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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re) Chapter 11
)
WINDSTREAM HOLDINGS, INC., *et al.*,¹) Case No. 19-22312 (RDD)
)
) (Jointly Administered)
Debtors.)

**LIMITED OBJECTION OF APPDIRECT CANADA, INC. TO NOTICE
OF REJECTION OF A CERTAIN EXECUTORY CONTRACT**

AppDirect Canada, Inc. ("AppDirect"), by and through its undersigned attorneys, hereby files this limited objection (the "Objection") to the *Notice of Rejection of a Certain Executory Contract* [Docket No. 1955] (the "Rejection Notice") filed by the above-captioned debtors and debtors in possession ("Windstream" or the "Debtors"), and respectfully represents as follows:

¹ The last four digits of Debtor Windstream Holdings, Inc.'s tax identification number are 7717. Due to the large number of debtor entities in these chapter 11 cases, for which the Debtors have requested joint administration, a complete list of the debtor entities and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors' proposed claims and noticing agent at <http://www.kccllc.net/windstream>. The location of the Debtors' service address for purposes of these chapter 11 cases is: 4001 North Rodney Parham Road, Little Rock, Arkansas 72212.



Preliminary Statement

The Rejection Notice brings to a close a fifteen-year contractual relationship between AppDirect and Windstream during which AppDirect developed, promoted, and supported a variety of white-labeled services provided and sold to Windstream customers. In simple terms, AppDirect designed and built for Windstream a premium technical support platform, data storage, and premium technical support services more fully described herein, which supported and enhanced the Windstream end-user experience with the ultimate goal of engendering customer loyalty and driving revenue growth. AppDirect is a technology company focused on delivering cloud subscription commerce platforms to hundreds of partners globally. AppDirect utilized its expertise, technology, and know-how to provide Windstream and its customers with top-of-the-line industry services. Pursuant to a single day's notice given by the Rejection Notice, Windstream has indicated its intent to abruptly discontinue, and thereafter independently perform, AppDirect's services. AppDirect contends that unless Windstream complies with the termination requirements detailed in the MSA (as hereafter defined), Windstream's actions in continuing to perform AppDirect's services may in fact constitute a misappropriation of AppDirect's property and give rise to an independent postpetition cause of action against Windstream for infringement of AppDirect's intellectual property rights. Unfortunately, during the preceding two-week period, AppDirect's repeated efforts to address these issues in a collaborative manner have been met with Windstream's obstreperous unwillingness to engage.

Background

1. On February 25, 2019, (the “Petition Date”), the Debtors each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). The Debtors provide network communications, technology solutions, broadband, entertainment, security solutions, and core transport solutions to consumers and small businesses.

2. The Debtors continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Debtors’ chapter 11 cases.

3. AppDirect is a technology company made up of more than 100 engineers and technologists whose primary role is to support and design rapidly evolving technologies. AppDirect employs a team of programmers who develop tools designed to solve complex issues on behalf of its clients and their customers, including tools for online data storage, remote end-user service support, and end-user local machine maintenance. AppDirect continually invests its own resources in technology so that its agents can focus on providing a strong customer experience, while eliminating traditional call center restrictions.

4. Prior to the Petition Date, AppDirect, formerly known as Radialpoint SafeCare Inc., and Windstream Services, LLC, formerly Windstream Corporation, entered into a Master Services Agreement dated January 1, 2015 (together with all amendments thereto, the “MSA”). A true and correct redacted copy of the MSA is attached hereto as Exhibit A. Pursuant to the MSA, AppDirect licensed certain technology and provided related technical support services to Windstream, including but not limited to:

- Premium Technical Support services (the “PTScx Services”), which are made available to Windstream’s customers via a service center accessible via phone

or via instant messaging provided through AppDirect's Service Point Dashboard software ("SPD");

- The ability for Windstream customers to download and use AppDirect's SPD software (developed and owned by AppDirect), which, among other functions, optimizes the end-user's computer, allows for contact with technical support representatives pursuant to AppDirect's PTScx services, and allows the end-user to back up his/her data to AppDirect's cloud via ODS (as defined below);
- Online Data Storage ("ODS") backup services which enabled Windstream customers to store their data (the "Subscriber Content") on AppDirect's servers.

The PTScx Services, the SPD software, and ODS back up services, together with all other technical support services described in the MSA shall be referred to as the "AppDirect Services."

5. In connection with the AppDirect Services provided to Windstream, the MSA permits Windstream to use certain data, information, services, intellectual property, software, documentation, and confidential information (collectively, as more specifically described in the MSA, the "AppDirect Property"). However, Windstream is contractually *prohibited* from, among other things:

- (a) modifying, copying, distributing, or creating derivative works from AppDirect Property (MSA § 4.11.2);
- (b) accessing or using AppDirect Property beyond the scope contemplated by the MSA (MSA § 4.11.4);
- (c) accessing, using, or distributing AppDirect Property for any unlawful, prohibited, illegal, damaging, or otherwise unsuitable purposes (MSA §4.11.6); and

(d) using, disclosing, reproducing, summarizing, or distributing any Radialpoint Confidential Information (as such term is defined in the MSA) for any purposes other than what are contemplated by the MSA or the business relationship between AppDirect and Windstream (MSA § 9.2).

6. Not only did AppDirect continue to provide the Debtors with services pursuant to the MSA during these bankruptcy proceedings, at the Debtors' request, AppDirect agreed to reduce its pricing and provide additional technology and support services at no additional charge. Indeed, on or about April 15, 2019, after the Petition Date, AppDirect and Windstream executed Amendment 4 to the Master Services Agreement, in which AppDirect agreed to reduce pricing for the PTSx Services and the ODS services and Windstream agreed to extend the term of the MSA until December 31, 2022.

7. On information and belief, in May 2020, without providing notice to AppDirect, Windstream began sending notices to its customers informing them that Windstream planned to discontinue the AppDirect Services effective May 31, 2020. A true and correct copy of one such notice is attached hereto as Exhibit B. Among other things, the notices directed customers to call a different, non-AppDirect-related technical support phone number, and informed customers that their ODS accounts would be discontinued. Upon learning from a perplexed Windstream customer that Windstream sent these notices, AppDirect reached out to Windstream to discuss the Debtors' intentions regarding the MSA. However, rather than responding to AppDirect's efforts to discuss an orderly wind-down of services consistent with the terms of the MSA, the Debtors delayed engaging in any discussions with AppDirect until June 1, 2020, and later that evening filed the Rejection Notice seeking to reject the MSA effective June 1, 2020 (the "Proposed Rejection Date").

8. On June 2, 2020, AppDirect sent a cease and desist letter to Windstream regarding certain continuing obligations under the MSA. The cease and desist letter sought confirmation that, in accordance with the MSA, Windstream (a) destroyed all AppDirect Property pursuant to the MSA's termination provisions, (b) agrees to abide by the prohibitions against use and disclosure of AppDirect Property, and (c) has taken steps to ensure that its customers have uninstalled any of AppDirect's software, which includes the SPD software. Additionally, the cease and desist letter sought compensation for AppDirect's continued storage of approximately 200 terabytes of Subscriber Content, which generates daily hosting expenses for AppDirect. Moreover, despite the notices sent by the Debtors to their customers, AppDirect continues to receive calls from the Debtors' customers seeking technical assistance, and Debtors' customers continue to upload and download Subscriber Content to AppDirect's servers.

9. Despite AppDirect's efforts to work with the Debtors to effectuate an orderly transition of services under the MSA that protects and preserves AppDirect Property and minimizes the direct impact on the Windstream customers, AppDirect has been unable to engage in productive discussions with the Debtors. Accordingly, AppDirect does not object to the Debtors' exercise of their business judgment in rejecting the MSA. However, AppDirect does object to the Proposed Rejection Date and affirmatively seeks: (a) establishment of a rejection date that is effective only after the Debtors' full compliance with the above-referenced provisions of the MSA, (b) preservation of AppDirect's right to seek equitable or injunctive relief for the infringement of its intellectual property rights or Windstream's conduct in violation of the termination provisions of the MSA, and (c) protection from any potential liability arising from AppDirect's election to exercise its right under the MSA to delete and destroy Subscriber Content.

Argument

A. The Rejection Should Be Effective as of the Date the Debtors Fully Comply With the Provisions of the MSA.

10. AppDirect objects to the Proposed Rejection Date set forth in the Rejection Notice because as of the Proposed Rejection Date, the Debtors have not fully complied with the wind down provisions of the MSA. Accordingly, AppDirect is continuing to provide services under the MSA after the Proposed Rejection Date via its continued provision of PTSex and ODS services. Moreover, the MSA affirmatively obligates Windstream to take certain steps to protect AppDirect's intellectual property used by Windstream and its customers upon cancellation of AppDirect Services, including destroying all AppDirect Property, and confirming that its customers have uninstalled and deleted any AppDirect software. The MSA also prohibits Windstream from further using or disclosing the AppDirect Property.

11. Any rejection of the MSA should be effective no sooner than the date upon which the Debtors certify compliance with the MSA. Specifically, the Debtors must (a) provide a written certification signed by a duly authorized officer of the Debtors that Windstream has destroyed all AppDirect Property and Radialpoint Confidential Information (as more fully described in the MSA), (b) certify that, notwithstanding the rejection of the MSA, the Debtors will abide by the prohibitions against unlawful use and disclosure of the AppDirect Property, (c) confirm that the Debtors have taken affirmative steps to ensure that its customers have uninstalled all AppDirect software, (d) negotiate terms of payment for the storage of Subscriber Content and any other services in connection with the MSA provided after the Proposed Rejection Date but prior to the actual effective date of rejection, and (e) either timely (i) negotiate in good faith with AppDirect to transition the Subscriber Content into the possession of the Debtors (which, pursuant to MSA § 8.4.2.5, must be at Debtors' expense which itself must, pursuant to MSA § 8.1.4.7, be calculated

according to AppDirect's standard Professional Services rates), or (ii) confirm that the Debtors do not wish to transition the Subscriber Content and therefore AppDirect may remove it from its servers.

12. Delaying the effective date of the rejection will incentivize the Debtors to take the five steps enumerated above and engage in an exercise to ensure that AppDirect's intellectual property rights will not be infringed. Failure to comply is likely to result in the continued use by Windstream and its customers of the AppDirect Property and RadialPoint Confidential Information (as defined in the MSA), which will cause ongoing harm to AppDirect. Moreover, AppDirect continues to incur costs related to Windstream's failure to meet the requirements of the MSA and AppDirect should be compensated for those costs prior to rejection. The burden should be placed on the Debtors to eliminate the incurrence of additional costs on behalf of the estate by conditioning the effective date of rejection on the completion of their affirmative duties under the MSA. Should the Debtors fail to complete the enumerated tasks, the estate may be subject to far greater liability to AppDirect for the postpetition infringement of AppDirect's intellectual property rights, and to Windstream's own customers for the allowing the destruction of their uploaded Subscriber Content to occur.

B. Any Order Approving Rejection of the MSA Must Preserve AppDirect's Rights to Seek Injunctive Relief.

13. As set forth above, the MSA places affirmative obligations on Windstream to, among other things, protect AppDirect's intellectual property by (a) refraining from modifying, copying, distributing, or creating derivative works from AppDirect's intellectual property, (b) destroying all AppDirect Property (as defined in the MSA) in Windstream's possession, and (c) refraining from using and disclosing all AppDirect Property (as defined in the MSA).

14. To appropriately protect AppDirect's intellectual property, it is imperative that, even after the rejection, the Debtors and any of their nondebtor affiliates cease using any of AppDirect's intellectual property in the operation of AppDirect's premium technical support platform and any related technical support services. Additionally, Windstream is obligated to use its best efforts to direct its customers to delete any software used in connection with the MSA.

15. All of these obligations to protect AppDirect's intellectual property survive both rejection and termination of the MSA. The failure of Windstream to comply with these obligations after rejection of the MSA may result in damages that cannot be remedied through monetary remuneration. In the event that Windstream fails to abide by these obligations after rejection of the MSA, AppDirect's equitable remedies must be preserved post-rejection.

16. Section 101(5)(B) of the Bankruptcy Code defines a claim as a "right to an equitable remedy for breach of performance *if such breach gives rise to a right to payment...*" 11 U.S.C. § 101(5)(B) (emphasis added). However, where "money damages are not permissible, only equitable relief is available and remedies for the breach may be pursued outside of the bankruptcy proceedings." *In re Future Graphics, Inc.*, 2010 Bankr. LEXIS 1666, at *15 (Bankr. E.D.N.C. May 17, 2010) (citing *In re The Ground Round, Inc.*, 335 B.R. 253 (B.A.P. 1st Cir. 2005)). *See also United States v. LTV Corp. (In re Chateaugay Corp)*, 944 F.2d 997, 1008 (2d Cir. 1991) (finding that a creditor does not hold a claim if it has no option to accept payment in lieu of injunctive relief).

17. Accordingly, any order approving the rejection of the MSA must not interfere with AppDirect's rights to pursue its equitable remedies for any post-rejection breach of the MSA by the Debtors. Further, any monetary damages arising from AppDirect Services provided to Windstream in connection with Windstream's continuing obligations under the MSA should be

entitled to administrative expense priority. *See, e.g., In re Kollel Mateh Efraim*, 2010 Bankr. LEXIS, at *19-20 (Bankr. S.D.N.Y. Sept. 21, 2010) (noting that where a benefit is conferred post-rejection, the benefit constitutes an administrative expense under section 503(b)); *Meredith Corp. v. Home Interiors & Gifts, Inc. (In re Home Interiors & Gifts, Inc.)*, 2008 Bankr. LEXIS 2476, at * (Bankr. N.D. Tex. Oct. 9, 2008) (holding that a creditor was entitled to an administrative expense claim for the value conferred to the estate from the debtor's use of licenses after the debtor's rejection of the license agreement); *In re Int'l Ventures*, 215 B.R. 726, (Bankr. E.D. Ark. 1997) (noting that a claimant may be entitled to an administrative claim post-rejection if it can demonstrate a tangible benefit to the estate).

C. Any Order Approving Rejection Should Protect AppDirect from Liability With Respect to the Deletion of Customer Data

18. The MSA provides Windstream the option to take possession of the Subscriber Content currently hosted by AppDirect, within a reasonable timeframe and at Windstream's expense. MSA §§ 8.1.4.7 and 8.4.2.5. Conversely, the MSA does not obligate AppDirect to retain such Subscriber Content upon cancellation of the services it provides to Windstream. As the MSA does not prohibit AppDirect from removing Subscriber Content from its servers after the termination of the MSA, AppDirect may do so without liability to Windstream or its customers. Moreover, AppDirect's own End-User License Agreement ("EULA")², which is passed-through to Windstream end-users by virtue of their use of AppDirect's services and software, disclaims any liability on behalf of AppDirect should Subscriber Content be deleted. EULA, § 2.3. Any order approving the rejection of the MSA should confirm that the absence of AppDirect's liability as to deletion of Subscriber Content survives the rejection of the MSA, and AppDirect shall not be

² The full text of the AppDirect EULA can be found at <https://www.appdirect.com/products/apphelp/eula-consumer>

liable to either Windstream or its customers for any damages relating to the deletion of Subscriber Content from AppDirect's servers based on Windstream's failure to exercise its option to transition the Subscriber Content to its control.

Reservation of Rights

19. AppDirect reserves its right to assert any and all claims, including priority claims, administrative expense claims, and any other claims against the Debtors for App Direct Services and for any damages arising from the Debtors' failure to comply with postpetition obligations related to the MSA.

WHEREFORE, AppDirect respectfully requests that the Court sustain the Objection, enter an order granting relief consistent with the foregoing objections, and grant any other and further relief as the Court deems just and proper.

Dated: June 15, 2020
Wilmington, Delaware

BALLARD SPAHR LLP

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CERTIFICATE OF SERVICE

I, Chantelle D. McClamb, hereby certify that on this 15th day of June, 2020, a copy of the foregoing was served on all parties receiving CM/ECF notices in this case.

/s/ Chantelle D. McClamb
Chantelle D. McClamb

EXHIBIT A

MASTER SERVICES AGREEMENT

This MASTER SERVICES AGREEMENT (“MSA”) is entered into as of January 1, 2015 (the “Effective Date”):

BY AND BETWEEN **RADIALPOINT SAFECARE INC.**, a New Brunswick (Canada) corporation having its principal place of business at 2050 de Bleury Street, Suite 300, Montreal, QC, H3A 2J5, Canada (“**Radialpoint**”).

AND **WINDSTREAM CORPORATION and its Affiliates**, a Delaware corporation, having its principal place of business at 4001 N Rodney Parham Rd., Little Rock, AR, 72212, United States (collectively “**Windstream**”).

(collectively referred to as the “**Parties**”, and individually, as a “**Party**”).

WHEREAS Radialpoint has developed certain technology and services through which it enables its customers to offer premium technical support services and provide other solutions and services to their respective clients;

WHEREAS Windstream is a voice and data communications provider;

WHEREAS Windstream (acting through Windstream Communications Inc.) and Radialpoint have entered into a Hosted Solution Services Agreement (contract number 090026N1) effective on February 19, 2009 for the provision of certain online backup services by Radialpoint to Windstream’s customers (the “**Old OBS Contract**”);

WHEREAS Windstream (acting through Windstream Communications Inc.) and Radialpoint, acting through its subsidiary, Radialpoint SafeCare USA LLC., have entered into a Master Services and Software License Agreement (contract number 090112N1) effective December 13, 2008, for the provision of certain premium technical support services by Radialpoint to Windstream’s customers (the “**Old PTS Contract**”);

WHEREAS the Parties now desire to terminate both the Old OBS Contract and the Old PTS Contract, and replace them with this Agreement as of the date of termination of the Effective Date hereof.

THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement, the Parties hereto agree as follows:

1. DEFINITIONS AND INTERPRETATION

1.1. **DEFINITIONS:** Whenever used in this Agreement, any Schedule, Exhibit, Statement of Work, or any amendment or restatement hereto or thereto, or in any communication required or permitted hereunder, the capitalised terms shall have the meaning set forth below, unless defined otherwise or unless the context otherwise requires.

1.1.1. “**Affiliate**” means, when used with reference to a specific Person, any other Person that, directly or indirectly, through one or more intermediaries, (i) owns or controls, (ii) is owned or is controlled by, or (iii) is under common ownership or common control with such specific Person. For the purpose of this definition, the terms “own” or “control” (including all derivations thereof) refer to the beneficial ownership of more than fifty percent (50%) of the voting rights or interest of that Person.

1.1.2. “**Agreement**” means this Master Services Agreement, together with all its Schedules, Exhibits, Statements of Work and attachments as may be amended, superseded or supplemented from time to time, in writing, by the Parties.

1.1.3. “**Authorised Recipients**” shall have the meaning set forth in section 9.3 hereof.

1.1.4. “**Background IP**” means, with respect to a Party, Intellectual Property in which that Party owns or licenses from a third party all or part of the Intellectual Property Rights prior to or independently of this Agreement.

1.1.5. “**Billing Subscriber List**” shall have the meaning set forth in section 5.3.2 hereof.

