

Board Office Use: Legislative File Info.	
File ID Number	13-1881
Committee	Facilities
Introduction Date	8-28-2013
Enactment Number	13-1813
Enactment Date	8-28-13



OAKLAND UNIFIED  
SCHOOL DISTRICT

Memo

To Board of Education

From Dr. Gary Yee, Acting Superintendent  
and Secretary of the Board of Education  
Timothy White, Associate Superintendent, Facilities Planning and Management

Board Meeting Date August 28, 2013

Subject Division of Facilities Planning and Management P.O's. Less than \$50,000.00

Action Requested: Ratification by the Board of Education of the attached contracts for the Division of Facilities Planning and Management.

Legistar #	Name	Amount	Funding Source	P.O.	Project	Date	City
13-1859	Air Sea Containers	\$1,948.00	County School Facilities Fund	P.O.	Ralph Bunche Portable Installation	5-17-2013	Oakland
13-1860	Asbestos Management Group	\$2,600.00	Measure B	P.O.	Lowell MS Modernization	7-2-2013	Oakland
13-1861	Associates Comfort Systems	\$980.00	County School Facilities Fund	P.O.	La Escuelita Educational Center	7-25-2013	San Leandro
13-1862	Bayview Environmental Services Inc.	\$7,850.00	County School Facilities Fund	P.O.	Oakland Tech Seismic Retrofit	7-11-2013	Oakland
13-1863	Charles M. Salter Associates, Inc.	\$2,650.00	Measure B	P.O.	Highland New Classroom Building	7-11-2013	San Francisco
13-1864	Danda Hauling & Trucking	\$1,400.00	County School Facilities Fund	P.O.	Stonehurst CDC Building Replacement	5-28-2013	Brisbane
13-1865	Digital Design Communications	\$3,851.19	Developer Fee	P.O.	La Escuelita Educational Center	4-2-2013	Oakland
13-1866	Elation Systems	\$35,200.00	Measure B	P.O.	Labor Compliance Software	6-26-2013	Pleasanton
13-1867	Graham Tree Services, Inc.	\$4,500.00	County School Facilities Fund	P.O.	Ralph Bunche Portable Installation	7-8-2013	San Leandro
13-1868	H&M Mechanical Group	\$3,800.00	Measure B	P.O.	Highland New Classroom	7-24-2013	Oakland
13-1869	HY Hibser Yamauchi Architects, Inc.	\$20,000.00	Fund 67	P.O.	District Administration Planning Studies	6-18-2013	Oakland
13-1870	J&R Fence, Inc.	\$21,213.00	County School Facilities Fund	P.O.	J&R Fence, Inc.	4-18-2013	San Leandro
13-1871	Musson Theatrical	\$12,952.00	County School Facilities Fund	P.O.	Oakland Technical Seismic Retrofit AB300	4-2-2013	Santa Clara
13-1872	NVB Playgrounds, Inc.	\$2,452.00	County School Facilities Fund	P.O.	Stonehurst CDC Building Replacement	5-17-2013	Indianapolis, IN
13-1874	Peninsulators	\$1,745.00	County School Facilities Fund	P.O.	Stonehurst CDC Building Replacement	5-17-2013	San Jose
13-1875	School Dude	\$6,648.31	Fund 40	P.O.	Building & Grounds	4-9-2013	Cary, NC
13-1876	School Dude	\$19,300.95	Deferred Maintenance	P.O.	Building & Grounds	4-22-2013	Cary, NC



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13-1877	School Outfitters	\$3,866.16	County School Facilities Fund	P.O.	School Outfitters	6-12-2013	Cincinnati, OH
13-1878	Telex Communications	\$30,000.00	Fund 1	P.O.	Telex Communications	6-7-2013	Dublin
13-1879	The Davey Tree Expert Tree Company	\$6,800.00	Measure A	P.O.	Arroyo Viejo CDC Renovation of Building	4-8-2013	San Ramon
13-1880	WHM Incorporated	\$3,920.00	Measure B	P.O.	Highland New Classroom	7-11-2013	Moraga
13-1881	WiLine	\$35,000.00	Fund 67	P.O.	District Administration Relocation	6-18-2013	San Mateo

**Discussion:**

Among the key purposes of the District's Facilities Master Plan is to provide an academic environment for the Oakland community that will give every student, educator, and community member using our facilities the best possible opportunity for learning.

