditioned. Notwithstanding the foregoing, either party may assign this Agreement in its entirety, without the consent of the other party, to an affiliate or in connection with a merger, acquisition, corporation reorganization or sale of all or substantially all of its assets not involving a direct competitor of the other party.
- 11.5 Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, then the remaining provisions of this Agreement will remain in full force and effect.
- 11.6 Force Majeure. No Party shall be liable for any default or delay in the performance of its obligations under this Agreement if and to the extent such default or delay is from causes outside the reasonable control of a Party. Such causes may include fire, flood, earthquake, natural disasters or acts of God, terrorist acts, riots, civil disorders, freight embargoes, government action, or the like, provided the non-performing Party is without fault in causing such default or delay, and such default or delay could not have been prevented by reasonable precautions and could not reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means (including disaster recovery services, if any). However, the non-performing Party shall not be excused from its obligations to protect the other Party's Confidential Information or to provide disaster recovery and business continuity services, as may be required under this Agreement. In such event the non-performing Party shall be excused from further performance or observance of the obligations so affected for as long as such circumstances prevail and such Party continues to use commercially reasonable efforts to recommence performance or observance without delay. Any Party so delayed in its performance shall immediately notify the Party to whom performance is due by telephone (to be confirmed in writing within twenty-four (24) hours of the inception of such delay) and describe at a reasonable level of detail the circumstances causing such delay.
- 11.7 Notices. All notices, requests, demands, or other formal communications hereunder, including notices of change of address, shall be in writing, and either personally delivered, sent by certified mail, email, or overnight mail by a nationally recognized courier, or facsimile, if to IRTH or Subscriber, at the addresses and facsimile numbers following this paragraph. Notices will be deemed effective upon personal delivery or transmission by facsimile (with a transmission report confirmation), three (3) business days after mailing if sent by certified mail, or the next business day if sent overnight mail by a nationally recognized courier.

IRTH Notice: irth Solutions, Inc.
Sales Department
5009 Horizons Drive
Columbus, Ohio 43220
Facsimile No 614-784-8018
Sales@irthsolutions.com

Subscriber Notice: Windstream Procurement Department
4001 Rodney Parham Road
Little Rock, AR 72212
Facsimile No. 501-748-5191

- 11.8 Insurance. IRTH shall provide and maintain insurance against losses or claims which may arise out of or result from IRTH's performance or obligation to perform under this Agreement. IRTH shall provide the following coverage's to meet Subscriber's insurance requirements: (a) Commercial General Liability with Broad Form Liability Endorsement, in the amount of \$2,000,000; (b) Vehicular Liability Insurance, in the amount of \$1,000,000; (c) Workers' Compensation, including the following: Statutory Coverage applicable in the state where the Services are performed and Employers Liability Coverage "B" (or stop gap coverage), in the amount of \$1,000,000; and (d) Professional Liability Insurance with a combined single limit of not less than \$1,000,000 per occurrence; (e) EDP Errors and Omissions Insurance in the amount of \$2,000,000.

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Before any Services begin, IRTH must furnish properly executed certificates of insurance or endorsements naming Subscriber as an additional insured on IRTH's Commercial General Liability policy. Subscriber shall be furnished at least thirty (30) days prior notice of any non-renewal and/or cancellation and/or reduction in limits or material change in any of the required coverages. Whenever IRTH shall have Subscriber's property in its possession, IRTH shall be deemed the insurer thereof and shall be responsible for such property until its return to and acceptance by Subscriber. If IRTH's insurance is canceled because IRTH failed to pay its premiums or any part thereof, or if IRTH fails to provide and maintain certificates as set forth herein, Subscriber shall have the right, but shall not be obligated, to withhold payment of IRTH's invoices until Subscriber has received satisfactory evidence of IRTH's payment of insurance premiums or pay such premium to the insurance company or to obtain such coverage from other companies and to deduct such payment from any sums that may be due or become due to IRTH, or to seek reimbursement for said payments from IRTH, which sums shall be due and payable immediately upon receipt by IRTH of notice Subscriber.