- 1.1.6. **“Bundle”** means (when used in reference to a particular SKU) that the Subscriber Services associated with such SKU are made available to Subscribers in combination with one or more other products and/or services that Windstream generally makes available to its End-Users.
- 1.1.7. **“Business Day”** shall mean 8:30 a.m. to 5:00 p.m. (GMT-5 / Eastern), Monday through Friday, excluding holidays observed by Radialpoint and its support centres, as well as those observed in the Territory.
- 1.1.8. **“Claim”** means any and all claims, demands, causes of action, lawsuits, proceedings, orders, judgments, settlements or damages, contingent or otherwise.
- 1.1.9. **“Confidential Information”** shall have the meaning set forth in section 9.1 hereof.
- 1.1.10. **“Connected Device”** means a Device that can connect to the internet either through wired or wireless connection, including but not limited to, smartphone, tablet computer, digital music player or game console.
- 1.1.11. **“Deliverable”** means such deliverable, item, Software, material, Documentation or other item to be provided or made available by Radialpoint as part of Professional Services.
- 1.1.12. **“Deployment Date”** means, with regard to a Service Schedule, the date when Radialpoint deploys a Service related to such Service Schedule into its production environment in accordance with the applicable Statement of Work.
- 1.1.13. **“Device”** means a personal computing device (including without limitation a PC), portable tablet device, mobile phone or any other similar electronic device with a user interface and compatible with the Subscriber Services, which is owned and/or lawfully operated by a Subscriber to access and/or use the Subscriber Services.
- 1.1.14. **“Disclosing Party”** shall have the meaning set forth in section 9.1 hereof.
- 1.1.15. **“Documentation”** means the reference materials for the Services, the Professional Services, the Software or the Deliverables, as applicable, including any and all manuals, help files, support materials and user guides made available by either Party in relation to the Services, the Professional Services, the Software or the Deliverables, and any of their components, parts and underlying modules, as well as the notes for any Modifications, including in all cases all copies thereof.
- 1.1.16. **“Effective Date”** means the effective date of this MSA, as set forth on the first page hereof.
- 1.1.17. **“End-User”** means any individual or a small or medium business entity, as the case may be, that either (i) has a billing relationship with Windstream for the subscription to any products or services sold and/or made available by Windstream, (ii) receives or uses any products or services sold and/or made available by Windstream, or (iii) registers for the access to and/or use of any products or services sold and/or made available by Windstream, in all cases for such individual’s personal use, or the use of the small or medium business entity’s personnel, including its employees, agents and representatives.
- 1.1.18. **“End-User Licence Agreement”** or **“EULA”** means the End-User Licence Agreement containing terms and conditions applicable to the use by and licence to the Subscribers of the Software provided as part of the Subscriber Services, as it may be updated by Radialpoint from time to time. The most up-to-date version of the EULA may be found at < <http://www.radialpoint.com/en-eula> >.
- 1.1.19. **“Entitlement”** means the entitlement of a Subscriber to access and/or use the Subscriber Services, whether by way of purchase of a Subscription by such Subscriber, or as otherwise made available by Windstream, including as part of various Bundles that Windstream provides to such Subscriber under the Windstream Terms of Service.
- 1.1.20. **“Exhibit”** means an exhibit to a Schedule, providing further details on the Software, Services and/or Professional Services to be provided to Windstream by Radialpoint under this Agreement, as further described in section 2 below.
- 1.1.21. **“Fees”** mean the fees, charges and expenses that Windstream shall pay to Radialpoint for the Services and/or the Professional Services pursuant to any Schedule and/or Statement of Work, as further described in section 5 hereof.

- 1.1.22. “**Force Majeure**” shall have the meaning set forth in section 16.7 hereof.
- 1.1.23. “**Foreground IP**” means any and all Intellectual Property developed, created, conceived or reduced to practice by Radialpoint (including through its Affiliates and/or Subcontractors) under, in relation with, or as the result of this Agreement, including all Modifications thereto.
- 1.1.24. “**Incident Assistance**” means a one-time Entitlement of a Subscriber for the access and use of the Subscriber Services, without the procurement of an Ongoing Subscription.
- 1.1.25. “**Intellectual Property**” or “**IP**” means anything that is or may be subject to an Intellectual Property Right, whether or not reduced to practice, such as, but not limited to ideas, concepts, techniques, processes, procedures, approaches, methodologies, formulae, algorithms, plans, systems, research, information, documentation (including Documentation), data, courseware, training materials, manuals, teaching guides, data compilations, specifications, requirements, designs, diagrams, works, programs, literary and artistic works, symbols, names, technologies, software (including but not limited to Software), codes, tools, know-how, images, performances, discoveries, inventions, trademarks (including logos, trade names, service marks and Trademarks), trade secrets, designs, confidential information (including Confidential Information), mask work and integrated circuit topographies, including in all cases Modifications thereto.
- 1.1.26. “**Intellectual Property Right**” or “**IPR**” means any right, whether or not registered, that is or may be granted or recognised under applicable statutes or regulations in any jurisdiction (including common law or civil law principles) with regard to Intellectual Property, including, without limitation, patents, design patents, copyrights, moral and neighbouring rights, industrial designs, trademarks (including Trademarks), trade names, service marks, trade secrets, know-how, and other similar rights, and including rights in and to any application for any of the foregoing.
- 1.1.27. “**Legacy Users**” refers to all ‘subscribers’, as such term is employed respectively in the Old OBS Contract and in the Old PTS Contract.
- 1.1.28. “**MDF**” or “**Marketing Development Fund**” refers to the marketing development fund described in section 5.11 hereof.
- 1.1.29. “**Minimum Monthly Commitment**” shall have the meaning set forth in section 5.4 hereof.
- 1.1.30. “**Modification**” includes any past, present or future translation, abridgement, condensation, retrenchment, revision, correction, improvement, enhancement, integration, configuration, customisation, expansion, addition, bug fix, patch, Update, Upgrade, new version, new feature, or other modification.
- 1.1.31. “**MSA**” means this Master Services Agreement, excluding Schedules, Exhibits, Statements of Work and Documentation.
- 1.1.32. “**MSA Term**” shall have the meaning set forth in section 8.1 hereof.
- 1.1.33. “**Old Contracts**” means collectively the Old OBS Contract and the Old PTS Contract;
- 1.1.34. “**Old OBS Contract**” shall have the meaning set forth in the preamble above;
- 1.1.35. “**Old PTS Contract**” shall have the meaning set forth in the preamble above;
- 1.1.36. “**Ongoing Subscription**” means a recurring monthly Entitlement of a Subscriber to access and use the Subscriber Services.
- 1.1.37. “**PC**” means a single Microsoft Windows or Apple Mac operating system-based personal computer or laptop. For further clarity, PC shall be deemed a Device for the purposes of this Agreement;
- 1.1.38. “**Peripheral**” means any electronic equipment (other than a Device) that can connect to a Device either through a wired or wireless connection, such as (without limitation) a printer, digital camera, or digital music player.
- 1.1.39. “**Performance Data**” shall have the meaning set forth in section 10.4 hereof.

- 1.1.40. “**Person**” means an individual, corporation, company, cooperative, partnership, trust, unincorporated association, or entity with juridical personality or governmental authority or body. Pronouns referring to a Person shall have a similarly extended meaning.
- 1.1.41. “**Personal Information**” means any and all information or set of information that can be used to uniquely identify a natural person who is a Subscriber or an End-User. Personal Information excludes however the name, the title, the business address or the business telephone number of an employee of a business.
- 1.1.42. “**Privacy Policy**” means the privacy policy of Radialpoint outlining how it accesses, collects and processes Personal Information. The most up-to-date version of Radialpoint’s Privacy Policy is available at < <http://www.radialpoint.com/en-privacy> >, and may be updated by Radialpoint from time to time.
- 1.1.43. “**Professional Services**” means specific professional services that may be rendered and/or made available by Radialpoint to Windstream pursuant to a Statement of Work and in accordance with the Professional Services Schedule, such as customisation, translation, development, implementation, Campaigns and other similar services. For clarity, Professional Services exclude the Services and the Subscriber Services.
- 1.1.44. “**Professional Services Fees**” or “**PS Fees**” means the Fees set forth in a Statement of Work which are payable by Windstream to Radialpoint for the performance of Professional Services and/or delivery of Deliverables pursuant to such Statement of Work.
- 1.1.45. “**Professional Services Schedule**” or “**PS Schedule**” means Schedule A (Professional Services), pursuant to which Radialpoint provides Professional Services under this Agreement.
- 1.1.46. “**Radialpoint Data**” means all data, information, text, drawings and other materials which are embodied in any medium including all electronic, optical, magnetic or tangible media and which (i) are supplied by Radialpoint, including its Affiliates and Subcontractors, or (ii) Radialpoint generates, collects, processes, stores or transmits while rendering the Services under this Agreement, including without limitation Performance Data.
- 1.1.47. “**Radialpoint Property**” shall have the meaning set forth in section 6.1 hereof.
- 1.1.48. “**Receiving Party**” shall have the meaning set forth in section 9.1 hereof.
- 1.1.49. “**Residential Subscriber**” means a Subscriber other than a SMB Subscriber.
- 1.1.50. “**Retired Version**” shall have the meaning set forth in section 7.3 hereof.
- 1.1.51. “**Schedule**” means a schedule, including all Exhibits thereto, describing the Services or the Professional Services (as applicable) to be provided to Windstream by Radialpoint under this Agreement, as further described in section 2 below. For further clarity, a Schedule refers to either the Professional Services Schedule or a Service Schedule.
- 1.1.52. “**Schedule Term**” means the term of a Service Schedule as defined therein.
- 1.1.53. “**Service Levels**” means the service levels outlined in Exhibit MSA-1 hereto.
- 1.1.54. “**Service Schedule**” means a Schedule under which Radialpoint provides Services other than Professional Services.
- 1.1.55. “**Services**” means the services which shall be rendered and/or made available by Radialpoint to Windstream and/or to its Subscribers (on behalf of Windstream) and that are outlined in applicable Service Schedules. For further clarity, the Services include the Subscriber Services (as applicable), but exclude Professional Services.
- 1.1.56. “**SKU**” means stock-keeping unit which uniquely identifies each type of Subscription to the Subscriber Services.
- 1.1.57. “**SMB Employee**” means an employee or other individual duly authorized by a SMB Subscriber to access and use the Subscriber Services for and/or on behalf of such SMB Subscriber.
- 1.1.58. “**SMB Subscriber**” means a Subscriber that is a small or medium business Person.

- 1.1.59. “**Software**” means any and all software (including applications, utilities, tools, macros, scripts, system software, databases, data files, routines, subroutines, pieces of code and user interfaces, and all aspects, components, modules, portions, compilations, libraries and versions thereof, regardless of language, format or the medium on which they are stored or expressed) which may be provided by Radialpoint or its Subcontractors pursuant to this Agreement, including all Modifications thereto, which enable or facilitate the provision, marketing, fulfillment and/or operation of the Services.
- 1.1.60. “**Stand-Alone**” means (when used in reference to a particular SKU) that the Subscriber Services associated with such SKU are made available to Subscribers separately and independently from any other products and/or services that Windstream may make available to its End-Users.
- 1.1.61. “**Statement of Work**” or “**SOW**” means a document signed by both Parties which outlines the Professional Services to be rendered by Radialpoint to Windstream in accordance with the terms of the Professional Services Schedule hereto, including related Deliverables, Fees and the delivery timeframe, and which is incorporated into this Agreement by reference.
- 1.1.62. “**Subcontractor**” means a Person (including its respective employees, agents, representatives or other Persons) that (i) performs a part or parts of the Services and/or Professional Services on behalf of Radialpoint, or (ii) provides or licences its products or services to either Party hereto which may be necessary for the performance of the Services and/or Professional Services hereunder.
- 1.1.63. “**Subscriber**” means an End-User who is entitled to receive or has received on at least one occasion the Subscriber Services during a billing month. For clarity, unless otherwise expressly provided in a Service Schedule, references to Subscribers in a given Service Schedule shall refer only to Subscribers to the Subscriber Services that are described in such Service Schedule.
- 1.1.64. “**Subscriber Reconciliation Process**” shall have the meaning set forth in section 5.6 hereof.
- 1.1.65. “**Subscriber Services**” mean those Services that are rendered and/or made available to Subscribers by Windstream or by Radialpoint, on behalf of Windstream, pursuant to a Service Schedule. For clarity, the Subscriber Services exclude Professional Services.
- 1.1.66. “**Subscription**” means the Entitlement of a Subscriber to access and use the Subscriber Services either as an Ongoing Subscription or as an Incident Assistance.
- 1.1.67. “**Support Services**” means the Radialpoint support obligations described in section 2 of Exhibit MSA-1 hereto, provided to Windstream (and not to End-Users or Subscribers).
- 1.1.68. “**Taxes**” means any and all present or future applicable taxes, duties, withholdings, tariffs, levies, customs, capital or income taxes or other governmental charges or expenses, including but not limited to value added tax, sales tax, consumption tax and similar taxes or duties as well as any current or future municipal, state, federal or provincial taxes.
- 1.1.69. “**Territory**” means the United States of America.
- 1.1.70. “**Trademarks**” mean any and all trademarks, service marks, trade names, logos, branding, distinctive and particular elements of graphic, design, structural layout, user interface, trade dress and stylistic convention (including the digital implementation thereof) made available by one Party to the other as part of this Agreement
- 1.1.71. “**Transferred Deliverable**” means a Deliverable, but only such Deliverable, as is specifically identified in a Statement of Work as being a “Transferred Deliverable”, and that is developed and provided solely and specifically for Windstream, and for which Radialpoint has received full payment of Fees associated therewith.
- 1.1.72. “**Update**” means, in relation to a Software or a Service, bug fixes, workarounds, patches, new definition files, maintenance updates, or other updates. An Update excludes port-overs between operating systems, additions of new functionality, new releases, customisations or future products which Radialpoint licenses separately.
- 1.1.73. “**Upgrade**” means, in relation to a Software or a Service, a major change, new product, version or release that features at least one major functionality changes, improvements or new features to the

relevant computer code, Software, Service or application so as to have, in reference to products, the resulting product considered a new release.

- 1.1.74. “**Windstream Data**” means all data, information, text, Personal Information, drawings and other materials which are embodied in any medium including all electronic, optical, magnetic or tangible media and which are supplied to Radialpoint by Windstream, its Subcontractors and/or Subscribers hereunder, excluding however the Radialpoint Data.
- 1.1.75. “**Windstream Property**” shall have the meaning set forth in section 6.2 hereof.
- 1.1.76. “**Windstream Terms of Service**” means the written agreement between Windstream and its Subscribers containing terms and conditions applicable to the provision of the Subscriber Services to such Subscribers.
- 1.2. **PRECEDENCE OF TERMS:** Unless specifically agreed otherwise in writing in Schedules, Exhibits or Statements of Work, in the event of any conflict or inconsistency between this Agreement, its Schedules, Exhibits, Statements of Work and attachments, such conflict or inconsistency shall be resolved in the following order of priority: (i) Exhibits (but only for purpose of an applicable Schedule, and without impact on other Schedules), (ii) Schedules (but only for purpose of that particular Schedule, and without impact on other Schedules), (iii) this MSA, and (iv) Statements of Work (but only for purpose of each particular Statement of Work, and without an impact on other Statements of Work). Furthermore, unless otherwise agreed to in writing, the terms and conditions set forth in a Schedule, Exhibit or a Statement of Work shall apply exclusively to the applicable Schedule, Exhibit or Statement of Work, and shall not affect the terms and conditions governing the remaining Schedules, Exhibits and/or Statements of Work, as the case may be.
- 1.3. **INTERPRETATION:** The headings of sections and subsections in this Agreement are used for convenience purposes only, and will not be deemed to limit, expand or in any way affect the interpretation of any term or provision of this Agreement. Whenever used in this Agreement: (i) the terms in plural include the singular, and vice versa, and (ii) the terms “includes”, “including” and “such as”, mean respectively “including without limitation”, “includes without limitation” and “such as without limitation”. A reference to a statute or a regulation, or a provision thereof, is a reference to such statute, regulation, or provision as it is in force as of the Effective Date, and as it may be amended, supplemented or re-enacted thereafter, and includes any subordinate regulation and legislation. Unless expressly agreed to in writing, the terms and conditions of any purchase or sales order shall not affect the effect and the interpretation of this Agreement, and in case of any conflicting terms, the terms and conditions of this Agreement shall prevail. Unless expressly provided otherwise, all operations hours are based on the Eastern Time Zone (GMT-5).

2. SCOPE OF SERVICES

- 2.1. **SCOPE OF AGREEMENT:** This Agreement outlines and governs the terms of the business relationship between Windstream and Radialpoint regarding the provision of Services, Professional Services and Software. It shall apply to all Schedules (including their respective Exhibits) and Statements of Work which are incorporated hereto by reference. Each Service Schedule shall contain additional terms and conditions applicable specifically to the Software and Services rendered or made available pursuant to such Service Schedule.
- 2.2. **SERVICES:** In consideration for the payment of the Fees and applicable Taxes by Windstream as set forth in section 5 below, and subject to the terms and conditions of this MSA and each applicable Service Schedule, Radialpoint shall provide the Services and license Software to Windstream as set forth in each Service Schedule, as applicable.
- 2.3. **PROFESSIONAL SERVICES:** Where Radialpoint is required to provide Professional Services to Windstream, such Professional Services shall be outlined in a Statement of Work and provided in accordance with the Professional Services Schedule.
- 2.4. **SUBCONTRACTING AND RADIALPOINT EMPLOYEES:** The obligations of Radialpoint under this Agreement may be fulfilled by Radialpoint directly or through its Affiliates and/or Subcontractors, provided that Radialpoint shall remain responsible for the provision of Services and Professional Services under this Agreement. Radialpoint shall obtain appropriate agreements with its employees and others, including any Subcontractors, who are affected to the provision of the Services under this Agreement, to enable full compliance with all the provisions of this Agreement. Windstream shall have the right to review and approve

the qualifications of the agents Radialpoint assigns to perform the Subscriber Services under this Agreement. Windstream shall have the right to designate that any such agents be removed and replaced with or without cause.

- 2.5. **HIRING:** Each Party agrees not to hire any employee of the other with whom such Party has contact due to the performance of a SOW without the prior written permission of the other Party, both during such time as the performance of Services under a SOW is pending and thereafter continuing for a period of six (6) months. This provision shall not apply to (i) Radialpoint's employees designated on a SOW as available for hire, (ii) employees of either Party responding to advertisements made at job fairs, or in media circulated to the general public at large, or (iii) former employees, agents, or representatives of either Party.
- 2.6. **BRANDING:** Subject to the applicable Professional Services, the extent and the details of which shall be set forth in a Statement of Work, Radialpoint shall customise the necessary Subscriber-facing Software with Windstream branding elements, such as Windstream's Trademarks.
- 2.7. **TRANSITION FROM OLD CONTRACTS:** As of the Effective Date of this Agreement, the Old Contracts shall terminate. As of the Effective Date hereof, immediately prior to the termination of the Old OBS Contracts, all Legacy Users existing as of such date under Old Contracts respectively shall become Subscribers under this Agreement. Without restricting the generality of the foregoing, but for further clarity, as of the Effective Date of this Agreement, any and all services provided to Legacy Users shall be provided in accordance with this Agreement.