Through implementation of the Facilities Master Plan, the District intends to improve the District's facilities in terms of structural integrity, safety, reliability of operating (mechanical) systems, access to modern resources, number and type of appropriate laboratories and specialized instruction rooms, opportunities for physical education, and attractiveness, such that the Oakland Public Schools are second to none. Operation of the District schools under the planned approach is intended to ensure safety, cleanliness, and orderliness for all individuals participating in the learning process.

The basic facility needs of students such as proper lighting, functional roofs, noise control and well maintained buildings, not only convey the message that we value our students and teachers but may foster a sense of school pride and community ownership which may improve attitudes towards learning. The implementation of the Facilities Master Plan is our first step in that direction.

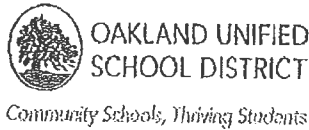
**Fiscal Impact:**

Various

**Recommendation:**

The Board of Education is requested to approve the Facilities Planning and Management contracts and Purchase Order for the OUSD school sites.





P.O. Number: \_\_\_\_\_

P.O. Date: \_\_\_\_\_

## PURCHASE ORDER TERMS AND CONDITIONS

### WiLine

#### 1. Definitions.

**A)** "Bid" means the Contractor's offer made in response to a solicitation to perform a contract to supply goods or perform services at a specified price.

**B)** "Bidder" means a supplier who submits a Bid to the District in response to a solicitation.

**C)** "Contract" means Contractor's Bid; drawings or specifications, if any; these bid/purchase order terms and conditions together with the terms appearing on the reverse side hereof; and any other documents identified therein or herein as incorporated by reference and inclusive of any subsequently issued addenda and/or amendments.

**D)** "Contractor" means the business entity designated on the face of this purchase order that is supplying Deliverables to the District. Contractor shall be synonymous with "supplier", "vendor", or other similar term.

**E)** "Deliverables" means the tangible and/or intangible personal property, product, service, software, information technology, telecommunications technology, and other items to be delivered pursuant to this purchase order including any such items furnished incident to the provision of services.

**F)** "District" means the Oakland Unified School District.

**2. Assignment; Subcontracting.** The Contractor may not assign this Contract in whole or in part, and/or monies due Contractor, without the prior written consent of the District and surety, if any. Subject to the foregoing, this Contract shall be binding upon the parties and their respective successors and assigns. All subcontractors must be approved in advance by the District. Upon the District's written request, Contractor shall terminate any subcontractor.

**3. Audit.** The District shall have the right to examine and audit Contractor's records related to this Contract. Contractor and its subcontractors shall maintain and preserve all such records for a period of at least three (3) years after final payment to Contractor or after final Contract closeout, as determined by the District.

**4. Award of Contract.** The Bidder's Bid or quotation is deemed a firm offer; issuance of this document as a purchase order evidences the District's acceptance of that offer. If an award is made on a bid, the contract will be awarded according to the authority granted by the Board of Education of the District ("Board") pursuant to California law.

**5. Acceptance/Rejection of Bids.** The District may award a contract on an individual item or combination of items, whichever is in the best interest of the District. A bidder may specify that the District's acceptance of one item shall be contingent upon the District's acceptance of one or more additional items submitted in the same bid. Bids shall remain open and valid for 120 days after bid opening date unless otherwise stipulated and may be accepted without further written notice by the District. The Bidder may withdraw its bid at any time before the bid opening.

**6. District Name May Not Be Used.** The name and/or logo of the District or any school of the District may not be used in any advertisements or communications which may convey the impression that the District authorizes the solicitation and/or that there may be some connection or endorsement between the District and the Contractor.



7. **Fingerprinting.** The Contractor and its subcontractors shall fully comply with the provisions of Education Code Section 45125.1 when Contractor and/or its subcontractors will have more than limited contact with District pupils

8. **Governing Law.** This Contract shall be governed by and construed in accordance with the laws of the state of California, without regard to conflicts of laws.