11.9 Entire Agreement. This Agreement, including all exhibits, addenda, and Statement of Service, constitutes the entire agreement between the parties and supersedes all prior or contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and signed by the party against whom the modification, amendment or waiver is asserted.

11.10 Duplicate Originals. This Agreement may be executed in one or more counterparts, and if in more than one counterpart, each, when taken together, shall constitute one and the same instrument. Signatures on this Agreement which are exchanged by facsimile or other electronic means are true and valid signatures for all purposes hereunder and shall bind IRTH and Subscriber to the same extent as original signatures.

11.11 Authority. Each individual signing this Agreement warrants such execution has been duly authorized by the party for which he or she is signing. The execution and performance of this Agreement by each party has been duly authorized by all applicable laws and regulations and all necessary corporate action, and this Agreement constitutes the valid and enforceable obligation of each party in accordance with its terms.

11.12 Compliance with Laws: Federal Government Contracting Notice.

(a) Compliance Clauses. Each Party shall, at its own cost and expense, perform its obligations under this Agreement in compliance with all applicable laws to which a Party is subject. As a supplier to the U.S. Government, Windstream is required by U.S. Government Regulations to require that all Windstream vendors, suppliers, contractors, and licensors comply with the following additional clauses: 48 CFR 52.225-13 Restrictions on Certain Foreign Purchases (Feb. 2006); and 48 CFR 52.247-64 Preference for Privately Owned U.S. Flag Commercial Vessels (Feb. 2006). For all vendor, supplier, contractor, and licensor contracts over \$10,000, the following general terms additionally apply: 48 CFR 52.222-21 Prohibition of Segregated Facilities (Feb. 1999) and 48 CFR 52.222-26 Equal Opportunity (Mar. 2007). For all vendor, supplier, contractor, and licensor contracts over \$15,000, 48 CFR 52.222-36 Affirmative-Action for Workers with Disabilities (Oct. 2010) shall apply. For all vendor, supplier, contractor, and licensor contracts over \$100,000, the following general terms additionally apply: 48 CFR 52.219-8 Utilization of Small Business Concerns (May 2004) (in all subcontracts allowing further subcontracting with third parties by the vendor, supplier, contractor or licensor); 48 CFR 52.222-35 Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Sept. 2010); 48 CFR 52.222-37 Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (July 2011); and 48 CFR 52.203-6 Restrictions on Subcontractor Sales to the Government (Sept. 2006). For contracts over \$650,000 (\$1,500,000 for construction) that allow the vendor, supplier, contractor, or licensor to further subcontract with third parties, 48 CFR 52.219-9 Small Business Subcontracting Plan (Oct. 2010) shall also apply.

(b) Small Business Subcontracting Plan. Pursuant to 48 CFR 52.219-9 Small Business Subcontracting Plan (Oct. 2010), if applicable, upon request by Windstream, a vendor, supplier, contractor or licensor whose contracts with Windstream (i) will total at least \$650,000 (\$1,500,000 for construction) and (ii) allow the vendor, supplier, contractor, or licensor to further subcontract with third parties, shall submit to Windstream a written Small Business Subcontracting Plan ("Subcontracting Plan") that complies with the requirements of 48 CFR 52.219-9 and addresses subcontracting with small business concerns, including small businesses, veteran-owned small

businesses, service-disabled veteran-owned small businesses, HUBZone small businesses, small disadvantaged businesses, and women-owned small businesses. The Subcontracting Plan shall become an exhibit attached to this Agreement and incorporated herein by this reference. If a Subcontracting Plan is required under this Section, Windstream shall have the right, in its sole discretion, to terminate this Agreement, on written notice, if Contractor fails to properly submit or follow a Subcontracting Plan. Additionally, Contractor agrees to indemnify Windstream for any damages, of whatever nature, Windstream is required to pay under 48 CFR Part 52 if those damages result from Contractor's failure to properly submit or follow a Subcontracting Plan.