3. NOT USED

4. RIGHTS AND OBLIGATIONS OF WINDSTREAM

- 4.1. **DISTRIBUTION:** Subject to the terms and conditions contained in each Service Schedule and in this MSA, and to the terms of the licences granted below, throughout the MSA Term, Windstream shall use commercially reasonable efforts to market, distribute and make available such Subscriber Services to its End-Users (including the Subscribers, as applicable) for their end-use and not for resale. Furthermore, where as part of Services Radialpoint provides Windstream with a version of its Software suited for mobile Devices (such as mobile phones or tablet computers, as applicable), Windstream shall also use commercially reasonable efforts to register, publish and make available such mobile version of Software, at Windstream's own expense, on the applicable mobile application stores, under Windstream's account.
- 4.2. **EULA:** The download, installation, access and use of the Software and the access and use of the Subscriber Services are subject to the terms and conditions of the EULA. Where possible, Windstream shall deploy its best efforts to ensure that Subscribers consent to the terms and conditions of the EULA prior to their download, installation, access and use of the Software and/or access or use of the Subscriber Services. For further clarity, the EULA shall apply concurrently with and independently from the Windstream Terms of Service.
- 4.3. **END-USER RESTRICTIONS:** Windstream acknowledges and agrees that Radialpoint has the right to restrict, suspend or terminate the Subscriber Services, including license to Software, to any Subscriber that Radialpoint, at its sole discretion, determines that such Subscriber (i) refuses to accept, agree to and/or comply with the terms and conditions of the EULA; or (ii) accesses and/or uses the Software and/or the Subscriber Services in violation of any term or condition of the EULA.
- 4.4. **ACCESS BY WINDSTREAM:** Windstream may access and use the Software and the Services internally as reasonably necessary for the purposes of quality control, testing and training of its own representatives, the whole in accordance with the terms and conditions of this MSA, applicable Schedules and the EULA.
- 4.5. **RESPONSIBILITIES:** In order to enable Radialpoint to provide Services in a timely manner and in accordance with this Agreement, Windstream must, without limitation (i) provide Radialpoint with all reasonably necessary accurate and detailed information, (ii) conduct any diagnostic and test activities reasonably requested by Radialpoint, and (iii) cooperate fully and in a timely manner with Radialpoint as reasonably requested by Radialpoint.
- 4.6. **COOPERATION:** Windstream shall cooperate and assist Radialpoint in implementing all necessary processes and procedures, in accordance with Radialpoint's reasonable guidance, in order to enable Radialpoint (i) to proceed with the activation and the provision of the Services, (ii) to provide such Services to Windstream and

- included Subscriber Services to Subscribers throughout the MSA Term and each respective Schedule Term, as well as (iii) to remotely install, update, upgrade, control and/or uninstall Software on each End-User's Device.
- 4.7. DEDICATED STAFF: Throughout the MSA Term, Windstream shall designate and make available to Radialpoint, as reasonably necessary for the purposes hereof, (i) an appropriately qualified technical lead employed by Windstream, (ii) an appropriately qualified marketing manager dedicated to Subscriber Services, as well as (iii) an appropriately qualified program manager; each of which shall be the contact persons at Windstream, in charge of all tasks and responsibilities that are typically the responsibility of persons occupying such positions.
 - 4.8. BILLING OF END-USERS: Except of otherwise explicitly agreed upon in a Service Schedule, Windstream shall be responsible for all billing operations with regard to End Users, including the Subscribers. Notwithstanding anything to the contrary in this Agreement, the non-payment by Subscribers of their dues to Windstream shall not relieve the latter of its obligation to pay Fees to Radialpoint.
 - 4.9. SYSTEM INTEGRATION: Windstream shall ensure to provide Radialpoint, at Windstream's expense, access to Windstream's and/or its Subcontractor's systems in order to allow necessary system integration, if any.
 - 4.10. ACCESS TO PREMISES: When accessing or using the other Party's premises (or those of such Party's Subcontractors), the visiting Party's agents, employees, invitees and representatives shall comply with all rules, regulations and policies of the other Party (and/or those of its Subcontractors, as applicable) regarding to conduct and security. Each Party, acting reasonably, shall have the right to disallow any individual or individuals admittance to its (or its Subcontractors') premises, should such individual or individuals wilfully fail or refuse to abide by such rules, regulations and policies.
 - 4.11. PROHIBITED USE: Windstream shall not, and shall prohibit and not permit any other Person, including Subscribers, directly or indirectly, to:
 - 4.11.1. decompile, transform, modify, adapt, translate, disassemble, reverse engineer, in whole or in part, or otherwise attempt to decrypt, derive, reconstruct or discover any source or object code, underlying ideas, algorithms, file formats, programming or interoperability interfaces, trade secrets, or sensitive or proprietary information of or related to Software, Services or other Radialpoint Property;
 - 4.11.2. modify, merge, alter, copy, distribute (except as provided in this Agreement) or otherwise reproduce, hack into, misuse or tamper with Services, Software or other Radialpoint Property, or produce or create any other derivative applications whatsoever or any derivative works thereof;
 - 4.11.3. destroy or remove any copyright, trade secret, patent, trademark or other proprietary or legal markings or notices placed upon or contained within the Software, the Documentation or other Radialpoint Property or any supporting media;
 - 4.11.4. represent, advertise, distribute, access and/or use Software, Services and/or other Radialpoint Property (i) otherwise than as specifically described in this Agreement, the Documentation, the EULA or as agreed to in writing by Radialpoint, or (ii) to violate, or in a manner that violates, applicable laws or regulations;
 - 4.11.5. post, publish, transfer, display, store, distribute, upload or disseminate, or otherwise transmit, load upon or make available anything (including any information, files, software, documents, videos, music, photographs, images, data or other content) through or in connection with Software, Services or other Radialpoint Property, that (i) violates any legal, property, intangible, Intellectual Property Rights, confidentiality or privacy rights of others, (ii) is inappropriate, inaccurate, illegal or unlawful, profane, defamatory, obscene, offensive, abusive, discriminatory, threatening, hateful or gratuitously violent, (iii) or that contains or triggers any viruses, Trojan horses, worms, malware, time bombs, cancelbots, corrupted files, or any other similar software, program or device that may be damaging;
 - 4.11.6. access, use or distribute Software, Services or other Radialpoint Property for unlawful, prohibited, illegal, inappropriate, offensive, hateful or gratuitously violent, damaging or otherwise unsuitable purposes, including in connection with activities involving pyramid schemes, chain letters, junk email, spamming, hacking, defamation, discrimination, abuse, harassment, stalking, threatening, or otherwise violating the rights of any Person;

- 4.11.7. use the Software for or in connection with any hazardous environment requiring fail-safe performance or operation, the operation of aircraft navigation, nuclear facilities, or communication systems, weapons systems, direct or indirect life-support systems, air traffic control, or any application or installation where failure could result in death, severe physical injury or property damage. Windstream acknowledges and agrees that the Software is not fault-tolerant and is not designed or intended for such use;
- 4.11.8. transfer, sublicense, copy, rent, loan, resell, auction, lease, share or operate on a time share or service bureau basis the Software or other Radialpoint Property;
- 4.11.9. access, use or distribute Services, Software or other Radialpoint Property to offer services to third parties, other than to Subscribers, without Radialpoint's prior written consent;
- 4.11.10. attempt to interfere with, disrupt or disable the Software, or circumvent or alter any method of measuring, tracking, recording or billing of the Software or the Services to third party without the prior written consent of Radialpoint;
- 4.11.11. disclose information or analysis (including without limitation benchmarks) regarding the quality or performance of Services, Software or other Radialpoint Property; or
- 4.11.12. violate any other prohibited uses of a specific Service or Software, as described in the applicable Service Schedule.

5. PAYMENT, FEES AND TAXES

5.1. **FEES:** In consideration of the provision of Services and/or Professional Services, and licences granted under this Agreement, as applicable, Windstream shall pay to Radialpoint all Fees set forth in Schedules and Statements of Work. Fees exclude any and all applicable Taxes, which shall be paid by Windstream in addition to the Fees.

5.2. **EXPENSES:** Where Radialpoint provides Professional Services to Windstream under a Statement of Work, in addition to the applicable Fees for such Professional Services, Windstream shall pay reasonable travel expenses which may be incurred by Radialpoint's personnel for travel, as approved by Windstream's Project Manager, in connection with the performance of Professional Services. Unless otherwise agreed upon in the relevant Statement of Work, in order to be eligible for reimbursement, all such expenses must be in compliance with Windstream's then-current travel reimbursement policy. All other expenses incurred by Radialpoint but not expressly agreed upon in the relevant Statement of Work must be approved in advance by Windstream's Project Manager. Radialpoint may invoice Windstream for such expenses monthly, in arrears.

5.3. **PAYMENT TERMS:** [REDACTED]

5.4. MINIMUM COMMITMENTS:

[REDACTED]

[REDACTED]

[REDACTED]

5.5. LATE PAYMENTS:

[REDACTED]

5.6. SUBSCRIBER RECONCILIATION:

[REDACTED]

[REDACTED]

5.7. **BILLING DISPUTES:**

[REDACTED]

5.8. **BOOKS AND RECORDS:**

[REDACTED]

5.9. **AUDIT:**

[REDACTED]

[REDACTED]

5.10. DISCREPANCY: [REDACTED]

5.11. MARKETING DEVELOPMENT FUND:

5.11.1. [REDACTED]

6. INTELLECTUAL PROPERTY

6.1. RADIALPOINT PROPERTY: As between the Parties (including their respective Affiliates, if applicable), Radialpoint, alone or together with its Subcontractors, as applicable, owns and shall own all rights, titles and interest worldwide, including without limitation all Intellectual Property Rights, in and to any and all (i) Radialpoint Trademarks and Radialpoint Background IP, and (ii) all Foreground IP; including in all cases above Modifications thereto and the goodwill associate therewith (collectively “**Radialpoint Property**”). Without restricting the generality of the foregoing, Radialpoint Property includes any and all Intellectual Property, Intellectual Property Rights and all other rights, titles and interest in and to all Software, Services, Professional Services and Deliverables (except for Transferred Deliverables and other Windstream Property that may be included, integrated, embedded or incorporated therein, which remains the sole and exclusive property of Windstream), as well as Radialpoint Data, Performance Data, Documentation and Confidential Information provided directly or indirectly by Radialpoint, its Affiliates and/or Subcontractors. Except if otherwise expressly agreed to in a Schedule or a Statement of Work, nothing in this Agreement shall, or be deemed to, transfer or assign any right, title or interest in or to any of such Radialpoint Property to Windstream or any other Person, and except for the licences expressly granted in this Agreement, they shall remain vested in Radialpoint.

6.2. WINDSTREAM PROPERTY: As between the Parties (including their respective Affiliates, if applicable), Windstream owns and shall own all rights, titles and interest worldwide, including without limitation all

Intellectual Property Rights, in and to any and all Windstream Trademarks and Windstream Background IP, as well as the goodwill associate therewith (collectively “**Windstream Property**”). Without restricting the generality of the foregoing, Windstream Property includes any and all Intellectual Property, Intellectual Property Rights and all other rights, titles and interest in and to Transferred Deliverables (provided that Radialpoint has received full payment of Fees associated therewith), Windstream Data and all Confidential Information provided by Windstream (except for Radialpoint Property that may be included, integrated, embedded or incorporated therein, which remains the sole and exclusive property of Radialpoint). Except if otherwise expressly agreed to in a Schedule or a Statement of Work, nothing in this Agreement shall, or be deemed to, transfer or assign any right, title or interest in or to any of such Windstream Property to Radialpoint or any other Person, and except for the licences expressly granted in this Agreement, they shall remain vested in Windstream.

- 6.3. **RADIALPOINT TRADEMARK LICENCE:** Radialpoint hereby grants to Windstream a limited, non-exclusive, revocable, non-transferable and non-sub-licensable royalty-free licence to use, reproduce, distribute and display in the Territory Radialpoint’s Trademarks made available to Windstream by Radialpoint as part of this Agreement, solely to enable Windstream to perform its obligations under the section 15 (Marketing and Press Releases) hereof, and only in accordance with Radialpoint’s reasonable trademark usage guidelines, as updated by Radialpoint from time to time. Radialpoint may require Windstream to cease using the Radialpoint’s Trademarks if, in the reasonable opinion of Radialpoint, the continued display of the Radialpoint’s Trademarks would cause a materially adverse effect on Radialpoint’s image and the goodwill associated therewith. All use of the Radialpoint’s Trademarks, including the goodwill and reputation associated therewith, shall inure to the benefit of Radialpoint.
- 6.4. **WINDSTREAM TRADEMARK LICENSE:** Windstream hereby grants to Radialpoint a worldwide, non-exclusive, revocable, non-transferable and non-sub-licensable (except to Radialpoint’s Affiliates and Subcontractors which would be assisting Radialpoint in the performance of the Services) royalty-free licence to use, reproduce, distribute and display Windstream’s Trademarks made available to Radialpoint by Windstream as part of this Agreement, solely (i) to perform its obligations under the section 15 (Marketing and Press Releases) hereof, and (ii) as may be otherwise required under the Schedules hereto; and only in accordance with Windstream’s reasonable trademark usage guidelines, as updated by Windstream from time to time. Windstream may require Radialpoint to cease using Windstream’s Trademarks if, in the reasonable opinion of Windstream, the continued display of Windstream’s Trademarks would cause a materially adverse effect on Windstream’s image and the goodwill associated therewith. All use of Windstream’s Trademarks, including the goodwill and reputation associated therewith, shall inure to the benefit of Windstream.
- 6.5. **LIMITED LICENCE FROM WINDSTREAM:** Windstream acknowledges that for the performance of Services and/or Professional Services, Radialpoint may require to access and/or use certain Windstream’s Background IP and/or Transferred Deliverables. Therefore, Windstream hereby grants to Radialpoint a non-exclusive, limited, non-transferable non-sub-licensable (except to Radialpoint’s Affiliates and Subcontractors who will be assisting Radialpoint in the performance of the Services and/or Professional Services) worldwide royalty-free licence during the MSA Term to access and use Windstream’s Background IP and Transferred Deliverables, solely to the extent necessary for, and for the sole purpose of, allowing Radialpoint to perform its obligations under this Agreement.

7. UPDATES AND UPGRADES

- 7.1. **AVAILABILITY AND RELEASE:** Radialpoint may provide, from time to time, Updates and/or Upgrades to Software provided as part of the Services, as it deems necessary at its sole discretion, without however having any obligation to do so. Radialpoint shall provide a written notice to Windstream advising it of the release or the upcoming release of an Upgrade to Software.
- 7.2. **UPGRADES:** With Respect to Upgrades that will have a material impact of the Subscriber user experience, Radialpoint shall provide Windstream with (i) Documentation that describes the purpose and operating specifications of such Upgrade, (ii) an estimate of applicable Professional Services Fees associated with the Upgrade, if any, and (iii) a copy of such updated or upgraded Software that can be loaded and tested in the Windstream test environment, at least thirty (30) days prior to the date of implementation into the production environment of Radialpoint (as applicable).

- 7.3. **RETIREMENT OF SOFTWARE:** Upon release by Radialpoint of an Upgrade (e.g. version 11.0), the version that is one (1) version below the newly released version (e.g. version 10.0) shall be automatically retired (the “**Retired Version**”). Radialpoint shall provide Windstream with forty-five (45) days’ notice prior to the retirement of a Retired Version. Upon expiration of the said forty-five (45) day period, Radialpoint will no longer provide Updates for such Retired Version. Upon retirement of the Retired Version, Radialpoint shall continue to provide Support Services for such Retired Version for the period of six (6) months from the date of the notice of retirement.

8. TERM AND TERMINATION

- 8.1. **TERM:** This Agreement shall become effective on the Effective Date, and shall remain in full force and effect until the expiration or termination of all Service Schedules hereto, unless otherwise terminated in accordance with its terms (the “**MSA Term**”).

- 8.2. **TERMINATION:** Either Party may terminate:

- 8.2.1. any Service Schedule hereto if the other Party is in breach or default of any material obligation under such Service Schedule, and such breach or default is not cured for a period of thirty (30) days after receipt by the breaching Party of a written notice from the other Party informing of such breach or default, including a description and the details thereof;
- 8.2.2. this Agreement if (i) the other Party files for a voluntary petition of bankruptcy in any jurisdiction, is declared insolvent or bankrupt by a court of any competent jurisdiction, makes an assignment for the benefit of creditors, or is unable to pay its invoices as they mature, or (ii) as otherwise expressly permitted under this MSA or a Schedule.

- 8.3. **CONTINUITY:**

- 8.3.1. Where a Party chooses to terminate a Service Schedule hereto pursuant to section 8.2.1 above or the a termination provision of such Service Schedule, such Service Schedule shall be terminated in accordance with its/their respective terms.
- 8.3.2. The expiration or the termination of a Service Schedule shall have no effect on the obligations of the Parties under this MSA or the other Service Schedules which are not terminated.
- 8.3.3. However if a Party desires to terminate this Agreement entirely in accordance with section 8.2.2 above, the Parties shall follow the termination procedure applicable to each Service Schedule, and this MSA shall survive and continue applying to each such Service Schedule until it is terminated in accordance with its terms.
- 8.3.4. Where a Schedule does not contain specific termination provisions, such Schedule shall be terminated in accordance with this section 8, given the necessary adjustments.
- 8.3.5. The termination of this Agreement shall be without prejudice to any other rights and remedies available hereunder, at law or in equity.

- 8.4. **EFFECT OF TERMINATION:** Unless otherwise expressly stated in a Service Schedule:

- 8.4.1. immediately upon any termination or expiration of a Service Schedule hereto:
- 8.4.1.1. all Services rendered by Radialpoint under such Service Schedule, including any related Subscriber Services, shall immediately terminate;
- 8.4.1.2. all licences granted under such Service Schedule shall terminate. This includes, without limitation, the licences granted to Subscribers under the End-User Licence Agreement for the Subscriber Services described in such Service Schedule;
- 8.4.1.3. Windstream shall immediately cease all marketing, distribution, access and use of any and all Services and Software provided under such Service Schedule;
- 8.4.1.4. Windstream shall advise in writing all Subscribers that all relevant Subscriber Services provided under such Service Schedule are terminated and that all Software may no longer be used and must be uninstalled and deleted;

- 8.4.1.5. Upon request, each Party shall return to the other Party and/or destroy, at the other Party's option and expense, within a reasonable timeframe, such other Party's property (Windstream Property or Radialpoint Property, as applicable) in its possession, custody or control, which is no longer necessary to continue the relationship between the Parties, as the case may be;
- 8.4.1.6. Windstream shall pay to Radialpoint all outstanding Fees and other amounts incurred in relation with such Service Schedule within thirty (30) days of the expiration or the termination date thereof;
- 8.4.2. immediately upon any termination or expiration of this Agreement:
 - 8.4.2.1. all Services rendered by Radialpoint under this Agreement, including any related Subscriber Services, shall immediately terminate;
 - 8.4.2.2. all licences granted under this Agreement shall terminate. This includes, without limitation, all the licences described in sections 4 and 6 hereof, the licences that may be granted pursuant to a Schedule, as well as licences granted to Subscribers under End-User Licence Agreements;
 - 8.4.2.3. Windstream shall cease all marketing, distribution, access and use of any and all Services and Software;
 - 8.4.2.4. Windstream shall advise in writing all Subscribers that all relevant Subscriber Services are terminated and that all Software may no longer be used and must be uninstalled and deleted;
 - 8.4.2.5. Upon request, each Party shall return to the other Party and/or destroy, at the other Party's option and expense, within a reasonable timeframe, such other Party's property (Windstream Property or Radialpoint Property, as applicable) in its possession, custody or control, and provide the other Party with an officer certificate confirming its compliance with the foregoing;
 - 8.4.2.6. Windstream shall pay to Radialpoint all outstanding Fees and other amounts within thirty (30) days of the termination or expiration date.

9. CONFIDENTIALITY

- 9.1. **CONFIDENTIAL INFORMATION:** For the purpose of this Agreement, "**Confidential Information**" means: (i) information marked, designated or otherwise identified in writing by the disclosing Party and/or its Affiliates, Subcontractors and its and their respective directors, officers, employees, agents, consultants, and legal or financial advisors (the "**Disclosing Party**") as proprietary or confidential, or using other similar wording, (ii) information, whether or not such information is marked, designated or otherwise identified in writing as proprietary or confidential, if such information is marked, designated or otherwise identified in writing as proprietary or confidential, under the circumstances surrounding its disclosure or by reason of its nature, ought in good faith to be treated as proprietary or confidential by a reasonable recipient Person, as well as (iii) any and all of the foregoing which is prepared by the receiving Party (the "**Receiving Party**") or its Authorised Recipients (as defined below) and that contains, reflects or is based upon, in whole or in part, any Confidential Information. Notwithstanding the foregoing, Confidential Information excludes (i) any information that is in the public domain at the date of disclosure to the Receiving Party or which, after its disclosure hereunder, enters the public domain through no fault, action or omission of the Receiving Party or its Authorised Recipients, (ii) information that the Receiving Party can prove with documented evidence was already known to the Receiving Party at the time of its disclosure, (iii) any information that was obtained from a third party which, to the demonstrable knowledge of the Receiving Party, was at the time of the disclosure lawfully in possession of such information and was not and is not in violation of any contractual or legal nondisclosure or confidentiality obligation with regard to such information; and (iv) any information that the Receiving Party can prove was/is independently developed by the Receiving Party, without use of any Confidential Information.
- 9.2. **PROTECTION:** The Receiving Party shall take all reasonable measures to keep the Confidential Information in confidence. Such measures shall be at least as great as those the Receiving Party employs to safeguard and prevent from disclosure its own information of a similar nature, but in any event not less than reasonable care. The Receiving Party shall not use, disclose, reproduce, summarise or distribute the Confidential Information

for any purposes other than the subject matter of this Agreement, and always as part of its business relationship with the Disclosing Party.