9. **Indemnification.** Contractor agrees to indemnify and hold harmless the District, the Board, and their employees, agents, volunteers, affiliates, officers and directors from, and defend each of them against, any injury to person or property, claims, suits, liabilities or expenses (including reasonable attorneys' fees and costs) resulting from or connected with Contractor's performance hereunder, breach of its representations, warranties or obligations hereunder, or Contractor's failure to comply with any applicable law, or regulation.

10. **Independent Contractor.** Contractor shall perform its obligations under this Contract as an independent contractor of the District. Nothing herein shall be deemed to constitute Contractor and the District as partners, joint venturers, or principal and agent. Contractor has no authority to represent the District. Contractor shall not at any time or manner represent that it or any of its subcontractors or agents are in any manner agents or employees of the District.

11. **Independence of Bid.** Unless Bidder is furnishing a joint bid, by submitting this Bid, Bidder swears under penalty of perjury that it did not conspire with any other supplier to set prices in violation of antitrust laws.

12. **Insurance.** Upon the District's request, Contractor shall provide, and require its subcontractors to maintain, insurance policy/policies and limits of coverage acceptable to the District to protect against claims that may arise from this Contract.

13. **Joint Bids.** A joint bid submitted by two or more bidders participating jointly in one bid may be submitted, and each participating bidder must sign the joint bid. If the contractor is comprised of more than one legal entity, each entity shall be jointly and severably liable under this contract. In addition, the joint contractors must designate, in writing, one individual having authority to represent them all in matters relating to the contract. The District assumes no responsibility or obligation for the division of orders or purchases among joint contractors.

14. **License.** Upon payment in full for software, Contractor grants the District a perpetual, non-exclusive, worldwide, irrevocable, fully paid right and license, to install and use the software on all computing devices used by or for the benefit of the District. This license is subject to the limitation on the maximum number of end users or other scope limitations listed on the facing page and, if none are listed, this license shall be deemed to be enterprise-wide and the software may be used by all District end users without any maximum number of users. The license shall extend to permit contractors working for the District to use the software in the performance of their duties for the District.

15. **Non-Discrimination.** Contractor shall comply with all laws prohibiting discrimination in employment and shall include this nondiscrimination requirement in all subcontracts to perform work under the Contract.

16. **Order of Precedence.** This Contract constitutes the entire agreement between the parties and supersedes any prior or contemporaneous written or oral understanding or agreement and any contrary provisions on packing slips, invoices, or other documents submitted by the Contractor. Any conflict or inconsistency among the components of this Contract shall be resolved by giving precedence in the



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SCHOOL DISTRICT

*Community Schools, Thriving Students*

following order: (1) Contractor's Bid; (2) these Contract Terms and Conditions; (3) all other attachments incorporated into the Contract by reference. No term or condition of this Contract may be terminated, modified, rescinded, or waived except by a writing signed by both parties. No modification or waiver of this Contract shall be deemed effected by Contractor's acknowledgment, confirmation or other documentation containing other or different terms. Should any such document from Contractor contain additional or different terms than this Contract, those terms shall be considered proposals by Contractor which are hereby rejected.

**17. Packaging, Delivery and Acceptance.**

**A) Packaging.** Items shall be packaged to protect them from damage during transit. Packing slips must include the District Purchase Order number, contents, quantity, and description. Material Safety Data Sheets shall be Included when applicable.

**B) Delivery.** Contractor shall be responsible for delivery on a free-on-board (FOB) Destination basis and shall incur all costs associated with the delivery unless otherwise specified in this Contract. All deliveries shall be set on the District's dock and/or pallets or as otherwise prescribed by the District. All Deliverables are subject to acceptance by District. District will notify Contractor in writing of any defect or nonconformity and Contractor will repair or replace such defective or nonconforming goods or, at the District's option, refund the purchase price to District.

**C) Acceptance.** If Items are not properly packaged or Identified, or If Items are determined by the District to be defective or non-conforming, deliveries or any part thereof may be rejected, and all costs (return and re-delivery) shall be at the Contractor's expense. All goods to be delivered hereunder may be subject to final inspection, test and acceptance by the District at destination, notwithstanding any payment or inspection at source. The District shall give written notice of the rejection of goods delivered or services performed hereunder within a reasonable time after receipt of such goods or performance of such services. Such notice of rejection will state the respects in which the goods do not substantially conform to their specifications. Acceptance shall not be construed to waive any warranty rights the District may have at law or by express reservation in this Contract with respect to conformity. Title to and risk of loss of Deliverables shall vest in the District upon acceptance.