11.13 Hiring. Each Party agrees not to hire any employee of the other with whom such Party has contact without the prior written permission of the other Party, both during such time as the performance of Services under a SOS is pending and thereafter continuing for a period of six (6) months. This provision shall not apply to (i) Supplier's employees who have been continuously assigned to full-time Windstream servicing activities in excess of twelve (12) consecutive months, (ii) Supplier's employees designated on a SOS as available for hire, (iii) employees of either Party responding to advertisements made at job fairs, through Windstream internal communications, or in media circulated to the general public at large, or (iv) former employees, agents, or subcontractors of Supplier.

11.14 Originality. Supplier represents, warrants, and covenants the originality of any work performed or Product delivered under this Agreement and that no portion of the Product completed on behalf of Windstream under this Agreement violates or is protected by patent, copyright, trade secret, or other intellectual property or other rights of Supplier or any third party. For purposes of this Section, Product shall not include materials or services supplied by Windstream. In addition to the indemnity described in Sections 9.4, if an infringement claim threatens Windstream's or its Affiliates' continued use of any Products provided by Supplier under this Agreement, Supplier shall, in the following order and at no cost to Windstream, (i) obtain the right for Windstream to continue use of such Products, (ii) repair or modify the Products so they are both non-infringing and functionally and operationally equivalent to the Products initially delivered, or (iii) provide replacement Products which are functionally and operationally equivalent to the Products. If none of the foregoing is possible, then Windstream shall have the right to terminate this Agreement immediately upon notice to Supplier and Supplier shall refund all fees paid by Windstream hereunder which relate to such Products.

11.15 Ethics. Supplier warrants that it has given no commissions, payments, kickbacks, lavish gifts, entertainment, or other things of value to any employee or agent of Windstream in connection with this Agreement and acknowledges that the giving of any such payments, gifts, entertainment, or other things of value is strictly in violation of Windstream's policy on conflicts of interest and may result in the cancellation of this Agreement and/or any or all SOW(s). Supplier must notify Windstream's Chief Financial Officer or Controller of any solicitation by any of Windstream's employees or agents for any payments, gifts, entertainment, or other things of value.

11.16 Necessary Contracts From Employees. Supplier represents, warrants, and covenants that it has or will obtain appropriate agreements with its employees and others, including any permitted subcontractors, whose services it may require, sufficient to enable full compliance with all the provisions of this Agreement.

This Agreement has been duly executed by the duly authorized representatives of the parties on the date set forth above.

IRTH:

IRTH SOLUTIONS, INC.

DocuSigned by:

By: Brent Bishop

By: Brent Bishop

President & CFO

SUBSCRIBER:

WINDSTREAM COMMUNICATIONS, INC.

DocuSigned by:

By: Tony Thomas

Name: Tony Thomas

Title: Chief Financial Officer

From: Larry Bame [mailto:lbame@irthsolutions.com]
Sent: Thursday, July 19, 2012 11:12 AM
To: Cox, Stephanie; Eastman, Andrew M
Subject: Windstream Statements of Service

Andy & Stephanie,

Good morning! I hope you are both doing well.

Attached are 2 new Statements of Service. The terms are the same as the agreement that Stephanie is reviewing. The part that changed is the Fees and what is included. The new statements are both for our Premier edition. Option 1 includes 1, 100,000 tickets with an annual subscription fee of \$227,031.00 for 3 years and Option 2 includes 1,220,000 tickets with an annual subscription fee of \$239,031.00 for 3 years.

The reason for the changes are as follows:

- On the last round of pricing, I miscalculated the cost per ticket for the Pro option. Once I reviewed the worksheet, I saw that Premier was not only the better option because of the applications included but it is also less expensive than the Pro option. Basically the cost per ticket with Pro is \$0.18/ticket in packets of 5,000 tickets. The cost per ticket for Premier is \$0.15/ticket.
- I reviewed Windstream's needs with Andy. He feels 30 logins are adequate therefore no need to include 55. He also requested options including 1,100,000 tickets and 1,220,000 tickets.
- The 120,000 ticket difference is for Iowa Telecommunications Services which is owned by Windstream. Tickets are sent directly to the locators. These tickets should go to irthnet first for many reasons. I am happy to review them with you in detail. From a financial standpoint, locators typically charge about \$2.00 to screen tickets (\$240,000 annually for 120,000 tickets). The incremental cost to add 120,000 is \$12,000 due to additional discounts provided to you by irth. You are a great customer and we have tried to put together the right offer for you. Andy and I spoke at length regarding whether we should include 1,220,000 tickets or 1,100,000 tickets. Because of our long-term relationship, our team agreed to provide the additional 120,000 tickets for \$12,000 in order to encourage you to move forward with option 2 now! In a nutshell, you can spend \$12,000 to save \$240,000 and use both irthnet and your existing staff to screen tickets!