- 9.3. **AUTHORISED DISCLOSURE:** The Receiving Party may disclose Confidential Information only to the Receiving Party's Affiliates, Subcontractors and its and their respective directors, officers, employees, agents, consultants, and legal or financial advisors (collectively the "**Authorised Recipients**") on a need-to-know basis, provided however that the Receiving Party first enters into appropriate written non-disclosure and confidentiality agreements with such Authorised Recipients containing terms no less restrictive than the nondisclosure and confidentiality obligations contained in this Agreement and applicable to the Confidential Information disclosed hereunder.
- 9.4. **LEGAL DISCLOSURE:** If the Receiving Party becomes legally compelled to disclose any Confidential Information, the Receiving Party shall promptly notify in writing the Disclosing Party, allowing the latter to seek a protective and other appropriate remedies from a court before any Confidential Information is so disclosed. In any case, the Receiving Party may only disclose the portion of Confidential Information that the Receiving Party is legally compelled to disclose, to the extent permitted by law, and make commercially reasonable efforts to obtain assurance that confidential treatment will be accorded to the Confidential Information.
- 9.5. **RETURN OF INFORMATION:** Upon the Disclosing Party's written request, the Receiving Party shall promptly return all originals, copies, reproductions and summaries of Confidential Information, or at the Disclosing Party's option, destroy all copies thereof and certify in writing the destruction of the same, signed by a duly authorised officer of the Receiving Party.
- 9.6. **UNAUTHORISED USE:** The Receiving Party shall notify in writing the Disclosing Party immediately upon discovery of any actual or threatened unauthorised use, disclosure, misuse or misappropriation of Confidential Information, including the details and the circumstances thereof. The Receiving Party shall cooperate with the Disclosing Party in all reasonable ways to help the Disclosing Party correct the situation.
- 9.7. **BENCHMARKING:** Windstream shall not release or disclose the results of any benchmark or other evaluation of the Services or the Software to any third party without the prior written approval of Radialpoint for each such release. Windstream acknowledges and agrees that such benchmarking or evaluation shall be considered Confidential Information of Radialpoint and be treated in accordance with this section 9.
- 9.8. **CONFLICT AND SURVIVAL:** In the event of conflicts or inconsistencies between this section 9 and the provisions of a non-disclosure agreement executed between the Parties, the provisions of this section 9 shall take precedence. This section shall survive termination of this Agreement for a period of three (3) years from the date of termination or expiration hereof. For clarity, but without restricting the generality of the foregoing, the Parties acknowledge and agree that the provisions of this section 9 shall supersede and apply to the disclosure of Confidential Information exchanged and/or otherwise disclosed by the Parties under the Mutual Non-Disclosure Agreement entered into by the Parties (directly and/or through their respective Affiliates) effective as of September 25, 2008, including without limitation Confidential Information exchanged and/or disclosed under the Old Contracts.

10. SECURITY AND COMPLIANCE

- 10.1. **INFORMATION SECURITY REQUIREMENTS:** The provisions listed below shall apply in the event Radialpoint shall connect to Windstream's networks or obtain Windstream data in the performance of duties and obligations under this Agreement.
 - 10.1.1. **Information Security Management.** Radialpoint shall have a security policy that may contain:
 - (a) guidance to and training for its personnel to ensure the confidentiality, integrity, and availability of information and systems maintained or accessed by Radialpoint and/or its Subcontractors with sanctions for non-compliance;
 - (b) incident detection and management;
 - (c) express instructions regarding the steps to take in the event of a compromise or breach;
 - (d) backup processes sufficient to keep detailed, accurate and up-to-date accounts and records, including computer logs, of all information security activities carried out; and
 - (e) commercially reasonable standards and procedures to address the configuration, operation, and management of systems and networks, which shall include use of commercial or professional-grade (i) security controls, (ii) identification and patching of security vulnerabilities on a commercially reasonable schedule, and (iii) anti-virus software.

- 10.1.2. Adherence to Windstream Information Security Standards/Protocols. If Radialpoint has access to any Windstream systems or its network, Radialpoint shall adhere to general Windstream information security standards/protocols and its “Third Party Network Connection Policy” as may be reasonably agreed upon by the Parties in writing from time to time. Radialpoint shall only use any network connection for the specific lawful business purposes outlined in this Agreement and will allow only authorized employees, representatives, Subcontractors and/or agents to access the network connection. Radialpoint shall be solely responsible for ensuring that such employees are not security risks and shall: (i) maintain commercially reasonable technology controls to protect the network connection, including firewalls, anti-virus software, security monitoring and alerting systems (i.e., intrusion detection systems); and (ii) implement and maintain remote access solutions for personnel that are designed and audited in conformity with industry best practices.
- 10.1.3. Notice of Claims. By telephone with written follow-up, Radialpoint shall notify Windstream of the following events as soon as practicable after the event: (a) suspected breaches or compromises or threats against Windstream data or Radialpoint’s systems or networks that directly or indirectly support Windstream data; (b) any law enforcement or administrative investigation or inquiry into suspected misuse or abuse of Radialpoint’s systems or network; and, (c) Radialpoint’s non-compliance with its obligations under this section 10.
- 10.1.4. Information Security Assessments and Audits; Remedial Action. Subject to appropriate confidentiality measures as determined by Radialpoint, Radialpoint shall permit information security assessments to be performed by Windstream on Radialpoint and/or its Subcontractors’ (to the extent acceptable by such Subcontractors, and subject to their prior written consent) networks, services, software, data, or equipment. Radialpoint shall have the right to exclude from such inspection any of its confidential or proprietary information which was not otherwise provided to Windstream in performance of this Agreement. In the event of the identification of any material security-related risk to Windstream’s data, Radialpoint and/or its Subcontractor shall take such remedial action as Windstream may reasonably request based on industry best practices, at no additional charge to Windstream.
- 10.1.5. PCI DSS. Windstream is required to adhere to the Payment Card Industry Data Security Standard (PCI DSS) promulgated by the PCI Security Standards Council. In the event Radialpoint processes, transmits and/or stores cardholder data in the performance of the Services provided to Windstream, and is therefore considered a “service provider” under Requirement 12.8 of the PCI DSS, Radialpoint agrees, to the extent applicable, to the following: (i) Radialpoint is responsible for the security of the cardholder data it possesses, including the functions relating to storing, processing, and transmitting of the cardholder data, (ii) Radialpoint agrees to comply with all applicable PCI-DSS compliance requirements, and to perform the necessary steps to validate its compliance with PCI DSS, (iii) if applicable, Radialpoint agrees to supply the current status of its PCI DSS compliance status, and evidence of its most recent validation of compliance upon request by Windstream, and (iv) Radialpoint shall promptly notify Windstream if Radialpoint ceases to be PCI DSS compliant, and shall provide Windstream a summary of the steps being taken to remediate the non-compliance status.
- 10.2. WINDSTREAM SUPPLIER CODE OF ETHICS: Radialpoint hereby agrees that it shall comply in all material respects with the Windstream Supplier Code of Ethics attached hereto under Exhibit MSA-2, or Radialpoint’s own internal code of ethics, which shall be similar to the one attached in said Exhibit MSA-2. Where Windstream implements changes to its Supplier Code of Ethics, Windstream shall provide Radialpoint with reasonable advance written notice. Subject to appropriate confidentiality measures as determined by Radialpoint, Radialpoint shall permit Windstream to conduct an assessment (once per period of twelve (12) consecutive months) of Radialpoint’s compliance with the relevant code of ethics.
- 10.3. PERSONAL INFORMATION: Radialpoint acknowledges and agrees that Personal Information that it receives, collects or processes as part of its obligations under this Agreement, whether from Windstream or from Subscribers, shall be treated by Radialpoint in accordance to its Privacy Policy and applicable privacy and data protection laws and regulations in the Territory and in Canada. Radialpoint agrees that it shall process

such Personal Information only to the extent necessary to fulfill its obligations under this Agreement. In order to enable Radialpoint to comply with the requirements above, Windstream shall:

- 10.3.1. obtain all necessary consents and approvals from Subscribers prior to transferring any Personal Information to Radialpoint, or enabling it to collect same from the Subscribers, or process it;
 - 10.3.2. use commercially reasonable efforts to remove, anonymise and process the information that it provides to Radialpoint in relation to this Agreement as to limit as much as possible the amount of Personal Information transferred to Radialpoint;
 - 10.3.3. be responsible to ensure, where Radialpoint is required to transfer to Windstream any Personal Information that it has collected from Subscribers, that Windstream uses and processes such Personal Information in accordance with applicable privacy and data protection laws and regulations. Windstream hereby acknowledges and agrees that Radialpoint shall have no liability whatsoever for Windstream's (including its Affiliates' and Subcontractors') access, use and/or processing of Personal Information it has received from Radialpoint under this Agreement.
- 10.4. **PERFORMANCE DATA:** Windstream acknowledges and agrees that Radialpoint may use data collected in connection with this Agreement for its internal business purposes, such as, without limitation, analytics, quality assurance, as well as product and service development and improvement ("**Performance Data**"). Such Performance Data may include, without limitation, activation, retention and/or churn rates, service level, and so forth. It may also include data generated from Personal Information, provided however that such data shall be anonymized and not be traced to Windstream.

11. REPRESENTATIONS AND WARRANTIES

- 11.1. **RADIALPOINT WARRANTY:** Radialpoint warrants that (i) all the Services and Professional Services shall be performed in a good workman like manner in accordance with normal industry standards, (ii) Software will substantially conform to the specifications described in the Documentation for a period of ninety (90) days from the date of its release to Windstream, if used in a manner consistent with the Documentation, (iii) Radialpoint shall perform its obligations and exercise its rights under this Agreement in accordance with all applicable laws, and (iv) Radialpoint has full power and authority to execute and deliver this Agreement. Without restricting or expanding the scope of the foregoing warranty, but for clarity only, upon expiration of the ninety (90)-day period set forth in subsection 11.1 (i) above, Radialpoint agrees to deploy commercially reasonable efforts to support its Software so that it conforms as much as possible to the specifications described in the applicable Documentation.
- 11.2. **WINDSTREAM WARRANTIES:** Windstream warrants that (i) it will perform its obligations and exercise its rights under this Agreement in accordance with all applicable laws, (ii) it has obtained and/or will obtain all licences, permits, approvals, registrations, certifications and/or authorisations necessary to perform its obligations under this Agreement, and to enable Radialpoint use Windstream Property in its provision of Services, (iii) it will obtain all necessary Subscriber consents to access, collect and process Subscriber Personal Information, and to enable Radialpoint to do same, as may be necessary under this Agreement, including without limitation that to access, collect and share such Personal Information with Windstream; and (iv) it has full power and authority to execute and deliver this Agreement.
- 11.3. **NO OTHER WARRANTIES:** Subject to the terms and conditions of any Service Schedule, which shall be applicable to that specific Service Schedule, unless otherwise explicitly agreed to in writing by the Parties, and except for the express and limited warranties provided in section 11.1 above, and to the maximum extent permitted by applicable law, all Software, Services, Professional Services, Deliverables, Documentation, Confidential Information, and all other products or services made available, performed, licensed or provided directly or indirectly by Radialpoint, its Affiliates or Subcontractors under this Agreement (including and any and all Intellectual Property Rights related thereto, and in each case any and all components thereof) are furnished "as is", at Windstream's risk and perils, with all faults, and without warranty, representation or condition of any kind, whether written, oral, express, implied, whether arising by equity, law, course of dealing or otherwise, including any and all warranties, representations or conditions of title, ownership, non-infringement, quality, workmanship, conformity, merchantability and fitness for a particular or general purpose, and including but not limited to the warranty that the Software, the Services, the Professional Services or the Documentation shall be free of errors or run uninterrupted, as applicable.

- 11.4. **MUTUAL REPRESENTATIONS:** Each Party hereby represents to the other (i) that by entering into this Agreement such Party will not be in violation of any non-competition, confidentiality or other similar restrictive agreement or obligation that it may have with an unaffiliated third party, and (ii) that it will assist the other Party in all reasonable respects to obtain releases or other necessary information or documentation regarding any of the foregoing.

12. LIMITATION OF LIABILITY

- 12.1. **LIMITATION OF LIABILITY:** Subject to section 12.4 below, and subject to the terms and conditions of any Service Schedule, which shall be applicable to that specific Service Schedule unless otherwise explicitly agreed to in writing by the Parties, and to the maximum extent permitted by applicable law, each Party's total maximum aggregate cumulative liability (including that of its Affiliates and Subcontractors, and its and their respective directors, officers, employees, agents and representatives) towards the other Party (including its Affiliates and Subcontractors, and its and their respective directors, officers, employees, agents and representatives), under any legal or equitable theory of action, shall be limited to actual, proven and reasonable loss, cost, claim, liability, damage and expense, and shall not, under any circumstances, exceed, in the aggregate for all aggrieved parties two million dollars (\$2,000,000) per Claim, up to a total aggregate maximum of six million dollars (\$6,000,000) for all past, present or future Claims arising under or in relation to this Agreement.
- 12.2. **ADDITIONAL EXCLUSION OF LIABILITY FOR RADIALPOINT:** Radialpoint shall have no liability whatsoever with regard to any Claims that arise out of (a) any representation or warranty made by Windstream to Subscribers or any other third party (through Windstream Terms of Service or otherwise) which contradicts the terms and conditions of this Agreement, the EULA or the Documentation, unless pre-approved in writing by Radialpoint; (b) a breach of the EULA by a Subscriber or by Windstream (if applicable) when accessing or using the Software and/or the Services; (c) an action, omission or fault of Windstream or of a Subscriber; or (d) any restriction, suspension or termination of the Subscriber Services by Radialpoint with regards to relevant End-Users under section 4.3 hereof.
- 12.3. **EXCLUSION OF INDIRECT DAMAGES:** In no event shall either Party be liable to the other Party for any special, exemplary, indirect, incidental, consequential or punitive damages, including without limitation any damages for loss of profits, of projected savings or revenues, of opportunities, of goodwill or other similar economic prejudice, or loss or corruption of data, whether arising in contract, tort, or under any other legal theory whatsoever, even if such Party has been advised of, knows or should know the possibility of such damages, or such damages have been reasonably foreseeable. This section shall apply notwithstanding any failure of essential purpose of any limited remedy.
- 12.4. **LIMITATION OF LIABILITY FOR BREACH OF MATERIAL PROVISIONS:** Notwithstanding anything to the contrary above in this section 12, each Party's total maximum aggregate cumulative liability (including that of its Affiliates and Subcontractors, and its and their respective directors, officers, employees, agents and representatives) towards the other Party (including its Affiliates and Subcontractors, as well as its and their respective directors, officers, employees, agents and representatives), under any legal or equitable theory of action, for all past, present or future Claims arising under or in relation to: (i) such Party's breach of confidentiality obligations under this Agreement, and/or (ii) such Party's indemnity obligations as set forth in section 13 below; shall be limited to actual, proven and reasonable loss, cost, claim, liability, damage and expense, and shall not under any circumstances exceed in the aggregate twelve million dollars (\$12,000,000).
- 12.5. **EXCLUSION OF FEES:** Without restricting the generality of the foregoing provisions, and for clarity only, the limitations of liability set forth in this section 12 do not apply to and do not restrict Radialpoint's right to recover the Fees for Services and/or Professional Services payable by Windstream under this Agreement.

13. INDEMNIFICATION

- 13.1. **INTELLECTUAL PROPERTY INFRINGEMENT INDEMNIFICATION BY RADIALPOINT:** This section 13.1 states the entire liability of Radialpoint, and Windstream's exclusive remedy, with respect to any actual or alleged violation, infringement or misappropriation of any Intellectual Property Rights in relation to this Agreement.
- 13.1.1. Radialpoint shall defend Windstream against any Claim arising from, in connection with or based on unaffiliated third party allegations that the Software directly or indirectly infringes its valid patent or other intellectual property right issued in the Territory as of the Effective Date, or misappropriate its

trade secrets, and Radialpoint shall pay the amount of any resulting adverse final judgment (or settlement to which Radialpoint consents). Windstream shall at all times have the right to direct the defense of, and accept or reject any offer to compromise or settle, any Claim asserted against Windstream. Windstream agrees to provide Radialpoint with reasonable assistance in defending the Claim, and Radialpoint shall reimburse Windstream for reasonable out of pocket expenses that Windstream incurs in providing such assistance. Radialpoint's obligations under this section do not extend to covering fees and costs of independent legal or other advisors that Windstream may choose to retain for its benefit within the context of a Claim.

- 13.1.2. Radialpoint's obligation under section 13.1.1 above shall not apply to the extent that any Claim is based on or results from: (i) any specifications, information, input, code, content or materials provided by or on behalf of Windstream, including Windstream's Trademarks, Windstream Background IP and the Transferred Deliverables, (ii) Windstream's use of the Software after Radialpoint notifies Windstream to discontinue such use, (iii) any combination of the Software with a non-Radialpoint service, system, network, hardware, product, software, equipment, data or process, except as authorised by Radialpoint in writing or as otherwise stated in this Agreement or in the Documentation, (iv) any use of, or access to Software otherwise than in compliance with this Agreement, the EULA or as authorised in the Documentation, including without limitation abuse, misuse or improper use, negligence, misapplication or tampering with respect to, of or with the Software or the Services by Windstream, its Affiliates, Subcontractors and/or Subscribers, (v) any Modification or alteration of the Software by any Person other than Radialpoint, unless authorised by Radialpoint in writing, (vi) use of any release or version of the Software other than the most current, unaltered release, if such infringement would have been avoided by the use of a current, unaltered release.
- 13.1.3. Radialpoint shall be relieved of the indemnity obligations under section 13.1.1 above if Windstream does not fulfill the following conditions: (i) promptly notify Radialpoint of any Claim Windstream becomes aware of; and (ii) upon Radialpoint's written request, and at Radialpoint's expense, it does not use its commercially reasonable efforts to provide Radialpoint with such information and assistance as Radialpoint may reasonably require for the purpose of so investigating, defending or settling each Claim and (iii) does not give Radialpoint authority to proceed with respect to such Claim or negotiate a settlement.
- 13.1.4. If Radialpoint receives information concerning an infringement or misappropriation Claim related to its Software, Radialpoint shall, in the following order at its sole expense (i) procure the right to continue to use the allegedly infringing item as permitted by this Agreement, or (ii) modify the item to make it non-infringing without substantially compromising its principal functions, or (iii) replace it with a non-infringing functional equivalent, in which case Windstream shall stop using the allegedly infringing item immediately. If none of the foregoing is possible, then Radialpoint and Windstream may jointly agree to terminate this Agreement, each Party acting reasonably and in good faith.
- 13.2. **INDEMNIFICATION BY WINDSTREAM:** Windstream hereby agrees to defend and indemnify Radialpoint, its Affiliates and Subcontractors (including its and their respective directors, officers, employees, agents, representatives, successors and assigns) from and against any and all Subscriber or unaffiliated third party Claim arising of or relating to (i) gross negligence or willful misconduct of Windstream (including its employees, agents and representatives), (ii) any damage to property and injuries (including death) to any persons caused by Windstream (including its employees, agents and representatives), or (iii) Windstream's failure to comply with applicable laws.
- 13.3. **ADDITIONAL INDEMNIFICATION BY RADIALPOINT:** Radialpoint hereby agrees to defend and indemnify Windstream and its Affiliates (including its and their respective officers, directors, employees, agents, representatives, successors and assigns) from and against any and all unaffiliated third party Claims arising of or relating to (i) gross negligence or wilful misconduct of Radialpoint and/or its employees, agents, representatives or its permitted Subcontractors, (ii) any damage to property and injuries (including death) to any persons caused by Radialpoint (including its employees, agents, representatives and permitted Subcontractors), or (iii) Radialpoint's failure to comply with applicable laws.