**18. Performance Guarantee.** A performance guarantee may be required on award of annual contracts which exceed \$81,000.

**19. Samples.** Samples of Items may be required by the District for inspection and specification testing and must be furnished free of expense to the District. The samples furnished must be identical in all respects to the items bid and/or specified in the Contract. Samples must be plainly marked with the name of Bidder, bid number, and date of bid opening. Samples may be retained for comparison with deliveries and if not destroyed by tests, may, upon request at the time the sample is furnished, be returned at Contractor's expense. Bidder/Contractor assumes all risk of loss of or damage to samples.

**20. Severability.** If any provision or part of this Contract shall be declared illegal, void, or unenforceable, such term or provision shall be deemed stricken and the remaining provisions shall continue in full force and effect to the extent permitted by law.

**21. Substitutions.** Product substitutions require the prior, express written authorization from an authorized District representative.

**22. Tax.** The District shall pay only California sales tax and use tax and/or Alameda County sales and use tax, as applicable. Contractor shall separately list all applicable taxes on the invoice. The District is exempt from payment of Federal Excise Tax. Contractor shall cooperate with the District in all matters related to



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Community Schools, Thriving Students

taxation and the collection of taxes. The District may, at its option, self-accrue tax and remit same to the state of California pursuant to the District's permit with the state of California.

23. **Termination.** The District may, by written notice to Contractor, terminate this Contract in whole or in part at any time at the District's convenience or for Contractor default. The District shall hold Contractor liable and responsible for all damages which may be sustained because of the Contractor's default. If Contractor fails or neglects to furnish or deliver any of the deliverables listed herein at the prices named and at the time and places stated herein or otherwise fails or neglects to comply with the terms of the Contract, the District may, upon written notice to the Contractor, cancel the Contract in its entirety, or cancel any or all items affected by such default; and may, whether or not the Contract is cancelled in whole or in part, purchase the Deliverables elsewhere without notice to the Contractor. The prices paid by the District at the time such purchase is made shall be the prevailing market prices. Any extra costs incurred by such default may be collected by the District from the Contractor.

24. **Title.** Title to and risk of loss of Deliverables shall pass to and vest in the District upon final acceptance by the District.

26. **Warranty.**

A) Contractor warrants that all Deliverables furnished hereunder will be free from defects in design, material, and workmanship, and will conform to applicable specifications, drawings, samples, and descriptions. All warranties shall be in addition to any warranties available under law and any standard Contractor warranty.

B) At the time of delivery, no software shall contain any virus, "Trojan horse," timer, counter or other limiting design, instruction, or routine that would erase data or programming or cause the software or any hardware or computer system to become inoperable or otherwise incapable of being used in the full manner for which it was designed and created.

C) No Deliverable shall violate or infringe upon the rights of any third party, including, without limitation, any patent, copyright, trademark, trade secret, or other proprietary rights of any kind. There is no action, suit, proceeding, or material claim or investigation pending or threatened against Contractor, that, if adversely determined, might affect any Deliverable or restrict the District's right to use any Deliverable. Contractor knows of no basis for any such action, suit, claim, investigation, or proceeding.

D) Contractor warrants it has full title to the Deliverables and has the right to grant the District the rights and licenses contemplated herein without the requirement for consent of any third party.

(See the attached Exhibit A)

AGREED and ACCEPTED: \_\_\_\_\_

Date: 6/24/2013

By: Jerry L. Johnson

Its (Title): Risk Management Officer

August 14  
RP Operations  
6/24/13  
Also see Exhibit A attached.

Exhibit A to the Purchase Order Terms and Conditions

By and Between the Oakland Unified School District and WiLine Networks, Inc.

Notwithstanding anything to the contrary, the terms of this Exhibit A shall take precedence to the terms of the Purchase Order Terms and Conditions.