I will reach out to both of you shortly to discuss the new Statements of Service and to see how Stephanie is doing with the redlines.

Thanks,

Trent Peugh | Sr. Vice President, Business Development

O: 614-947-3570 | M: 614-937-4971

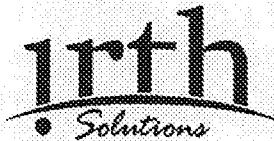
tpeugh@lrthsolutions.com | www.lrthsolutions.com

www.linkedin.com/in/trentpeugh

This message contains information which may be confidential and privileged. Unless you are the addressee (or authorized to receive for the addressee), you may not use, copy or disclose to anyone the message or any information contained in the message. If you have received the message in error, please advise the sender by reply e-mail and delete the message.

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IRTH Solutions - New
 5009 Horizons Dr
 Columbus OH 43220



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| Date | 8/9/2012 |
| Page | 1 |

EXHIBIT

C1

Bill To:

Windstream Communications
 Windstream Accounts Payable
 C00016859
 PO Box 18313
 Little Rock AR 72222

Ship To:

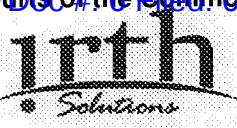
Windstream Communications
 Windstream Accounts Payable
 Jim Sheeler
 50 Executive Parkway
 Hudson Ohio 44236

| Purchase Order No. | Customer ID | Salesperson ID | Shipping Method | Payment Terms | Req Ship Date | Master No. |
|--------------------|-------------|----------------|---|---------------|---------------|------------|
| 0 | 00232 | BAME | | Net 30 | 8/9/2012 | 4,453 |
| Ordered | Shipped | Item Number | Description | Unit Price | Ext. Price | |
| 1 | 1 | US3-UP | UtiliSphere Premier Edition - 8/2012-7/2013 | \$65,375.00 | \$65,375.00 | |
| 1 | 1 | USLG25-OP | UtiliSphere 25 Login Package | \$4,156.000 | \$4,156.00 | |
| 234 | 234 | US3TP5-OP | UtiliSphere Premier 5K Ticket Package | \$750.000 | \$175,500.00 | |
| 1 | 1 | DISCOUNT | Discount | (\$6,000.000) | (\$6,000.00) | |

Please Remit To: IRTH Solutions, Inc
 Attn: Accounts Receivable
 5009 Horizons Dr.
 Columbus, Ohio 43220
 614-784-8010

| | |
|----------------|--------------|
| Subtotal | \$239,031.00 |
| Misc | \$0.00 |
| Tax | \$0.00 |
| Freight | \$0.00 |
| Trade Discount | \$0.00 |
| Total | \$239,031.00 |

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C2

IRTH Solutions, Inc.
5009 Horizons Drive
Columbus, Ohio 43220

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| Invoice | INV003852 |
| Date | 8/9/2012 |
| Page | 1 |

Bill To:
Windstream Communications
Windstream Accounts Payable
C00016859
PO Box 18313
Little Rock AR 72222