14. REMEDIES, DISPUTE RESOLUTION, GOVERNING LAW AND VENUE

- 14.1. **REMEDIES:** Each Party hereto acknowledges and agrees that the other Party may suffer immediate and irreparable harm as the result of breach of any of the nondisclosure, confidentiality and Intellectual Property protection provisions contained in this Agreement, for which monetary or other possible damages may not be sufficient and adequate remedy. Therefore the Parties agree the other Party shall be entitled to seek injunctive and other equitable relief in the event of (i) an actual or threatened breach, violation, infringement or misappropriation of Intellectual Property Rights, and/or (ii) an actual or threatened breach or violation of the nondisclosure and confidentiality obligations contained herein, in all cases without the necessity of posting bond beyond the minimal amount that may be required by the applicable law. This section shall apply in any jurisdiction, notwithstanding the choice of governing law and venue set forth in section 14.3 below.
- 14.2. **DISPUTE RESOLUTION:** Where a dispute arises between the Parties, the Parties shall deploy their best efforts to resolve the matter as soon as possible, escalating it to the attention of the upper management where required. Where the Parties fail to come to an understanding within twenty (20) days from the date of arising of the dispute, the members of the upper management of both Parties shall meet in person or by teleconference in order to resolve the matter. Such meeting shall take place as soon as possible, but no later than thirty (30) days from the date of arising of the dispute.
- 14.3. **GOVERNING LAW AND VENUE:** Subject to section 14.1 above, this Agreement shall be governed, construed and enforced in accordance with the laws applicable in the State of Delaware, USA, without giving effect to any choice or conflict of law rules which may otherwise direct the application of the laws of any other jurisdiction. Any dispute hereunder requiring judicial resolution shall be brought in a court of competent jurisdiction in Dover, DE, and the Parties each accept the exclusive jurisdiction of such courts. The Parties hereto expressly exclude the application of any non-United States laws and the United Nations Convention on Contracts for the International Sale of Goods from this Agreement and any transaction that may be entered into between the Parties in connection with this Agreement.

15. MARKETING AND PRESS RELEASES

- 15.1. **MARKETING:** In addition to its other responsibilities and obligations under this Agreement, Windstream is responsible for and covenants to use commercially reasonable efforts to promote, distribute and make available the Subscriber Services to its End-Users and its Subscribers in accordance with this Agreement.
- 15.2. **TRADEMARKS, INTELLECTUAL PROPERTY RIGHTS AND PUBLICITY:** Unless approved in writing, neither Party shall have any right to use any marks, names, slogans, logos or designations of the other Party including in any press release or public statement. Except as provided herein, nothing in this Agreement shall be deemed to grant either directly or by implication, estoppel, or otherwise, any license under any patents, copyrights, trademarks, service marks or other intellectual property rights of one Party to the other Party.
- 15.3. **MEDIA INITIATIVES:** Throughout the MSA Term, the Parties agree to hold joint media initiatives annually, which may include themed press releases, interviews, marketing campaigns, and other. The costs associated with such media initiatives shall be first agreed to between the Parties, and split equally amongst them.
- 15.4. **REFERENCING:** Each Party shall be entitled to make references to this business relationship and the business model, as well as to use the other Party's relevant Trademarks as part of its general customer listing, published lists, as well as in marketing and sales collateral (including without limitation brochures, sales decks, case studies, its corporate website, social media and other), only in reference to such other Party, and subject to the terms of the licences granted in sections 6.3 and 6.4 above. Any reference by either Party to the other Party or such other Party's Trademarks beyond the purposes permitted above shall be subject to such other Party's prior written approval.

16. MISCELLANEOUS

- 16.1. **NOTICES:** All notices, authorisations, and requests given or made in connection with this Agreement (including any Schedules and Statements of Work) must be sent by registered mail, express courier, facsimile or electronic mail to the addresses set forth below. The notices shall be deemed delivered on the date shown

on the postal return receipt, or on the courier, facsimile or electronic mail confirmation of delivery. The notices shall be addressed as follows:

IF TO RADIALPOINT:

[REDACTED]

IF TO WINDSTREAM:

[REDACTED]

- 16.2. **INDEPENDENT CONTRACTORS**: Nothing contained in this Agreement shall be construed as creating a joint venture, partnership, association or other form of a business organization, agency relationship, or employment relationship between the Parties, nor shall either Party have the right, power or authority to create any obligation or duty, express or implied, on behalf of the other. Radialpoint shall be responsible for all employer obligations towards all of its employees and agents under all applicable laws. Personnel used or supplied by Radialpoint in the performance of any portion of the Services shall be employees or agents of Radialpoint only and under no circumstances shall such personnel be deemed employees or agents of Windstream. Radialpoint shall have the sole responsibility for the conduct of its employees and agents, and for payment of their entire compensation, including salary, withholding of income and social security taxes, worker's compensation, employee and disability benefits and the like.
- 16.3. **COLLABORATION**: Each Party shall provide reasonable assistance to the other Party, at the other Party's expense, when needed in obtaining necessary permits, approvals, registrations and/or certifications.
- 16.4. **EXPORT CONTROLS**: The Parties agree to comply with all applicable international and national laws, regulations, resolutions or sanctions pertaining to import and export controls in the fulfillment of their respective obligations under this Agreement, including but not limited to compliance with the U.S. Export Administration Regulations, the Export and Import Permits Act (Canada), and any other related, relevant or applicable controls or restrictions. Windstream acknowledges that the Services, Software, Deliverables and Documentation licensed and/or provided hereunder may be subject to U.S., Canadian and other export controls laws, regulations, resolutions or sanctions (including restrictions applicable to end-user, end-use, prohibited parties lists, destination restrictions, including those applicable to ECCN 5D992 products). Radialpoint will seek and obtain any and all required permits, approvals, registrations and/or certifications to enable Windstream to access and use the Services, Software, Deliverables and Documentation within the Territory. Windstream shall be responsible for compliance with all applicable international and national import and export controls (including restrictions applicable to end-user, end-use, prohibited parties lists, destination restrictions, including those applicable to ECCN 5D992 products), and to seek and obtain any and all required permits, permissions and other authorisations to the extent necessary for distribution of the Subscriber Services (including Software) to Subscribers, or if it intends to access, use, distribute and/or export any Software, Deliverables, Documentation or Services outside Territory.
- 16.5. **COMPLIANCE WITH LAWS**: Each Party shall, at its own cost and expense, comply with all laws and regulations applicable to such Party, and perform its obligations under this Agreement in compliance with same. If either Party requires assistance from the other Party to comply with said laws and regulations, the

latter shall deploy commercially reasonable efforts to provide to the former with the necessary assistance and help.

16.6. FEDERAL GOVERNMENT CONTRACTING NOTICE. To the extent applicable to Radialpoint under this Agreement, the Parties agree as follows:

16.6.1. 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.

16.6.2. 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 Radialpoint fails to properly submit or follow a Subcontracting Plan. Additionally, Radialpoint 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 Radialpoint’s failure to properly submit or follow a Subcontracting Plan.

16.6.3. To the extent not exempt, Radialpoint (as well as any Subcontractors) shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and Subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability.

16.7. FORCE MAJEURE: No Party shall be liable for any default or delay in the performance of its obligations under this Agreement due to causes outside the reasonable control of a Party, 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 resources, workaround plans or other means (including disaster recovery services, if any) (“**Force Majeure**”). As an example, such event include, without limitation: (a) any action taken by a government or public authority of any kind, including but not limited to embargo, export or import restriction, rationing, quota, restriction or prohibition, (b) any civil commotion or disorder, riot, invasion, terrorist act, threat of or preparation of war, (c) accident, explosion, fire, storm, electric failure, flood, earthquake,

subsidence, epidemic or natural physical disaster, (d) strike, labour unrest, (e) failure caused by the Internet, to backbone peering point issues, or DNS issues; or (f) any other similar reason. During a Force Majeure event, the non-performing Party shall be excused from further performance or observance of its affected obligations for as long as the Force Majeure event continues so long as 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 (or by other available means of direct communication), 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. Should any Force Majeure event delay the performance by a Party of its respective obligations hereunder for thirty (30) days or more, the other Party may terminate this Agreement upon written notice to the delayed Party. This Section shall not excuse the non-performing Party 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.

- 16.8. **ASSIGNMENT:** Neither Party may assign or otherwise transfer this Agreement or any rights or obligations hereunder, in whole or in part, without the prior written consent of the other Party, which shall not be unreasonably withheld or conditioned. However either Party may assign or transfer this Agreement in whole or in part, any of its rights or obligations under this Agreement without the other Party's consent (a) to an Affiliate, (b) in connection with a merger, corporate reorganisation, acquisition, transfer, or sale of all or substantially all of its assets, or (c) a third party to whom Windstream outsources work reasonably related to the subject matter hereof, provided that such third party is not in the business of providing products and/or services competing with Radialpoint's products and/or Services made available to Windstream under this Agreement. Any assignment is conditioned upon the assigning Party's reasonable assurance that he assignee can adequately perform the assigning Party's duties and obligations in the same manner and on the same terms and conditions as the assigning Party. Any attempted non-permitted assignment shall be null and void. This Agreement shall inure to the benefit of the Parties and their permitted successors and assigns.
- 16.9. **WAIVER:** No waiver of any provision of this Agreement shall be effective unless it is in writing and signed by the Party against whom it is sought to be enforced. The delay or failure of either Party to fully exercise or enforce the performance by the other Party of any provision shall not affect the right to require such performance at any time thereafter; nor shall the waiver by either Party of a breach of any provision hereof on any occasion be taken or held to be a waiver of the provision itself.
- 16.10. **SEVERABILITY:** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, unenforceable or otherwise contrary to law, the same shall not affect any of the other terms or provisions of this Agreement, but such term or provision shall be changed and interpreted to the extent necessary to render such term or provision enforceable, and the rights and obligations of the Parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and undertakings of the Parties set forth in the remainder of this Agreement.
- 16.11. **SURVIVAL:** Notwithstanding any other provision of this Agreement, the provisions which by their nature are intended to survive the termination of this Agreement shall survive termination of this Agreement and any permitted assignment of this Agreement. Without restricting the generality of the foregoing, but for further clarity, the following sections shall survive the termination or the expiration hereof (as the case may be): 5 (Payment, Fees and Taxes), 6 (Intellectual Property), 8 (Term and Termination), 9 (Confidentiality), 11 (Representations and Warranties), 12(Limitation of Liability), 13 (Indemnification), 14 (Remedies, Dispute Resolution, Governing Law and Venue), and 16 (Miscellaneous).
- 16.12. **INSURANCE.** Upon Windstream's execution of this Agreement, Radialpoint shall provide Windstream with a certificate of insurance, in form issued by Radialpoint's insurer and/or insurance broker, which establishes that Radialpoint has the coverage listed therein and in which Windstream is named as an additional insured party under Radialpoint's relevant insurance policies. The insurance policies to be listed in the certificate may include commercial general liability, errors and omissions, umbrella liability and workers compensation. All insurance carriers shall be rated "A" or better by A.M. Best Co. and shall be reasonably acceptable to Windstream. All policies shall provide that the insurance listed in the certificate shall not be cancelled, terminated, or materially changed without Radialpoint giving Windstream prior written notice of at least thirty (30) days.

- 16.13. ENTIRE AGREEMENT: This Agreement, including all Schedules, Exhibits, Statements of Work, amendments and all other documents incorporated into this Agreement by reference, constitute the entire agreement between the Parties with regard to the subject matter hereof, and supersede any other prior and contemporaneous communications and agreements. Any amendments to this Agreement or to any document related thereto shall be made in writing and signed by duly authorised representatives of each Party. This Agreement may be executed in two or more counterparts, each of which shall be considered an original, but all of which 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 the Parties to the same extent as original signatures.
- 16.14. LANGUAGE: The Parties have expressly requested that this Agreement as well as all related documents be drafted in English. / *Les parties ont expressément demandé que ce contrat et tous les documents y afférents soient rédigés en langue anglaise.*

IN WITNESS WHEREOF, the Parties have executed this Agreement by their duly authorised representatives.

RADIALPOINT SAFECARE INC.

DocuSigned by:

 Signature
 009526672A240C...
 warren Levitan
 Name
 President & CEO
 Title
 10/24/2014
 Date

WINDSTREAM CORPORATION

DocuSigned by:

 Signature
 007F028E7A5A49F...
 Bob Gunderman
 Name
 CFO & Treasurer
 Title
 10/24/2014
 Date

EXHIBIT MSA-1

SERVICE LEVELS

This Exhibit MSA-1 defines service levels for the Subscriber Services provided by Radialpoint.

1. ADDITIONAL DEFINITIONS

- a. With the exception of the capitalised terms defined below in this section, which shall apply to this Exhibit MSA-1 and all related documents, the capitalised terms used herein and are defined in this section below or in the MSA.
- i. **“Defect”** shall mean any reproducible instance in which the Subscriber Services do not materially conform to the specifications and operating characteristics as set out in the applicable Documentation.
 - ii. **“Excused Outage”** means the unavailability of the Subscriber Services in whole or in part due to Defects caused by Windstream and/or by End-Users (including the Subscribers, as applicable), as described in section 4.d below.
 - iii. **“IT Systems”** means the IT systems, including chat and all applications, provided by Radialpoint as part of the Subscriber Services.
 - iv. **“Network Outage Time”** means the total of the Outage Duration measured in minutes in a calendar month relating to Telephony Network and IT Systems less any time associated with Planned Outages and Excused Outages.
 - v. **“PACE 60”** means the percentage of answered chat enquiries responded to by the Radialpoint’s agents within 60 seconds.
 - vi. **“PCA 60”** means the percentage of calls answered by Radialpoint’s agents within 60 seconds.
 - vii. **“Permitted Maintenance Downtime”** means both (i) scheduled downtime and maintenance periods, and (ii) emergency downtime and maintenance periods;
 - viii. **“Planned Outage”** means Subscriber Services downtime (i) scheduled by Radialpoint to carry out preventative maintenance services; or (ii) in order to implement any Upgrades or Updates.
 - ix. **“Resolution Time”** means the period from when Radialpoint replies and requests more information regarding a reported Defect (i.e. the end of the Response Time) until the Service Levels of the Subscriber Services have been restored through resolution of the Defect or implementation of an Update, Upgrade or Workaround.
 - x. **“Response Time”** means the period of time from when a Defect report is sent by Windstream to Radialpoint until Radialpoint replies and requests more information regarding the reported Defect.
 - xi. **“Service Availability”** means, the availability of the Subscriber Services, measured by subtracting from the total number of minutes in a given month, the total minutes of Service Interruption in such month, divided by the total minutes in such month and then multiplied by 100;

BY WAY OF EXAMPLE:

If in a given 30 day month there are 60 minutes of Service Interruption then the Service Availability for such month would be calculated as follows: = (43,200 being the total minutes in a 30 day month – 60 minutes of Service Interruption) / 43,200 = 43,140 / 43,200 = 0.9986.

Service Availability for the month would be 99.86%.

- xii. **“Service Interruption”** means the period of time that the Subscriber Services is not functional, experiences a Defect, or there otherwise is a lapse, outage or unavailability of the Subscriber Services. However Service Interruption excludes any downtime (i) due to Permitted Maintenance Downtime or Planned Outage, (ii) directly due to any unavailability of Windstream’s and/or End-Users’ (including the Subscribers’, as applicable) systems or network which is not caused by Radialpoint, or (iii) that is directly

caused by third parties which are not Radialpoint's Subcontractors under this Agreement, or otherwise by reasons beyond Radialpoint's reasonable control.

- xiii. **"Severity Level 1"** means a Defect that results in the unavailability of the Subscriber Services with (i) no bypass or Workaround, and that has a significant impact on at least twenty percent (20%) of Subscribers;
- xiv. **"Severity Level 2"** means a Defect that results in the unavailability of the Subscriber Services with a mutually acceptable temporary or tolerable Workaround available enabling Subscribers to access the Subscriber Services; and that has a significant impact on at least ten percent (10%) of Subscribers;
- xv. **"Severity Level 3"** means a Defect that results in one or more major function of the Subscriber Services to be unavailable or not working properly, but Subscribers are nonetheless able to access the Subscriber Services with non-material impact on their environment.
- xvi. **"Severity Level 4"** means a Defect that results in the unavailability or degraded performance of one or more functions of the Subscriber Services for a single Subscriber.
- xvii. **"Telephony Network"** means the telephone network provided by Radialpoint as part of the Subscriber Services.
- xviii. **"Ticket"** means the work order opened by Radialpoint in respect of a Subscriber requiring Subscriber Services.
- xix. **"Ticket Reopen Rate"** means the percentage of closed Tickets that are reopened for the same reason for which the Ticket was originally opened within seven (7) days of date of such original opening. For the avoidance of doubt, Radialpoint shall not at any time open a new Ticket for those Tickets captured under above but shall reopen such original Ticket.
- xx. **"Workaround"** means (i) a by-pass or a Modification to the Software or Subscriber Services, (ii) a by-pass or an alteration to the configuration of a Subscriber's Devices or Peripherals; or (iii) a change in the way a Subscriber or an agent accomplishes a task; including any combination of the foregoing, as applicable, whether or not of temporary nature, which help avoid, eliminate or mitigate a Defect.

2. RADIALPOINT SUPPORT OBLIGATIONS

- a. Radialpoint shall perform activities it deems necessary or advisable to provide Windstream with technical support as further described below. Radialpoint obligations are contingent on Windstream's compliance with the obligations and responsibilities of Windstream as described in this Agreement. Radialpoint shall furnish Windstream from time to time with standard operating procedures for implementing the technical support. These procedures may be modified at Radialpoint's discretion, with sixty (60) days prior written notice to Windstream.
- b. Each notice from Windstream in respect of Defects received by Radialpoint shall contain sufficient information reasonably necessary to enable qualified engineers to locate and reproduce the Defect identified in such notice.
- c. Windstream Contacts shall report Defects to Radialpoint as follows:
 - i. For single-fault Subscriber Services Defects, (i.e. Severity Level 3 and Severity Level 4) Windstream shall send an email to Radialpoint at windstream-support@radialpoint.com, confirming all the technical details regarding the Defect, and including all steps necessary to reproduce the Defect;
 - ii. For multi-fault Defects (i.e. Severity Level 1 and Severity Level 2), by telephoning 1-866-715-6294. Following each such call, Windstream shall send an email to Radialpoint at windstream-support@radialpoint.com, confirming all the technical details regarding the Defect to Windstream, including all steps necessary to reproduce the Defect;
 - iii. A Defect shall only be considered to have been reported once all the above steps have been followed and complied with by Windstream. Radialpoint may make accessible Defect tracking information to Windstream on all open known or reported Defects affecting Subscribers.
- d. Radialpoint shall alert Windstream via email (or other agreed upon means) of any newly reported and verified multi-fault Defects.
- e. During the Schedule Term, Radialpoint will provide to Windstream a 24/7 e-mail and emergency telephone technical assistance from the Radialpoint support centre.