1. **Acceptable Use Policy ("AUP").** Customer agrees: (a) not to use the services provided by WiLine (the "Services") for illegal purposes; (b) to comply with local, state and federal laws governing use of the Services; (c) that if the Vendor is notified of the existence of child pornography being transmitted over the Vendor network, Vendor may immediately suspend Service; (d) not to interfere with or disrupt the services or servers or networks connected to the Services.
2. **IP Address.** Vendor will assign to Customer, on a temporary basis, one or more Internet Protocol Address ("IP Address") either from the address space assigned to Vendor or a non-public NAT address. This IP Address belongs to Vendor and is not portable. Vendor reserves the right to change the IP Address at any time, for any reason without notice or liability; however in the event that such change is required Vendor shall coordinate with the Customer so as to minimize impact to Customer's use of Service.
3. **Force Majeure.** Neither Customer nor Vendor will not be in violation of this Agreement or otherwise liable for any delay, failure to perform or equipment or property damage, loss, destruction or malfunction, or any consequence thereof, caused in whole or in part by anything beyond their reasonable control, including, without limitation, power failures; cable cuts; failure caused by telecommunications or other Internet provider(s); worms; Trojan horses; viruses or other destructive code or software (collectively, "Events of Force Majeure").
4. **Mutual Indemnification.** (a) WiLine shall defend, indemnify, and hold the Customer, its officers, employees, and agents harmless from and against any and all liability, loss, expense (including reasonable attorneys' fees), or claims for injury or damages arising out of the performance of this Agreement but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of WiLine, its officers, employees or agents. (b) The Customer shall defend, indemnify, and hold WiLine, its officers, employees, and agents harmless from and against any and all liability, loss, expense (including reasonable attorneys' fees), or claims for injury or damages arising out of the performance of this Agreement but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of the Customer, its officers, employees or agents.
5. **Limitation of Liability.** IN NO EVENT WILL WILINE BE LIABLE FOR LOST PROFITS, OR FOR ANY INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT, EVEN IF WILINE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. WILINE'S LIABILITY UNDER OR ARISING OUT OF THIS AGREEMENT FOR DIRECT DAMAGES SHALL NOT EXCEED THE AMOUNTS PAID BY THE CUSTOMER FOR THE SERVICE. THE FOREGOING LIMITATION OF LIABILITY IS NOT APPLICABLE TO WILINE'S INDEMNIFICATION OBLIGATIONS SET FORTH ELSEWHERE IN THIS AGREEMENT. FURTHER, THE FOREGOING LIMITATION IS NOT APPLICABLE TO ANY PERSONAL INJURY CLAIM.
6. **Termination.** The District may, by written notice to Contractor, terminate this Contract in whole or in part at any time at the District's convenience after the initial 12 month term, or for Contractor default at any time.
7. **Sections of the Purchase Order Terms and Conditions to be considered Null and Void.** Section 9, Indemnification, of the Purchase Order Terms and Conditions shall be considered null and void and replaced by the above Section 4, Mutual Indemnification. Section 14, License, of the Purchase Order Terms and Conditions shall be considered null and void.

August 14th  
August 14th  
IP Operations  
6/24/13



**OAKLAND UNIFIED SCHOOL DISTRICT**  
Department of Facilities Planning & Manage

Certified: Gary Yee  
Gary Yee Ed.D., Secretary  
Board of Education

**AGREEMENT REQUEST FORM**

**DATE SUBMITTED 06-17-13 SUBMITTED BY: Tadashi Nakadegawa**  
**SECTION I. TYPE OF AGREEMENT (PLEASE CHECK ONE BOX)**

1.) A&E (Architects and Engineers) Contract	<input type="checkbox"/>	5.) "Small"(under \$15,000.00) Construction Contract	<input type="checkbox"/>
2.) IOR (Inspector of Record) Contract	<input type="checkbox"/>	6.) Resolution Awarding Bid & Construction Contract	<input type="checkbox"/>
3.) Agreement for Professional Services-Testing Etc.	<input type="checkbox"/>	7.) Change Order	<input type="checkbox"/>
4.) Amendment to Agreement for Professional Services (Amendment #-)	<input checked="" type="checkbox"/>	8.) Purchase Order Under \$50K:	<input type="checkbox"/>

Vendor Number: \_\_\_\_\_  
Fiscal Year: 2013-2014  
Date Processed: 6/18/2013  
To: MB 6/10 To DR: \_\_\_\_\_

**SECTION II LOCAL BUSINESS PARTICIPATION PERCENTAGE**

Local Business	Small Local Business	Small Local Resident Business	Total Percentage