Ship To:
Windstream Communications
Andy Eastman
50 Executive Parkway
Hudson, Ohio 44236

| Purchase Order No. | Customer ID | Sales Person | Shipping Method | Payment Terms | Req Ship Date | Master No. |
|--------------------|-------------|--------------|--|----------------|----------------|------------|
| | 00232 | BAME | MAIL | Net 30 | 8/9/2012 | 4,453 |
| Ordered | Shipped | Item Number | Description | Unit Price | Extended Price | |
| 1 | | 1 US3-UP | UtilSphere Premier Edition - 08/2012-07/2013 | \$ 65,375.0000 | \$ 65,375.00 | |
| 1 | | 1 USLG25-OP | UtilSphere 25 Login Package | \$ 4,156.00 | \$ 4,156.00 | |
| 234 | 234 | US3TPS-OP | UtilSphere Premier 5K Ticket Package | \$ 750.00 | \$ 175,500.00 | |
| 1 | | 1 DISCOUNT | Discount | \$ (6,000.00) | \$ (6,000.00) | |
| 1 | | 1 Credit | Credit for Payment of Paetec Invoice INV003746 8/2012-9/2012 | \$ (20,368.00) | \$ (20,368.00) | |
| 1 | | 1 Credit | Credit for Payment of Windstream Invoice INV003744 8/2012-6/2013 | \$ (41,798.65) | \$ (41,798.65) | |

Please Remit to:
IRTH Solutions, Inc.
Attn: Accounts Receivable
5009 Horizons Drive
Columbus, Ohio 43220
614-784-8010

| | |
|----------------|--------------|
| Subtotal | \$176,864.35 |
| Tax | \$0.00 |
| Fees | \$0.00 |
| Freight | \$0.00 |
| Trade Discount | \$0.00 |
| Total | \$176,864.35 |

irth Solutions
5009 Horizons Dr
Columbus OH 43220



| | |
|---------|-----------|
| Invoice | INV004457 |
| Date | 8/1/2013 |
| Page | 1 |

EXHIBIT

D

Bill To:

Ship To:

Windstream Communications
Windstream Accounts Payable
Leanna Franzetti - C00016859
Little Rock AR 72222

Windstream Communications
Windstream Accounts Payable
Mick Campbell
1925 Enterprise Pkwy
Twinsburg Ohio 44087

| Purchase Order No. | Customer ID | Salesperson ID | Shipping Method | Payment Terms | Req Ship Date | Master No. |
|--------------------|-------------|----------------|---|---------------|---------------|------------|
| 0 | 00232 | BAME | | Net 30 | 8/1/2013 | 5,093 |
| Ordered | Shipped | Item Number | Description | Unit Price | Ext. Price | |
| 1 | 1 | US3-EC | UtiliSphere Partner Edition - 08/2013-07/2014 | \$65,375.0000 | \$65,375.00 | |
| 1 | 1 | USLG25-EC | UtiliSphere 25 Login Package | \$4,156.0000 | \$4,156.00 | |
| 234 | 234 | US3TP5-EC | UtiliSphere Premier 5K Ticket Package | \$750.0000 | \$175,500.00 | |
| 1 | 1 | DISCOUNT | Discount | (\$6,000.000) | (\$6,000.00) | |

Please Remit To: IRTH Solutions, Inc
Attn: Accounts Receivable
5009 Horizons Dr.
Columbus, Ohio 43220
614-784-8010

| | |
|----------------|--------------|
| Subtotal | \$239,031.00 |
| Misc | \$0.00 |
| Tax | \$15,537.02 |
| Freight | \$0.00 |
| Trade Discount | \$0.00 |
| Total | \$254,568.02 |

TOTAL TICKETS GENERATED BY MONTH AND YEAR FOR THE THREE-YEAR
SUBSCRIBER AGREEMENT BETWEEN
PLAINTIFF IRTH SOLUTIONS AND WINDSTREAM COMMUNICATIONS