- f. Radialpoint shall have no obligation to provide Support Services and shall not be subject to Service Levels for any problems, issues or Defects resolved by a more current Upgrade or Update made available to Windstream and not yet implemented by Windstream.
- g. Radialpoint shall be under no breach or default of the Service Levels (i) in case of a Force Majeure, or (ii) if the failure results from or is caused by:
 - i. Excused Outage;
 - ii. a breach of the EULA by a Subscriber or any other End-User that has accepted its terms, as applicable;
 - iii. a breach of a warranty or representation by Windstream;
 - iv. the gross negligence or wilful misconduct of Windstream, its agents or End-Users (including the Subscribers, as applicable); or
 - v. Windstream, its agents or Subscribers' failure to comply with applicable laws and regulations under or in connection with its performance of this Agreement;

3. TIME FRAME FOR DEFECT RESOLUTION

- a. Radialpoint shall use commercially reasonable efforts to:
 - i. Assist Windstream in determining the cause of Defects encountered in the use of Subscriber Services;
 - ii. Meet the Response Times in accordance with the time frame below;
 - iii. Meet Resolution Times and to correct such Defects in accordance with the time frame set forth in the table below (including through the implementation of Workarounds, Updates or Upgrades, or other means Radialpoint deems necessary to bring the Subscriber Services into material conformance with their specifications). This provision shall apply to all Defects for Subscribers identified and reported to Radialpoint by Windstream and that Windstream can substantiate.

Defect Severity Level	Response Time	Target Action and Defect Resolution Time
Severity Level 1	Radialpoint will acknowledge if there is a problem or not within 4 hours.	Upon the Defect being appropriately reported to Radialpoint and acknowledged, Radialpoint will work 24/7 using commercially reasonable efforts to investigate and to resolve the Defect for any infrastructure backend issue with appropriate escalation and feedback on status to Windstream. In the allocation of its resources by Radialpoint, Severity Level 1 Defects take priority over Severity Level 2, 3 and 4 Defects.
Severity Level 2	Radialpoint will acknowledge if there is a problem or not within 8 hours.	Within 4 hours of the Defect being appropriately reported to Radialpoint and acknowledged, Radialpoint will work 24/7 using commercially reasonable efforts to investigate and to resolve the Defect for any infrastructure backend issue with appropriate escalation and feedback on status to Windstream. In the allocation of resources by Radialpoint, Severity Level 2 Defects take priority over Severity Level 3 and 4 Defects but are treated after Severity Level 1 Defects.
Severity Level 3	Radialpoint will acknowledge by email generally within 2 Business Days. Investigation and response occur only during normal business hours.	Radialpoint will use commercially reasonable efforts to resolve the Defect within 5 Business Days.

<p>Severity Level 4</p>	<p>Radialpoint will acknowledge by email generally within 3 Business Days.</p> <p>Investigation and response occur only during normal business hours.</p>	<p>Radialpoint will use commercially reasonable efforts to resolve the Defect within 10 Business Days.</p>
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- b. During the Schedule Term, Windstream shall receive technical support and assistance in identifying Defects and in developing appropriate Workarounds as may be reasonably feasible in Radialpoint’s judgment.
- c. Radialpoint shall have an escalation process in place.
- d. Radialpoint will use commercially reasonable efforts to monitor and detect potential Defects. In the event Radialpoint identifies any Severity Level 1 or Severity Level 2 Defect that may impact Subscriber Services, it shall notify Windstream, and shall begin Defect resolution in accordance with the requirements set out in this Exhibit MSA-1.

4. SERVICE AVAILABILITY

- a. AVAILABILITY: The target availability of Radialpoint’s Subscriber Services is 99.5% of the time in a given month.
- b. TIME EXCLUDED FROM CALCULATION: The following elements are excluded from the calculation of all Response Time, Resolution Time and Service Availability:
 - i. Radialpoint Permitted Maintenance Downtime and Planned Outages;
 - ii. Excused Outages;
 - iii. Time taken by Windstream to answer, provide information or take action, that Radialpoint may reasonably need to respond to, work to solve or to resolve a Defect, interruption or failure, delay or disturbance;
 - iv. Unplanned outage (with prior notice to Windstream, except in case of emergency) reasonably needed by Radialpoint to put in place a patch, fix, Update, Upgrade, release or any development needed to respond to, work to solve or to resolve a Defect, interruption or failure, delay or disturbance; and
 - v. Time when Radialpoint is working on a problem raised by Windstream as a preventative maintenance.
- c. ONGOING MAINTENANCE AND PLANNED OUTAGES: Radialpoint may perform weekly maintenance services at its discretion. Radialpoint shall give Windstream, at least five (5) Business Days prior written notice of any maintenance or Upgrade work which shall affect the availability of the service level. Such notice shall include (i) a brief description of the Planned Outage, (ii) the date and the time of such Planned Outage, and (iii) the estimated duration of the Planned Outage. Radialpoint shall deploy commercially reasonable efforts to ensure that Subscribers may still access Subscriber Services during the maintenance services.
- d. DEFECTS CAUSED BY WINDSTREAM: Radialpoint is not responsible for any Defect, interruption or failure, delay or disturbance of any Subscriber Service, during or to the extent that such Defect, interruption, failure, delay or disturbance is caused by either:
 - i. Windstream or the End-Users (including the Subscribers, as applicable), or their default to comply with Radialpoint’s technical requirements;
 - ii. the use of the Services in connection or combination with equipment, devices, products, technology, software, hardware or systems not specified by Radialpoint to be compatible in the Documentation or a SOW, as updated by Radialpoint in writing, as and when such list changes as being compatible with the Services;
 - iii. outages, performance degradation, events, services or occurrences caused: (i) by Windstream, End-Users (including the Subscribers, as applicable), or their Devices or Connected Devices; (ii) within Windstream’s or End-Users’ (including the Subscribers’, as applicable) control, or operational environment including Windstream or End-Users’ (including the Subscribers’, as applicable) hardware, applications or code, or the lack of necessary monitoring information from Windstream; or (iii) outside

Radialpoint's operational environment hosted by Radialpoint, including: (a) the flow of data between Radialpoint network and other portions of the internet, (b) the performance of internet services provided or controlled by third parties, (c) actions or inactions of these third parties that impair End-Users' (including the Subscribers', as applicable) or their Devices' and/or Connected Devices' connections to the internet, or (d) agreed upon stress testing of the Services;

- iv. an accident, abuse, misuse or improper use, negligence, misapplication or tampering with respect to, of or with the Services;
- v. a failure by Windstream to test correctly a Services or Software prior to its deployment;
- vi. an outbreak of any virus or other type of malware causing a sudden rise in Incidents.

or if:

- vii. Software was not well or properly installed or used or uninstalled by Windstream or the End-Users (including the Subscribers, as applicable), in accordance with this Agreement and the Documentation or any agreed operating procedures provided in writing by Radialpoint from time to time;
 - viii. Windstream or End-Users (including the Subscribers, as applicable) were using a version of Software not incorporating the most recently available Update or Upgrade; or
 - ix. Modifications to Software were made not by Radialpoint or as approved by Radialpoint in writing;
 - x. when the failure could have been avoided by a subsequent patch, Update, Upgrade, Workaround or other Modification of the Software that Windstream or the End-Users (including the Subscribers, as applicable) refused to or did not install;
 - xi. development, patch, fix, or other is made at the request of Windstream and approved by Windstream when Radialpoint advises Windstream of possible malfunction;
 - xii. Windstream did not follow Radialpoint's policies and procedures to implement or change in the environment or the interface environment and resulted in a failure; or
 - xiii. Windstream requests Radialpoint to postpone delivery date for an Update, Upgrade or an emergency Workaround.
- e. COMPENSATION: Where Radialpoint shall provide Subscriber Services due to a situation described in section 4.d above during a period exceeding four (4) hours in a given month, then Windstream shall pay Radialpoint a fee of forty dollars (\$40.00\$) per hour for each agent on shift at the time of such Excused Outage.

5. SERVICE LEVELS

[REDACTED]

6. TELEPHONY SYSTEM

[*** THIS SECTION IS APPLICABLE ONLY WITH REGARDS TO PTScx SERVICES, IF PROVIDED ***]

Radialpoint’s agents shall use Radialpoint’s telephony system, and Windstream’s agents, where applicable, shall use Windstream’s telephony system. Should a transfer back of a Subscriber be required, Radialpoint shall provide, verbally, Windstream’s telephone number for assistance. Should Windstream request that Radialpoint’s agents proceed with the transfer of the Subscriber call to Windstream agents, then Windstream shall pay for the cost of Radialpoint’s telephony minutes to proceed with said transfer of call.

7. MISDIRECTED CALLS

[REDACTED]

8. FORECAST PROCESS

- a. Windstream shall send Radialpoint a rolling three (3) month forecast of the number of Subscription and referral calls that Radialpoint can expect to receive per month, with interim forecasting to supplement where either Party reasonably believes such additional forecasting to be materially beneficial to the quality of the forecast. No revenue obligations and/or commitments shall be assumed by such forecast.
- b. The Parties discuss and agree to the forecast on a monthly basis. More frequent reviews of the forecast may be performed on an “as needed” basis.
- c. The Parties shall adhere to the following forecasting process:
 - i. Rolling Forecast: Radialpoint shall operate from a rolling forecast provided by Windstream for the provision of the Subscriber Services. Windstream shall provide Radialpoint with a forty-five (45) day lead time before locking down the forecast for a month.
 - ii. Lockdown & Forecast: The forecast meeting shall take place by the 15th of every month. In this meeting the forecast for the next three (3) months shall be reviewed. The volume for month 1 shall be locked down while indicative volume for the month 2 and 3 shall be provided by Windstream.
FOR EXAMPLE: When both Parties meet on the January 15th, for the forecast meeting, it shall lock down the forecast for March and shall provide indicative volume for the next 2 months’ forecast (the indicative

forecast for the months of April & May). The actual lockdown for the month of April shall occur at the next forecast meeting to be held the next month, February 15th.

For the avoidance of doubt, the forecast provided beyond the locked month by Windstream is for information only and shall be used by Radialpoint for guidance planning only and no revenue obligations and/or commitments shall be assumed by such forecast.

- d. Windstream shall provide the locked forecast for the overall monthly referral volume and new Subscriptions forty-five (45) days in advance of said forecasted month.
- e. If the forecasted referral volume increases from one forecasted month to the next exceed 20%, Windstream shall provide Radialpoint sixty (60) days’ notice prior to the first day of the month where Windstream forecast a volume increase in excess of 20% from the previous month forecasted referral volume to allow Radialpoint time to proceed with staffing adjustments. If Windstream fails to provide the notice, then Radialpoint shall be exempt from meeting the Service Levels for said month.

..... [End of Exhibit MSA-1].....

EXHIBIT MSA-2

WINDSTREAM CODE OF ETHICS

[Windstream Supplier Code of Ethics (version 01.21.14) to be inserted here]

..... [End of Exhibit MSA-2].....



Supplier Code of Ethics

It is the policy of Windstream to conduct business in a manner that is ethical and promotes the best interests of its customers, employees, and stockholders. Accordingly, Windstream expects its Suppliers to be ethical and honest, comply with all applicable laws and regulations, and avoid any appearance of impropriety or conflict of interest. Windstream Suppliers are never authorized to commit, or direct others to commit, any illegal or unethical act.

To assist Suppliers in meeting Windstream's expectations, this Supplier Code of Ethics ("Code") provides basic guidelines for important areas of business conduct. As used in this Code, "Supplier" refers to any entity providing products, people or services to Windstream, and where applicable, the personnel of Supplier and its subcontractors and agents. Windstream expects Suppliers to comply with these guidelines and always exercise good judgment in applying them to their conduct as a Windstream Supplier. In addition to the Code, Windstream expects all Suppliers to recognize and adhere to Windstream's [Ethics Policy](#), or a substantially similar internal supplier ethics and compliance program. Suppliers that do not comply with the Code may be subject to corrective action, up to and including termination of Windstream's agreement(s) with such offending Suppliers.

This Code is not intended to create new or additional rights, or any additional Windstream obligations, in favor of Suppliers, Supplier personnel, or any third parties. It supplements, but does not supersede, the agreements between Windstream and Suppliers. Windstream reserves the right to revise the Code and its Ethics Policy at any time.

REPORTING CONCERNS

Suppliers must promptly report concerns and potential or actual violations of this Code. Suppliers should contact Windstream's Chief Compliance Officer or Compliance Committee through the Windstream *Working with Integrity* Helpline at 888-898-3990, online at <https://www.tnwgrc.com/WebReport/> or by mail: Windstream Working with Integrity, Chief Compliance Officer, 4001 N. Rodney Parham Rd., Building 1 Floor 3, Little Rock, AR 72212. The Helpline and online reporting system have been established to provide Suppliers channels to report possible violations confidentially and anonymously. Both the Helpline and online reporting system are staffed by The Network Inc., an independent third party. Suppliers must provide reasonable assistance to any investigation by Windstream of a violation of this Code. Suppliers must protect anyone who works for them, either as an employee or a contractor, from any form of retaliation for reporting suspected or actual violations.

POLICY AGAINST FACILITATION PAYMENTS

Suppliers must know and abide by the laws of the United States, including the Foreign Corrupt Practices Act, and the countries in which international operations are being conducted. Suppliers who are acting on Windstream's behalf may not, with respect to any government official, pay bribes or engage in corrupt practices to advance any interests associated with Windstream. This includes directly or indirectly offering, promising to pay, or authorizing the payment or provision of money or anything of value to government officials, political parties, or candidates for political office for the purpose of influencing their acts or decisions. A Supplier acting on Windstream's behalf may not engage in any form of bribery, including commercial bribery. For the avoidance of doubt, when Suppliers team with Windstream in providing goods and services to government entities or otherwise deal with government officials in connection with Windstream matters, gifts or entertainment of **any** value are not permitted.

If a Supplier, in connection with its work for Windstream, is approached by anyone, including a government official or an agent thereof, and asked to provide a payment or anything of value to influence an act or decision of the official or his/her government, or to secure an improper advantage, the Supplier is required to refuse to make the payment or to provide anything of value and immediately report the incident to Windstream using the Helpline, online reporting system or mailing address.

FALSIFICATION OR ALTERATION OF RECORDS

Falsifying or altering records or reports, preparing records or reports for improper purposes, or knowingly approving such conduct is prohibited. Suppliers must keep accurate and complete books and records regarding all transactions relating to its work for Windstream. These prohibitions include the following:

- False or misleading entries or statements should never be made in any Supplier books or records, including expense reports, time records, or other documentation, for any reason.
- Expense reports must be completed accurately, showing the true purpose and correct amount of each expense item. Expense reports must never seek reimbursement of expenses that are not legitimate business expenses incurred in the

course of your duties as a Windstream Supplier. This means that an expense report must never seek reimbursement for personal spending that is unrelated to reasonable, business related expenses.

- Permanent entries in Supplier records should never be altered.
- No secret or unrecorded funds or assets should be created or maintained for any reason.
- Never make a payment or approve a receipt or expense report with the understanding that it will be used for a purpose other than what is described in the record of the transaction.

GIFTS AND ENTERTAINMENT

Suppliers warrant that no commissions, payments, kickbacks, lavish gifts, entertainment, or other things of any value have been given to any employee or agent of Windstream in connection with Supplier's work for Windstream, 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 Windstream's relationship with a Supplier. Suppliers must notify Windstream of any solicitation by any of Windstream's employees or agents for any payments, gifts, entertainment, or other things of value using the Helpline, online reporting system or mailing address.

APPEARANCE OF IMPROPRIETY – CONFLICTS OF INTEREST

Windstream awards business on the basis of several factors, including but not limited to, product or service needs, costs, project management resources, experience and performance record. A Supplier must not have a relationship with any employee at Windstream that affects or might appear to affect the objectivity of an employee's judgment or that is or appears to be a conflict of interest.

TREATMENT OF PEOPLE WITH RESPECT AND DIGNITY

Windstream expects Suppliers to treat all employees with respect and dignity and not to use corporal punishment, threats of violence, physical abuse or other forms of physical coercion, harassment or intimidation. Suppliers' employment, wage and benefits practices should not be based upon grounds of sex, race, age, color, religion, national origin, marital status, veteran status or disability, in accordance with state and federal law. Additionally, Windstream expects Suppliers to use their best efforts to achieve a diverse work force.

FREEDOM OF ASSOCIATION

Windstream expects Suppliers to respect the legal rights of their employees to join or not to join worker organizations, including trade unions or similar external representative organizations. Suppliers should strive for effective employee communication as a means of promoting positive employee relations.

LABOR RIGHTS

Suppliers must implement hiring practices to accurately verify the age of all workers and workers' legal right to work prior to employment. Suppliers will not employ individuals under the legal minimum working age of the jurisdiction and/or country where the Supplier operates. Suppliers must not use forced or involuntary labor whether bonded, imprisoned, or indentured, including debt servitude. Suppliers must comply with all applicable wage and hour laws and regulations, including, but not limited to, those relating to minimum wages, overtime hours, piece rates and other elements of compensation, and legally mandated benefits. Suppliers' employees should understand their employment conditions including payment terms and benefits.

SAFETY, HEALTH AND THE ENVIRONMENT

Windstream is committed to providing a safe, healthy and alcohol and drug free work place for its employees and for visitors to Windstream's facilities, and Windstream expects Suppliers to do that same. Suppliers should provide appropriate health and safety information and training to their employees. Suppliers are expected to follow all applicable safety, health, and environmental laws, as well as any related Windstream policies, and should have a program or mechanism(s) to enforce and monitor compliance with health and safety requirements. Such programs and/or mechanisms should include at least the following: (i) assurances that the Suppliers' workers are provided with a safe place to work and are qualified to perform their work functions safely; (ii) the ability to track occupational injuries and illness; (iii) an emergency preparedness plan and response procedure; (iv) efforts to eliminate or reduce waste of all types, including waste of water and energy; and (v) an environmental management system with a focus on continuously monitoring and improving environmental performance.

USE AND PROTECTION OF COMPANY ASSETS

Windstream's property and resources are highly valuable. Suppliers are responsible for protecting Windstream's tangible and intangible property and ensuring their legitimate Windstream-related business use. Some examples of Windstream property include our funds, buildings and facilities, company vehicles, resources used to provide communications services, office equipment, intellectual property and confidential information. Suppliers are responsible for safeguarding Windstream property in their possession and control, and for using such resources only for legitimate business purposes to advance the interests of Windstream. Windstream property may not be taken, sold, loaned, given away, licensed, assigned, damaged, used for non-business purposes or otherwise disposed of regardless of its condition or value, unless the Supplier has specific written approval from an authorized Windstream representative.

In addition, if Windstream issues a building key or access device to a Supplier, the key or access device must: (i) be safeguarded; (ii) be used only by the authorized recipient; (iii) not be transferred without the consent of Windstream; (iv) not be duplicated; and (v) be returned to Windstream immediately when the employment of its holder is terminated, when its holder no longer requires such building key or access device, or at the request of Windstream.

PROPERTY RIGHTS OF OTHERS

Windstream respects the property rights of others. In the conduct of business, Windstream has occasion to receive and use proprietary information of others, such as customer lists, technical developments or operational data, as well as other material that is not publicly available. Windstream must use this information only in accordance with the agreements under which such information is received. Windstream's policy is to honor and respect the intellectual property rights of others. Such intellectual property rights include patents, trademarks and copyrights. Suppliers should not engage in any improper use of the intellectual property rights of others, including the unlawful or unauthorized copying, revealing or use of anyone's intellectual property.