All requests will require the Assistant Superintendent's and the Director of Facilities Authorization and Signature

<u>Timothy E. White</u> Assistant Superintendent	Date <u>6/17/13</u>	<u>Tadashi Nakadegawa</u> Director of Facilities	Date <u>6/17/13</u>
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**SECTION III. AGREEMENT INFORMATION:**

Project Name:	1Gbps Transport Link	Project No:	<u>9879242601-5826</u>
Vendor Name:	<u>Wiline</u>	Vendor Contact:	Greg Kopecky
Vendor Phone Number:	1-888-4WILNE (888-494-5463), 415-902-2226, 650-523-5440 Fax	Vendor Mailing Address:	1164 Triton Drive, San Mateo, CA 94404
Agreement Start & Stop Dates:	Start: 06-17-13 Stop: 07-05-13	Amounts:	Current Contract Amount: 2,500.00 Per Month, Installation One Time Charge \$5,000.00 Not to Exceed Amount: \$35,000.00 Revised Contract Amount:
Has Work Started?	Yes <input type="checkbox"/> No <input type="checkbox"/> If yes give an explanation:	Has Work Been Completed?	Yes <input type="checkbox"/> No <input type="checkbox"/>
Certificate of Insurance Attached <input type="checkbox"/> Yes <input type="checkbox"/> No		Date provided:	

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: The District certifies to the best of its knowledge and belief, that it and its officials: Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency according to Federal Acquisition Regulation Subpart 9.4, and by signing this contract, certifies that this vendor does not appear on the Excluded Parties List. <https://www.sam.gov/portal/public/SAM>

**For Construction Contracts \$15,000, please provide or attach the following:**

- LEGISLATIVE FILE**
- 1) Number of Bids Received, List of Bidders and Amounts (Bid Form) (Attach Bid Documents) File ID No. 13-1851
- 2) Date(s) of Bid Advertisement Introduction Date 8-28-2013
- 3) Date of Bid Opening Enactment No. 13-1813
- 4) Name of Architect Enactment Date 8/28/13
- 5) Liquidated damages per day \_\_\_\_\_
- 6) Performance Bonds Attached \_\_\_\_\_
- 7) Payment Bonds Attached \_\_\_\_\_
- 8) Number of Phases \_\_\_\_\_
- (Sections 6 & 7 to be completed by Contract Administration department)

**Scope of Work:** (Needed to prepare Executive Summary)

**Discussion Information** (Needed to prepare Executive Summary) Installation, equipment maintenance, monitoring, point to point equipment lease

Funding Source Fund 67

Budget Number: \_\_\_\_\_

RES 0111

6/18/13  
**RECEIVED**



**EXHIBIT A**

**Customer Billing Information**

Oakland Unified School District  
Aaron Soo  
1000 BROADWAY  
OAKLAND, CA 94607  
Phone: 510-719-6307  
Email: aaron.soo@ousd.k12.ca.us  
Invoice Delivery Method: Email

**Customer Installation Information**

Oakland Unified School District  
Aaron Soo  
1000 BROADWAY  
OAKLAND, CA 94607  
Phone: 510-719-6307  
Email: aaron.soo@ousd.k12.ca.us

**Initial Term**

12 months from date of activation

**Date**

Requested Service Date\*: \_\_\_\_\_

\* Requested Service Delivery Date is subject to the terms under section 3 in the WiLine Service Agreement. Assuming no delays, it is within 5 business days for "ON" WiLine locations and within 30 business days for all other locations.

**WiLine Sales Information**

Direct Sales Office  
1164 Triton Drive  
San Mateo, CA 94404  
Phone: 1-888-4WILINE (888-494-5463)  
Fax: 650-523-5440

Sales Representative: Greg Kopecky  
Phone: 415-902-2226  
Email: greg.kopecky@wiline.com

**Payment Terms**

1. Service charges are billed monthly in advance and will commence when service is activated at customer's MPOE location.
2. Non-recurring installation fees are based on Basic Installations. Customer is solely responsible for bringing service from the MPOE to customer's suite location. Professional Services work outside Basic Installation, including requirement of Equipment not listed on this Agreement, may incur additional charges. Installation and Equipment charges will be billed upon acceptance by WiLine of Customer's signed Customer Service Agreement.
3. WiLine may charge a recurring access fee not to exceed 8.9% of Services charges to recover costs associated with providing WiLine Service to the building.
4. A \$50 late fee will be assessed on any past due balance. \$100 fee will be assessed on any suspended or terminated service that is reactivated.