| Agreement Year 1 | | | Agreement Year 2 | | | Agreement Year 3 | | |
|------------------|------|-----------|------------------|------|-----------|------------------|------|---------|
| August | 2012 | 47,446 | August | 2013 | 155,405 | August | 2014 | 139580 |
| September | 2012 | 41,940 | September | 2013 | 145961 | September | 2014 | 144318 |
| October | 2012 | 59,181 | October | 2013 | 158,119 | October | 2014 | 149064 |
| November | 2012 | 92,600 | November | 2013 | 113740 | November | 2014 | 101484 |
| December | 2012 | 79,303 | December | 2013 | 89,661 | December | 2014 | 95666 |
| January | 2013 | 91,883 | January | 2014 | 93,620 | January | 2015 | 90883 |
| February | 2013 | 83,157 | February | 2014 | 85,773 | February | 2015 | 81244 |
| March | 2013 | 107,195 | March | 2014 | 115,766 | March | 2015 | 129663 |
| April | 2013 | 145,383 | April | 2014 | 149,600 | April | 2015 | 152402 |
| May | 2013 | 157,435 | May | 2014 | 152,285 | May | 2015 | 142344 |
| June | 2013 | 144,034 | June | 2014 | 147,623 | June | 2015 | 150273 |
| July | 2013 | 156,434 | July | 2014 | 151,472 | July | 2015 | 150837 |
| Totals | | 1,205,991 | | | 1,559,025 | | | 1527758 |

| Extension | | | After non-Written Cancelation | | |
|-----------|------|--------|-------------------------------|------|-----|
| August | 2015 | 126481 | September | 2015 | 2 |
| | | | October | 2015 | 4 |
| | | | November | 2015 | 133 |
| | | | December | 2015 | 200 |
| Totals | | 126481 | | | 339 |

irth Solutions
5009 Horizons Dr
Columbus OH 43220



| | |
|---------|-----------|
| Invoice | INV005181 |
| Date | 8/1/2014 |
| Page | 1 |

EXHIBIT

F

Bill To:

Windstream Communications

Vendor #18234842 CID#E0159080
PO Box 18313
Little Rock AR 72222

Ship To:

Windstream Communications

Brad Hahn
PO Box 18313
Little Rock AR 72222

| Purchase Order No. | Customer ID | Salesperson ID | Shipping Method | Payment Terms | Reg Ship Date | Master No. |
|--------------------|-------------|----------------|--|---------------|---------------|------------|
| 0 | 00232 | BISHOP | MAIL | Net 30 | 8/1/2014 | 5,896 |
| Ordered | Shipped | Item Number | Description | Unit Price | Ext. Price | |
| 1 | 1 | US3-EC | UtiliSphere Partner Edition - 08/2014-07/2015 | \$65,375.0000 | \$65,375.00 | |
| 1 | 1 | USLG25-EC | UtiliSphere 25 Login Package | \$4,156.0000 | \$4,156.00 | |
| 234 | 234 | US3TP5-EC | UtiliSphere Premier 5K Ticket Package | \$750.0000 | \$175,500.00 | |
| 1 | 1 | DISCOUNT | Discount | (\$6,000.000) | (\$6,000.00) | |
| 68 | 68 | US3TP5-EC | UtiliSphere Premier 5K Ticket Package - Overages (08/2013-07/2014) | \$750.0000 | \$51,000.00 | |

Please Remit To: IRTH Solutions, Inc
Attn: Accounts Receivable
5009 Horizons Dr.
Columbus, Ohio 43220
614-784-8010

| | |
|----------------|--------------|
| Subtotal | \$290,031.00 |
| Misc | \$0.00 |
| Tax | \$0.00 |
| Freight | \$0.00 |
| Trade Discount | \$0.00 |
| Total | \$290,031.00 |

OC883 B19

IRTH Solutions

5009 Horizons Dr
Columbus OH 43220

| | |
|---------|-----------|
| Invoice | INV005843 |
| Date | 7/31/2015 |
| Page | 1 |

EXHIBIT

G

Bill To:

Ship To:

Windstream Communications
Vendor #18234842 CID#E0159080
PO Box 18313
Little Rock AR 72222

Windstream Communications
Brad Hahn
PO Box 18313
Little Rock AR 72222

| Purchase Order No. | | Customer ID | Salesperson ID | Shipping Method | Payment Terms | Req Ship Date | Master No. | |
|--------------------|---------|-------------|--|-----------------|---------------|---------------|------------|-------------|
| 0 | | 00232 | BISHOP | MAIL | Net 30 | 7/31/2015 | 6,620 | |
| Ordered | Shipped | Item Number | Description | | | | Unit Price | Ext. Price |
| 307,758 | 307,758 | ODTMPT2 | UtilSphere Ticket Overages 08/2014-07/2015 | | | | \$0.1500 | \$46,163.70 |