CONFIDENTIAL INFORMATION AND PRIVACY

Windstream values and protects confidential information, including information about our customers, employees, operations, finances and business plans, and information created by our customers, in accordance with applicable law. Windstream may execute a non-disclosure agreement with a Supplier before providing access to confidential information. Suppliers are required to protect Windstream's confidential information in accordance with that agreement; any disclosure of Windstream's confidential information is prohibited. This includes inadvertent disclosures, which means that Suppliers must not have discussions involving Windstream's confidential information in public areas where discussions could be easily intercepted or overheard. Suppliers may use Windstream's confidential information solely for the purposes for which it is provided under the agreement, and must not make independent use of Windstream's data.

TO REPORT CONCERNS AND POTENTIAL OR ACTUAL VIOLATIONS

Phone: *Working with Integrity* Helpline, 888-898-3990

Web: <https://www.tnwgrc.com/WebReport/>

Mail: Windstream Working with Integrity
Chief Compliance Officer
4001 N. Rodney Parham Rd.
Building 1, Floor 3
Little Rock, AR 72212

SCHEDULE A

PROFESSIONAL SERVICES

This Schedule A – Professional Services (“**PS Schedule**”) is subject to the terms and conditions of the Master Services Agreement (the “**MSA**”) entered into as of January 1, 2015 (the “**Effective Date**”) by and between **RADIALPOINT SAFECARE INC.** (“**Radialpoint**”) and **WINDSTREAM CORPORATION and its Affiliates** (collectively, “**Windstream**”, collectively with Radialpoint referred to as “**Parties**”, and individually, as “**Party**”).

This PS Schedule defines additional terms under which Radialpoint shall provide Professional Services to Windstream which may be necessary to enable Radialpoint to provide Services under this Agreement;

1. SCHEDULE DEFINITIONS

1.1. **DEFINITIONS:** With the exception of the capitalised terms defined below in this section, which shall apply to this Schedule A and all related Exhibits, documents and Statements of Work, the capitalised terms used herein and are defined in the MSA.

1.1.1. “**Change Request**” means, with regard to a Statement of Work, a document through which a Party may request a change to the scope of such Statement of Work, such as change, additions or deletions to the Deliverables described therein. Agreed upon Change Requests, once signed by all the Parties, constitute an amendment to the applicable Statement of Work, and are incorporated therein by reference. Change Requests shall contain at the minimum (i) a reasonably detailed description of the requested change, as well as (ii) a proposed solution, including an effort and cost estimate of the Professional Services to be performed as part of the Change Request, along with any proposed changes to the Professional Services Fees, to the Milestones, to the Statement of Work Term and to the timeframe for delivery, as applicable.

1.1.2. “**Deficiency**” has the meaning set forth in section 4.4 hereof.

1.1.3. “**Delivery**” has the meaning set forth in section 4.3 hereof.

1.1.4. “**In-Scope Work**” means the Professional Services and/or the Deliverables covered by the scope of a Statement of Work, and included in the Professional Services Fees payable there under.

1.1.5. “**Man-Workday**” means the equivalent of seven and a half (7.5) hours of work per one (1) individual.

1.1.6. “**Milestone**” means, with respect to a Statement of Work, a date or the arrival of a scheduled event, used by the Parties to track the progress of the performance of the Professional Services under such Statement of Work, and/or the delivery of Deliverables there under.

1.1.7. “**Out-of-Scope Work**” means the Professional Services and/or the Deliverables excluded from the scope of a Statement of Work and the Professional Services Fees payable thereunder. For further clarity, Out-of-Scope Work refers to Professional Services and the Deliverables which will not be performed or delivered as part of the applicable Statement of Work.

1.1.8. “**Testing**” has the meaning set forth in section 4.1 hereof.

2. STATEMENTS OF WORK

2.1. **SCOPE:** The Professional Services and any Deliverables rendered as part or as the result of them shall be described in the Statements of Work. Once executed, all Statements of Work shall be deemed to incorporate the terms of this Schedule A, and be annexed hereto under the Exhibit A-1.

2.2. **MINIMUM TERMS:** Each Statement of Work shall contain, at the minimum, the following information: (i) a sufficiently detailed description of In-Scope Work; (ii) a list of Out-of-Scope Work; (iii) a timetable outlining the Statement of Work Term and the Milestones; (iv) a list of assumptions, dependencies and constraints; (v) the responsibilities of Radialpoint and of Windstream; (vi) the names, the contact information and the responsibilities of each Party’s representatives in charge of the project described in the Statement of Work, including, without limitation, those of the project manager; (vii) the Professional Services Fees and the associated payment terms; and (viii) a reference to this Schedule A.

- 2.3. DEPLOYMENT OF SERVICES: If a Statement of Work relates to the deployment of a Service, it shall set forth the target Deployment Date for such Service.
- 2.4. STATEMENT OF WORK TERM: Unless otherwise specified in the Statement of Work, it shall commence on the date it is signed by all the Parties, and shall terminate at the Delivery of the last Milestone described in such Statement of Work.
- 2.5. PROJECT MANAGERS: Within ten (10) days after the execution of each Statement of Work, each Party shall designate in writing to the other the name, business address, and telephone number of the Project Manager who will be responsible for representing such Party in all technical matters under such Statement of Work. All transfer of Deliverables and communications regarding the Professional Services under such Statement of Work shall be accomplished through the Project Managers. In addition, the Project Managers shall arrange and chair progress review meetings and control all changes to a Statement of Work. Either Party may change the person designated to be its Project Manager for any Statement of Work at any time upon written notice to the other Party.

3. PAYMENT

- 3.1. PAYMENT: [REDACTED]
- 3.2. PROFESSIONAL SERVICES RATE: [REDACTED]

4. TESTING AND ACCEPTANCE

- 4.1. TESTING: Within ten (10) Business Days following the submission by Radialpoint of a Deliverable for Windstream’s acceptance, Windstream shall examine and test the Deliverable (“**Testing**”), and acting reasonably advise Radialpoint in writing whether Windstream accepts or rejects such Deliverable.
- 4.2. ACCEPTANCE: Acceptance will occur when the Deliverables and/or Professional Services in a Statement of Work meet the agreed upon tests or the acceptance criteria described in the SOW, as determined during Testing in accordance with section 4.1 above. Notwithstanding the foregoing, mutual agreement between the Parties to deploy a Deliverable into a production environment and the deployment of said Deliverable into a production environment shall be deemed to be Company’s acceptance of the Deliverable as of the date deployment into a production environment.
- 4.3. DELIVERY: Upon acceptance of a Deliverable in accordance with section 4.2 above, such Deliverable shall be deemed delivered in accordance to the terms and specifications of the Statement of Work as of the date of such acceptance (the “**Delivery**”).
- 4.4. DEFICIENCIES: Windstream may reject a Deliverable which does not materially conform to or perform in accordance with the requirements set forth in this Statement of Work (a “**Deficiency**”). If Windstream delivers to Radialpoint a notice that Windstream rejects a Deliverable due to a Deficiency, Radialpoint shall either make all necessary corrections, repairs, changes or additions to or replacements of all or any part of the Deliverable or provide Windstream with a plan acceptable to Windstream so that it conforms to and performs in accordance with the requirements set forth in this Statement of Work. Within thirty (30) days of receipt of such notice, Radialpoint shall have fixed the Deficiency and shall resubmit the Deliverable for Testing by Windstream. If the Deficiency is not corrected or if an acceptable plan for correcting such Deficiency is not established during such period, then, upon demand by Windstream, Radialpoint shall refund to Windstream all fees paid by Windstream relating to Professional Services performed and/or Deliverables under such SOW.
- 4.5. SUPPORT: During the Testing Radialpoint shall provide to Windstream the following support:
 - 4.5.1. A joint triage and evaluation of Deficiencies identified by Windstream during Testing shall be conducted. Radialpoint shall maintain logs of the reported Deficiency;
 - 4.5.2. Deficiencies shall be jointly categorised by severity and priority, based on impact to the solution, the Subscribers, and the launch;

- 4.5.3. High priority issues that must be addressed before launch shall be agreed upon, considering impact to the project calendar to address the issue(s);
- 4.5.4. Radialpoint shall address agreed upon high priority issues in accordance with the impact on the project calendar;
- 4.5.5. An issue shall be given to mean that the Software does not perform in accordance to the specifications of that Software.

5. CHANGE MANAGEMENT

- 5.1. CHANGE REQUEST: Either Party may request a change to a Statement of Work at any point prior to the execution of the work thereunder. The Party which submits such request shall be responsible to properly identify all such requested changes and to document them. No change to a Statement of Work shall be implemented unless it is approved by both parties in writing in form of a Change Request.
- 5.2. REQUEST BY WINDSTREAM: Where Windstream is the Party that requests a change to a Deliverable, as soon as possible, but not later than ten (10) Business Days after its receipt (unless otherwise agreed by the Parties in writing), Radialpoint shall deliver to Windstream a completed Change Request, provided that Windstream's request contained sufficient information to enable Radialpoint to adequately prepare its Change Request. Windstream shall response to such Change Request within ten (10) Business Days by countersigning the Change Request thus acknowledging its content thereto, or otherwise, by notifying Radialpoint about its concerns and/or the adjustments that may be necessary to the Change Request to render it acceptable to Windstream.
- 5.3. REQUEST BY RADIALPOINT: Where Radialpoint is the Party that requests a change to a Statement of Work, Radialpoint may submit a Change Request to Windstream. Windstream shall respond to such Change Request within ten (10) Business Days by countersigning the Change Request thus acknowledging its content thereto, or otherwise, by advising Radialpoint whether adjustments to the Change Request are necessary.
- 5.4. SUBSTANTIAL CHANGES: Where a Change Request required significant changes, Radialpoint may require that the new terms be documented in form of a new Statement of Work.
- 5.5. OUT-OF-SCOPE WORK: Radialpoint shall not be liable for any Out-of-Scope Work, or other services or deliverables which are not expressly identified in the Statement of Work or agreed upon in an accepted Change Request.
- 5.6. REJECTION OF A CHANGE REQUEST: In the event Windstream does not approve the Change Request submitted by Radialpoint, Windstream may either direct Radialpoint in writing to continue working under the terms of the original Statement of Work or terminate the original Statement of Work by providing written notice to Radialpoint, provided that Windstream immediately pays to Radialpoint: (i) all then invoiced but not yet paid Professional Services Fees; (ii) the Professional Services Fees (based on the rate set forth in section 3.2 above) for all work performed since the date of the last invoice to the date of termination; and (iii) any reasonable Fees and expenses associated with terminating the Statement of Work.

6. TERM AND TERMINATION

- 6.1. TERM: This Schedule A is coterminous with the MSA. It shall become effective on the Effective Date of the MSA, and shall remain in full force and effect until the MSA is terminated in accordance with its terms ("**Schedule Term**").

IN WITNESS WHEREOF, the Parties have executed this Schedule A by their duly authorised representatives.

RADIALPOINT SAFECARE INC.

DocuSigned by:
Warren Levitan
Signature
Warren Levitan
Name
President & CEO
Title
10/24/2014
Date

WINDSTREAM CORPORATION

DocuSigned by:
Bob Gunderman
Signature
Bob Gunderman
Name
CFO & Treasurer
Title
10/24/2014
Date

DS MS DS nw DS ta DS WA DS BD DS BG DS MB DS PJ DS CR DS PT DS DW DS DMR DS JG DS MT

EXHIBIT A-1

STATEMENTS OF WORK

[STATEMENTS OF WORK TO BE INSERTED HERE]

..... [End of Exhibit A-1].....

SCHEDULE B

RADIALPOINT TURNKEY PTScx SERVICES

This Schedule B – Radialpoint Turnkey PTScx Services (“**PTScx Schedule**”) is subject to the terms and conditions of the Master Services Agreement (the “**MSA**”) entered into as of January 1, 2015 (the “**Effective Date**”) by and between **RADIALPOINT SAFECARE INC.** (“**Radialpoint**”) and **WINDSTREAM CORPORATION and its Affiliates** (collectively, “**Windstream**”; collectively with Radialpoint referred to as the “**Parties**”, and individually, as a “**Party**”).

This PTScx Schedule defines additional terms under which Radialpoint shall provide premium technical support services to Windstream and its Subscribers as part of Services.

1. SCHEDULE DEFINITIONS

- 1.1. **DEFINITIONS:** With the exception of the capitalised terms defined below in this section, which shall apply to this PTScx Schedule and all related Exhibits, documents and Statements of Work, the capitalised terms used herein are defined in the MSA.
- 1.1.1. “**Initial Term**” shall have the meaning set forth in section 5.1 hereof.
- 1.1.2. “**PTScx Services**” means the premium technical support services rendered or made available by Radialpoint to Windstream and/or to its Subscribers (on behalf of Windstream), as described in Exhibit B-1. For further clarity, the PTScx Services are part of the Services.
- 1.1.3. “**PTScx Services Fees**” means the Fees that Windstream shall pay to Radialpoint for the PTScx Services, as described in Exhibit B-2.
- 1.1.4. “**PTScx Subscriber Services**” mean those PTScx Services that are rendered and/or made available to Subscribers by Windstream or by Radialpoint (on behalf of Windstream), as described in Exhibit B-1. For further clarity, the PTScx Subscriber Services are part of Subscriber Services.
- 1.1.5. “**Renewal Term**” shall have the meaning set forth in section 5.1 hereof.
- 1.1.6. “**Schedule Term**” means collectively the Initial Term and all Renewal Terms, as applicable.

2. PTScx SERVICES

- 2.1. **PROVISION OF PTScx SERVICES:** In consideration of the payment of the PTScx Services Fees and subject to the terms and conditions of this PTScx Schedule and the MSA, Radialpoint shall provide the PTScx Services to Windstream and included PTScx Subscriber Services to Subscribers (on behalf of Windstream) from the Deployment Date until the end of the Schedule Term hereof, in the Territory only, and in accordance with the Service Levels set forth in Exhibit MSA-1 to the MSA. The PTScx Services shall be available on a 24/7 basis.
- 2.2. **REPORTING:** Radialpoint shall provide Windstream with a set of pre-configured standard reports necessary to track the performance of the PTScx Subscriber Services by Radialpoint and their use by the Subscribers.
- 2.3. **COOPERATION:** Windstream shall cooperate and assist Radialpoint in implementing all necessary processes and procedures, in accordance with Radialpoint’s reasonable guidance, in order to enable Radialpoint (i) to proceed with the activation and the provision of the PTScx Services, (ii) to provide such PTScx Services to Windstream and included PTScx Subscriber Services to Subscribers throughout the Schedule Term, as well as (iii) to remotely install, update, upgrade, control and/or uninstall Software on each End-User’s Device.

3. FEES AND PAYMENT

- 3.1. **PTScx SERVICES FEES:** The PTScx Services Fees payable by Windstream to Radialpoint under this PTScx Schedule are based on the Entitlement of the PTScx Subscriber Services to Subscribers, as further described in the Exhibit B-2 hereto.
- 3.2. **PAYMENT:** The PTScx Services Fees are part of the Fees, and shall be paid by Windstream in accordance with section 5 (Payment, Fees and Taxes) of the MSA.

4. LIMITATION OF LIABILITY

4.1. ADDITIONAL LIMITATION OF LIABILITY: In addition to and without restricting the generality of the section 11 (Limitation of Liability) of the MSA, the Parties acknowledge and agree that in no event shall Radialpoint be (i) in breach of this Agreement, including any incapacity to achieve the Service Levels or the unavailability of the PTScx Services, and/or (ii) bear any liability whatsoever for any Claim arising from or is related to (a) Radialpoint’s incapacity to correct a defect, resolve an issue or answer a question of a Subscriber as part of the PTScx Subscriber Services; or (b) Radialpoint’s incapacity to provide PTScx Subscriber Services in association with an unsupported device or peripheral.

5. TERM AND TERMINATION

5.1. TERM: This PTScx Schedule shall become effective on the Effective Date (as set forth in the MSA), and shall remain in full force and effect for a period of three (3) years thereafter, unless otherwise terminated in accordance with the terms of the MSA or this PTScx Schedule (the “Initial Term”). Upon the expiration of the Initial Term, this PTScx Schedule shall automatically renew for additional successive one (1) year terms (the “Renewal Term”), unless either Party provides a notice of non-renewal ninety (90) days prior to the expiration of the Initial Term or the then current Renewal Term (as the case may be), or unless otherwise terminated in accordance with the terms of the MSA or this PTScx Schedule.

5.2. TERMINATION OF OTHER SCHEDULES: Unless otherwise expressly agreed to in writing in any other Service Schedule to this Agreement, which should be applicable exclusively to such Service Schedule, the expiration or the termination of this PTScx Schedule shall immediately terminate this Agreement and all other Schedules thereto. In this event, all Schedules shall be terminated in accordance to their respective terms, or, in the absence thereof, in accordance to the terms of the MSA, provided that the effective date of their respective termination shall be the effective date of expiration or termination of this PTScx Schedule.

IN WITNESS WHEREOF, the Parties have executed this PTScx Schedule by their duly authorised representatives.

RADIALPOINT SAFECARE INC.

DocuSigned by: Warren Levitan
Signature: [Handwritten Signature]
warren Levitan
Name
President & CEO
Title
10/24/2014
Date

WINDSTREAM CORPORATION

DocuSigned by: Bob Gunderman
Signature: [Handwritten Signature]
Bob Gunderman
Name
CFO & Treasurer
Title
10/24/2014
Date

EXHIBIT B-1

DESCRIPTION OF THE PTSCX SERVICES

This Exhibit B-1 outlines the PTSCx Services that shall be provided by Radialpoint under this PTSCx Schedule subject to the terms and conditions of this Agreement.

The Radialpoint turnkey PTSCx Services are an end-to-end solution that provides packaged premium technical support offering right-off-the-shelf, with all necessary labour and backend infrastructure. The PTSCx Subscriber Services may be provided through certain Radialpoint Subscriber-facing Software (if applicable), over the telephone or chat, or through a remote connection, as further described in the applicable Documentation. The PTSCx Subscriber Services shall be provided to Subscribers as part of the PTSCx Services.

1. PTSCX SERVICES OFFERING

Radialpoint delivers a customer experience enabled Premium Technology Support program, which includes cross-platform technical support, call center agent automation and intelligence, analytics and support automation. Radialpoint turn-key PTSCx Services offer a broad scope of technology support.

The PTSCx Subscriber Services included in the PTSCx Services are provided based on both the number of intended uses and the scope of required assistance, as further described in the applicable Documentation.

2. LIVE SUPPORT AGENTS

Radialpoint turnkey PTSCx Services comprise call centre agents and labour management. The live agent support shall be provided in accordance with the Services Levels described in Exhibit MSA-1 hereto. The agents who will be providing PTSCx Subscriber Services via a voice connection (i.e. telephone) shall be based in North America.

3. REPORTING AND ANALYTICS

Standard reports and analytics are available to Windstream that provide financial, Subscriber and PTSCx Services performance-related insights. They include data from each phase of the Subscriber lifecycle, providing information and visibility into key operational metrics required to run a premium technology support services programme.

..... [End of Exhibit B-1].....