**Commercial Service Description**

ITEM	SERVICE LEVEL	MONTHLY FEES	NON RECURRING
140197	WiNet Data 1000 Mbps (customized). 1000Mbps Point-to-Point circuit between 1000 Broadway, Oakland CA 94607 and 286 East 10th St., Oakland CA 94606	\$2500.00	
140198	Installation Fee		\$5000.00
	Note: Installation Fee		
140199	1 static IP address	\$0.00	
	<b>Subtotal</b>	<b>\$2500.00</b>	<b>\$5000.00</b>
	<b>Sales Tax</b>		
	<b>Total</b>	<b>\$2500.00</b>	<b>\$5000.00</b>

**Additional note:**

This Service Agreement is for a 1 Gbps Point-to-Point (Layer 2) circuit between 1000 Broadway, Oakland CA 94607 and 286 East 10th St., Oakland CA 94606

**Customer Authorization and Acceptance**

The signatory below hereby represents and warrants to WiLine that (s)he has the authority and power to sign on behalf of the Customer and bind Customer to this Order and Service Agreement Terms and Conditions as posted on www.wiline.com. By signing this document, Customer understands and agrees to be bound and subject to the Terms and Conditions for service as described in the Service Agreement Terms and Conditions. Before signing this document, please review all documents and information on this Order, including the billing and installation information and note any required changes.

Thank you for your business!

Authorized by: Name (print): \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Let me know if you have any other questions.

Thanks

Greg  
[415.902.2226](tel:415.902.2226)

Sent on the Sprint® Now Network from my BlackBerry®

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**From:** Aaron Soo <[aaron.soo@ousd.k12.ca.us](mailto:aaron.soo@ousd.k12.ca.us)>

**Date:** Thu, 13 Jun 2013 10:53:14 -0700

**To:** Greg Kopecky <[greg.kopecky@wiline.com](mailto:greg.kopecky@wiline.com)>

**Cc:** C. Joseph Cavanagh <[jcavanagh@sgicm.com](mailto:jcavanagh@sgicm.com)>; Kelvin Chan <[kelvin.chan@ousd.k12.ca.us](mailto:kelvin.chan@ousd.k12.ca.us)>

**Subject:** RE: dish wireless setup Oakland Unified School District

Thanks Greg,

Is it including the support for 24 x 7? If anything wrong with the antenna, you'll fix or replace in 4 hrs windows?  
Pls. confirm.

Thanks,

Aaron

**From:** Greg Kopecky [mailto:[greg.kopecky@wiline.com](mailto:greg.kopecky@wiline.com)]

**Sent:** Wednesday, June 12, 2013 2:58 PM

**To:** 'Aaron Soo'

**Cc:** 'C. Joseph Cavanagh'; 'Kelvin Chan'

**Subject:** RE: dish wireless setup Oakland Unified School District

Hi Aaron,

The results from my engineers survey are very positive. We have a clear line of sight to our existing mount on 1000 Broadway. Here is the pricing for a 1GB transport link.

[1Gbps Point to Point Ethernet transport link](#)

\$2500.00 per month

Installation - \$5,000.00 One Time Charge

Installation within 15 business days from date of signed Work Order

Equipment maintenance and upgrade – included

Link and network monitoring – included

Point to Point equipment lease - included

Term: 12 Months

1Gbps Point to Point Ethernet transport link

\$1800.00 per month

Installation - \$5,000.00 One Time Charge

Installation within 15 business days from date of signed Work Order

Equipment maintenance and upgrade – included

Link and network monitoring – included

Point to Point equipment lease - included

Term: 24 Months

1Gbps Point to Point Ethernet transport link

\$1500.00 per month

Installation - \$5,000.00 One Time Charge

Installation within 15 business days from date of signed Work Order

Equipment maintenance and upgrade – included

Link and network monitoring – included

Point to Point equipment lease - included

Term: 36 Months

**Scalable:** If you decide you need more bandwidth in the future you would not be responsible for purchasing new equipment to increase your bandwidth. WiLine would install the necessary equipment to support you additional bandwidth needs. This future proofs you against additional CapEx costs as your needs grow. Also if you decide to move you would not be responsible for decommissioning or moving of the equipment. WiLine will be responsible for this.