Please Remit to: IRTH Solutions, Inc.
Attn: Accounts Receivable
5009 Horizons Dr.
Columbus, Ohio 43220
614-784-8010

| | |
|----------------|-------------|
| Subtotal | \$46,163.70 |
| Misc | \$0.00 |
| Tax | \$0.00 |
| Freight | \$0.00 |
| Trade Discount | \$0.00 |
| Total | \$46,163.70 |

OC883 B20

IRTH Solutions5009 Horizons Dr
Columbus OH 43220

| | |
|---------|-----------|
| Invoice | INV005968 |
| Date | 9/1/2015 |
| Page | 1 |

EXHIBITH

exhibitsclerk.com

Bill To:Windstream Communications
Vendor #18234842 CID#E0159080
PO Box 18313
Little Rock AR 72222**Ship To:**Windstream Communications
Brad Hahn
PO Box 18313
Little Rock AR 72222

| Purchase Order No. | | Customer ID | Salesperson ID | Shipping Method | Payment Terms | Req Ship Date | Master No. |
|--------------------|---------|-------------|---|-----------------|---------------|---------------|-------------|
| 0 | | 00232 | BISHOP | MAIL | Net 30 | 9/1/2015 | 6,749 |
| Ordered | Shipped | Item Number | Description | | | Unit Price | Ext. Price |
| 126,487 | 126,487 | ODTMPT2 | UtiliSphere TM Per Ticket - Aug Tickets | | | \$0.1500 | \$18,973.05 |

Please Remit to: IRTH Solutions, Inc.
Attn: Accounts Receivable
5009 Horizons Dr.
Columbus, Ohio 43220
614-784-8010

| | |
|----------------|-------------|
| Subtotal | \$18,973.05 |
| Misc | \$0.00 |
| Tax | \$0.00 |
| Freight | \$0.00 |
| Trade Discount | \$0.00 |
| Total | \$18,973.05 |

**COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO**

irth Solutions, LLC,

Plaintiff,

v.

Windstream Communications, LLC,

Defendant.

No. 16-CV-001018

Judge Charles A. Schneider

CONSENT TO MOVE OR PLEAD

In accordance with Local Rule 13.01 of the Franklin County Court of Common Pleas, the parties have stipulated to a 7-day extension of time, from March 8, 2016 to March 15, 2016, for Defendant to move or plead in response to Plaintiff's Complaint.

There has been no prior stipulated extension of time for Defendant in this case, and the extension of time set forth in this stipulation does not exceed twenty-eight days.

Respectfully submitted,

s/ Patrick McCarthy per telephone auth.

Patrick McCarthy (0092947)
Vesha Law Firm, LLC
38 South High Street
Dublin, Ohio 43017
pat@veshalawfirm.com

Attorney for Plaintiff irth Solutions, LLC

s/ Jacqueline K. Matthews

Michael J. Montgomery (0070922)
mmontgomery@bakerlaw.com
BakerHostetler
1900 East Ninth Street, Suite 3200
Cleveland, Ohio 44114-3485
Telephone: 216.621.0200
Facsimile: 216.696.0740

Jacqueline K. Matthews (0086269)
jmatthews@bakerlaw.com
BakerHostetler
65 East State Street, Suite 2100
Columbus, Ohio 43215
Telephone: 614.228.1541
Facsimile: 614.462.2616

Counsel for Defendant Windstream Communications, LLC

CERTIFICATE OF SERVICE

I hereby certify that on March 8, 2016, I electronically filed the foregoing with the Clerk of the Court by using the e-Filing system which will send a notice of electronic filing to the following:

Patrick McCarthy
Vesha Law Firm, LLC
38 South High Street
Dublin, Ohio 43017
pat@veshalawfirm.com

Attorney for Plaintiff irth Solutions, LLC

s/ Jacqueline K. Matthews
Counsel for Defendant Windstream
Communications, LLC