EXHIBIT B-2

PRICING AND FEES

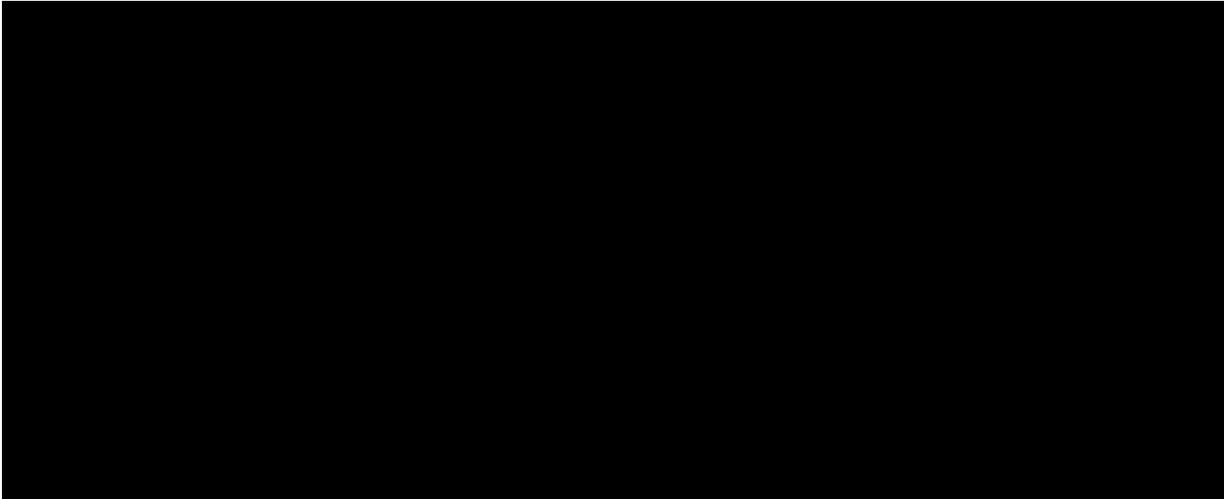
This Exhibit B-2 outlines the PTScx Services Fees that shall be paid by Windstream to Radialpoint for the provision of PTScx Services under this PTScx Schedule.

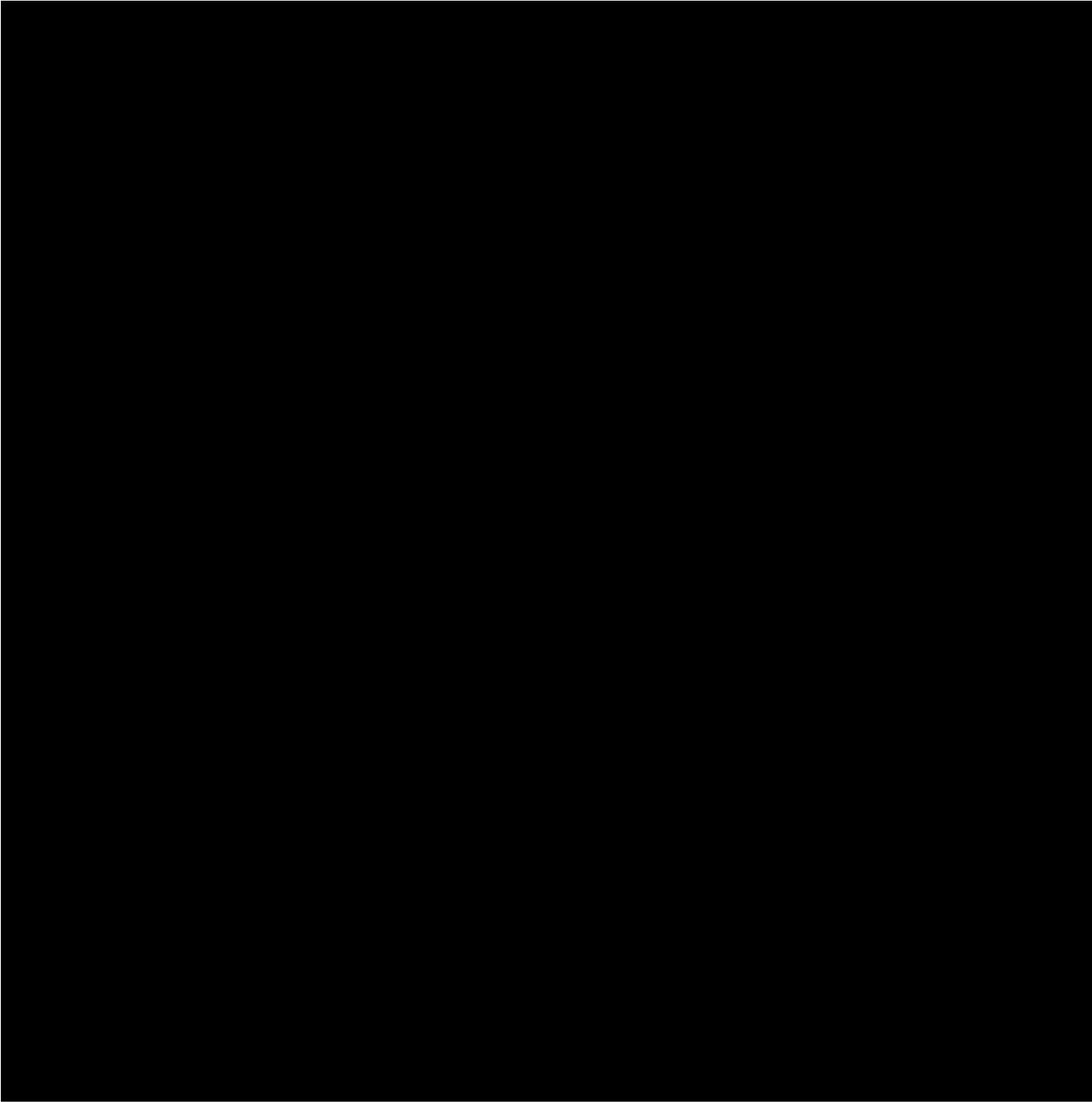
1. ADDITIONAL DEFINITIONS

- a. With the exception of the capitalised terms defined below in this section, which shall apply to this Exhibit B-2 and all related documents, the capitalised terms used herein and are defined in section 1 (Schedule Definitions) to this PTScx Schedule or in the MSA.
 - i. **“Advanced Bundle”** means the ‘Advanced Security Pack’ bundle made available by Windstream to its End-Users (which as of September 1, 2014, includes without limitation security and online backup offerings, and retails for \$9.99), as such bundle may be modified and/or replaced by Windstream from time to time during the Schedule Term, including without limitation in accordance with section 2.a below.
 - ii. **“Monthly Fee”** means the Fees payable for a Subscription, as further described in section 2.c below.
 - iii. **“One-Time Fee”** means the Fees payable for an Incident Assistance, as further described in section 2.d below.
 - iv. **“Point of Need”** means the sale of a Subscription to a Subscriber triggered by the request by the Subscriber for the provision of the PTScx Subscriber Services at the time of the sale of said Subscription.
 - v. **“Point of Sale”** means the sale of a Subscription to a Subscriber without the request for immediate provision of the PTScx Subscriber Services at the time of the sale of said Subscription.

2. PTScx SERVICES FEES

- a. **ADVANCED BUNDLE UPDATE:** Windstream hereby commits to adding the ‘One PC’ residential SKU set forth in the table below to Windstream’s Advanced Bundle no later than April 1, 2015. The Parties hereby acknowledge and agree that (i) the ‘One PC’ SKU shall be deemed included in Windstream’s Advanced Bundle and (ii) Radialpoint shall begin billing Windstream accordingly for the ‘One PC’ SKU Subscribers as of the earlier of: (a) the date of the actual launch of the ‘One PC’ SKU as part of Windstream’s Advanced Bundle, or (b) April 1, 2015 (the **“Advanced Bundle Launch Date”**). Windstream hereby further agrees to include the ‘One PC’ SKU (or such other SKU as may be agreed upon by the Parties in writing) as part of any modification and/or replacement of the Advanced Bundle throughout the Schedule Term, as may be applicable.

- b. **SUBSCRIPTION FEES:** 
- 

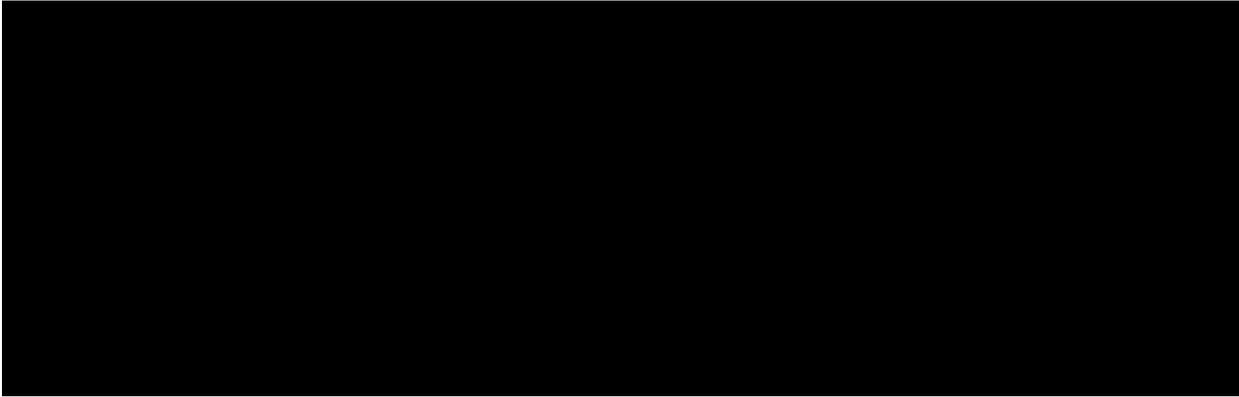


c. MONTHLY FEES:

[Redacted text block]

[Redacted text block]

d. **INCIDENT ASSISTANCE:** [REDACTED]



e. **PTSCX SERVICES FEES:** For each billing month the PTScx Services Fees payable by Windstream will equal to the sum of all One-Time Fees and all Monthly Fees (as set forth above in this section 2.c, and calculated based on the number of Subscriptions corresponding to each SKU) during such billing month.

..... [End of Exhibit B-2].....

SCHEDULE C

ONLINE BACKUP SERVICES

This Schedule C – Online Backup Services (“**OBS Schedule**”) is subject to the terms and conditions of the Master Services Agreement (the “**MSA**”) entered into as of January 1, 2015 (the “**Effective Date**”) by and between **RADIALPOINT SAFECARE INC.** (“**Radialpoint**”) and **WINDSTREAM CORPORATION and its Affiliates** (collectively, “**Windstream**”; collectively with Radialpoint referred to as the “**Parties**”, and individually, as a “**Party**”).

This OBS Schedule defines additional terms under which Radialpoint shall provide OBS Services to Windstream and its Subscribers as part of Services.

1. SCHEDULE DEFINITIONS

- 1.1. **DEFINITIONS:** With the exception of the capitalised terms defined below in this section, which shall apply to this OBS Schedule and all related Exhibits, documents and Statements of Work, the capitalised terms used herein are defined in the MSA.
- 1.1.1. “**Initial Term**” shall have the meaning set forth in section 6.1 hereof.
- 1.1.2. “**OBS Client**” means the online backup Software and associated online storage space provided by Radialpoint to Subscribers pursuant to this OBS Schedule for the purposes of accessing and using Subscriber Content as part of the OBS Services, and further described in Exhibit C-1 hereto. For further clarity, OBS Client shall be deemed Software for the purposes of this Agreement;
- 1.1.3. “**OBS Services**” mean the limited rights granted under the licences set forth in section 2.3 below, the associated Support Services and other services rendered or made available to Windstream by Radialpoint under this OBS Schedule, as further described in Exhibit C-1. For further clarity, the OBS Services are part of the Services.
- 1.1.4. “**OBS Services Fees**” means the Fees that Windstream shall pay to Radialpoint for the OBS Services, as described in Exhibit C-2.
- 1.1.5. “**Renewal Term**” shall have the meaning set forth in section 6.1 hereof.
- 1.1.6. “**Subscriber Content**” means any data or other content uploaded, downloaded, stored or otherwise processed through the OBS Client by Subscribers as part of the OBS Services.
- 1.1.7. “**Schedule Term**” means collectively the Initial Term and all Renewal Terms, as applicable.

2. OBS SERVICES

- 2.1. **PROVISION OF OBS SERVICES:** In consideration for the payment of the OBS Services Fees, and subject to the terms and conditions of this OBS Schedule and the MSA, Radialpoint shall provide the OBS Services to Windstream from the relevant Deployment Date until the end of the Schedule Term hereof, in the Territory only, and in accordance with the Service Levels set forth in Exhibit MSA-1 to the MSA.
- 2.2. **DISTRIBUTION:** Subject to the terms and conditions hereof and to the terms of the licences granted below, throughout the Schedule Term, Windstream shall use commercially reasonable efforts to market, distribute and make available OBS Services to its End-Users (including the Subscribers, as applicable) for their end-use and not for resale.
- 2.3. **OBS CLIENT LICENCE:** Subject to the payment of the OBS Services Fees and Windstream’s compliance with the terms and conditions of this Agreement, Radialpoint hereby grants to Windstream, for the duration of the Schedule Term, a limited, revocable, non-exclusive, non-transferable, non-sub-licensable licence to:
- 2.3.1. make available and distribute the OBS Client to Subscribers and other End-Users, only in the Territory and only in object code, for the purpose of installing and using the OBS Client by Subscribers in accordance with the terms and conditions of the EULA;

2.3.2. download, install and use, on its own systems, a reasonable number of copies of the OBS Client, in object code only, solely for internal use in the Territory in order to market the OBS Services to its End-Users and to provide the OBS Services to its Subscribers.

3. FEES AND PAYMENT

- 3.1. **OBS SERVICES FEES:** The OBS Services Fees payable by Windstream to Radialpoint under this OBS Schedule are described in Exhibit C-2 hereto.
- 3.2. **PAYMENT:** The OBS Services Fees are part of the Fees, and shall be paid by Windstream in accordance with section 5 (Payment, Fees and Taxes) of the MSA.

4. OBS CLIENT UPGRADES

- 4.1. **AVAILABILITY AND RELEASE:** Radialpoint may, from time to time, provide Updates and/or Upgrades to the OBS Client provided as part of the OBS Services, as it deems necessary at its sole discretion, without however having any obligation to do so. Radialpoint shall provide a written notice to Windstream advising it of the release or the upcoming release of an Upgrade to Software.

5. LIMITATION OF LIABILITY

- 5.1. **ADDITIONAL LIMITATION OF LIABILITY:** In addition to and without restricting the generality of the section 12 (Limitation of Liability) of the MSA, the Parties acknowledge and agree that in no event shall Radialpoint be (i) in breach of this Agreement, including any incapacity to achieve the Service Levels or the unavailability of the OBS Services, and/or (ii) bear any liability whatsoever for any Claim arising from or is related to (a) Radialpoint’s incapacity to provide OBS Services in association with an unsupported device; or (b) any loss, damage or unavailability of the Subscriber Content.

6. TERM AND TERMINATION

- 6.1. **TERM:** This OBS Schedule shall become effective on the Effective Date (as set forth in the MSA), and shall remain in full force and effect for a period of three (3) years thereafter, unless otherwise terminated in accordance with the terms of the MSA or this OBS Schedule (the “**Initial Term**”). Upon the expiration of the Initial Term, this OBS Schedule shall automatically renew for additional successive one (1) year terms (the “**Renewal Term**”), unless either Party provides a notice of non-renewal ninety (90) days prior to the expiration of the Initial Term or the then current Renewal Term (as applicable), or unless otherwise terminated in accordance with the terms of the MSA or this OBS Schedule.

IN WITNESS WHEREOF, the Parties have executed this OBS Schedule by their duly authorised representatives.

RADIALPOINT SAFECARE INC.

DocuSigned by:


 Signature ID: 72A240C...
 Warren Levitan

 Name
 President & CEO

 Title
 10/24/2014

 Date

WINDSTREAM CORPORATION

DocuSigned by:


 Signature ID: 7A5A49F...
 Bob Gunderman

 Name
 CFO & Treasurer

 Title
 10/24/2014

 Date

EXHIBIT C-1

DESCRIPTION OF THE OBS SERVICES

This Exhibit C-1 outlines the OBS Services that shall be provided by Radialpoint under this OBS Schedule subject to the terms and conditions of this Agreement.

Radialpoint’s OBS Services offering comprise several technology components that work together to deliver a highly effective backup solution. The OBS Services include the following components:

1. OBS CLIENT (SUBSCRIBER SOFTWARE)

The OBS Client is packaged Software included as part of the OBS Services that enables the provision of the OBS Services to Subscriber. OBS Client enables Subscriber to copy their files located on their compatible Device to remote online storage and to retrieve them. This process may be completed manually or automatically, all depending on Subscribers’ preferences.

2. ONLINE STORAGE

OBS Services provided hereunder include a limited online storage space where Subscribers may store their Subscriber Content. The size of such storage is set forth in Exhibit C-2 hereto.



..... [End of Exhibit C-1].....

EXHIBIT C-2

PRICING AND FEES

This Exhibit C-2 outlines the OBS Services Fees that shall be paid by Windstream to Radialpoint for the provision of OBS Services under this OBS Schedule.

OBS SERVICES FEES

The OBS Services Fees payable by Windstream to Radialpoint under this OBS Schedule are outlined below, and are equal to the sum of the OBS Storage Fee and the OBS License & Subscription Fee, as described below.

1. OBS STORAGE FEE: [REDACTED]
2. OBS LICENSE & SUBSCRIPTION FEE: [REDACTED]

..... [End of Exhibit C-2].....

EXHIBIT B

The image is a screenshot of a web browser window. At the top, the browser's address bar and navigation icons are visible. The page header features the "kinetic by windstream" logo on the left and the "kinetic.business by windstream" logo on the right. The main content of the page is a notice titled "1ST NOTICE" in red. The notice is addressed to "Dear Windstream Customer," and states that effective May 31, 2020, Windstream will be making changes to several products and support tools. It lists three products that will no longer be offered as standalone features or within internet feature bundles: Online Data Backup, Travel Safety Roadside Assistance, and PC Protect and Device Guard Equipment Coverage. A black redaction box with white text "Move the mouse to this area to send keyboard input to the remote device" is positioned over the text "Internet feature bundles will no longer contain the above features. Other included features within affected bundles will remain unchanged." Below this, the notice explains that standalone subscribers to these features will have their accounts updated and charges removed. It also lists changes to internet feature support tools and contact methods, including the discontinuation of the Windstream Service Agent desktop client and the modification of support numbers for Tech Help, Whole Home Tech Help, Wi-Fi Agent, Whole Home Agent, and Remote IT Support. The new support number is listed as 1-866-809-1016. A section titled "Online Backup Handling:" states that online storage accounts for Online Data Backup products will be discontinued and files deleted. Another black redaction box with the same white text is located at the bottom of the page.

kinetic
by windstream.

kinetic.business
by windstream.

1ST NOTICE

Dear Windstream Customer,

Effective May 31, 2020, Windstream will be making changes to several products and support tools.

The below products and services will no longer be offered as standalone features or within internet feature bundles:

- Online Data Backup (see additional details below)
- Travel Safety Roadside Assistance
- PC Protect and Device Guard Equipment Coverage

Internet feature bundles will no longer contain the above features. Other included features within affected bundles will remain unchanged.

PC Protect and Device Guard Equipment Coverage

Internet feature bundles will no longer contain the above features. Other included features within affected bundles will remain unchanged.

If you are a standalone subscriber to one of the above features, your Windstream account will be updated and ongoing charges for these products will be removed, effective on your June statement.

In addition, Windstream will also be making the below changes to Internet feature support tools and contact methods, effective May 31st:

- The Windstream Service Agent desktop client will be discontinued. If downloaded to your computer, the Service Agent will no longer function and can be uninstalled
- To streamline customer contact methods, Windstream is modifying the current support number for customers with the following products: Tech Help, Whole Home Tech Help, Wi-Fi Agent, Whole Home Agent, and Remote IT Support. The new support number will be **1-866-809-1016**

Online Backup Handling:

If you subscribe to a Windstream Online Data Backup product, your online storage account will be discontinued. Any stored files within the Online Data Backup site will be deleted.

Online Backup Handling:

If you subscribe to a Windstream Online Data Backup product, your online storage account will be discontinued. Any stored files within the Online Data Backup site will be deleted.

If you have important files saved within the Online Data Backup site, please log in and save them to your personal computer or storage device before May 31st. If you do not have files backed up from your computer and saved to the Online Data Backup site, no action is needed.

Please note, failure to retrieve personal Online Data Backup files by May 31, 2020, will result in lost data, as files cannot be retrieved after this time.

Continued on back.