## WiLine Service Agreement Terms and Conditions

This WiLine Service Agreement Terms and Conditions ("Agreement") is by and between WiLine Networks, Inc., with its principal place of business at 1164 Triton Dr., San Mateo, CA 94404 ("WiLine") and entity ("Customer") with its principal place identified on the service agreement work order ("Service Agreement") for WiLine services ("Services") described in the Service Agreement. Any Services provided by WiLine to Customer shall be governed by the terms and conditions herein.

- 1. Acknowledgment and Acceptance of Agreement.** The Services are provided to Customer by WiLine in accordance with this Agreement and signed Service Agreement, which comprise the entire agreement between WiLine and Customer superseding any prior agreements pertaining to this subject matter. Customer agrees that Customer is subject to any posted policies or rules applicable to Services which may be posted at any time. IF CUSTOMER DOES NOT AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT, CUSTOMER IS NOT PERMITTED TO USE THE SERVICES. PLEASE CONTACT WILINE CUSTOMER CARE AT WWW.WILINE.COM TO CLOSE CUSTOMER ACCOUNT AND DISCONTINUE THE SERVICES. CUSTOMER'S CONTINUED USE OF THE SERVICES EVIDENCES CUSTOMER AGREEMENT TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, INCLUDING ANY AMENDMENT.
- 2. Customer Representations.** Customer represents to WiLine that, at all times: (a) Customer is at least 18 years of age; (b) Customer owns the premises at which the Services will be installed ("Site") or have the consent of the owner for any changes needed to the Site for installation of the Service; (c) Customer has reviewed any restrictive covenants or homeowner's restrictions and confirmed that an antenna and WiLine Equipment as defined below may be installed on the Site; (d) Customer will notify WiLine of any change of occupancy, ownership, or tenancy of the Site; (e) Customer will use the Service in accordance with this Agreement; and (f) Customer will provide and maintain routers, switches, firewalls, computer(s), cabling and other customer-premises based equipment necessary to receive and operate the Service (hereafter referred to as "Other Products").
- 3. Services, Installation and Activation.** WiLine will provide the Services identified on the Service Agreement. The Service Installation Address ("Service Address") will be recorded as Customer's Primary Place of Use. WiLine will make said Services available at the Service Address within thirty (30) business days from the date this Agreement is signed so long as delays described below have not occurred. The date that WiLine notifies Customer that a Service is available is the "Activation Date" for such Service. The "Commencement Date" with respect to each Service shall be the earlier of (i) three (3) days after the respective Delivery Date or (ii) the date that Customer begins using such Service. Notwithstanding any notice provisions in the Agreement to the contrary, for purposes of this Section, notification of the Activation Date will be deemed delivered on the day such notice is provided by WiLine and billing will commence on the Activation Date. If WiLine is solely responsible for any delays in Service availability beyond that 30-business day period, WiLine will credit any Install Fee or Setup Fee previously paid for that Service. To receive installation credit, Customer must request the credit in writing or email to [billing@wiline.com](mailto:billing@wiline.com) within 30 days of the date of the first invoice. No credit will be issued, however, if delays were a result of: (a) WiLine's inability to secure access to the property(ies), including but not limited to rooftop(s), Main Point of Entry (MPOE), Customer suite or point of demarcation; or (b) Customer's faulty or incomplete facilities or equipment; or (c) Customer's request for delay, failure to promptly respond to WiLine's request or timely supply any requested or necessary information; or (d) Customer's negligence or omissions; or (e) Customer's failure to meet Agreement approval terms; or (f) any special installation circumstances WiLine identified to Customer at the time of sale; or (g) events or circumstances beyond our control, such as "Events of Force Majeure"; or (h) inability to acquire or maintain commercially reasonable transport and other facilities; or (i) any delay pursuant to federal or state action; or (j) any delay in the transfer or porting of a phone number. Further, no installation credit will be payable if Services require special set-up or installation at Customer's Service Address, whether or not identified at the time of sale. Should special set-up or installation be required, WiLine may terminate this Agreement or cancel any Services without any obligation or liability to Customer. Installation commitments and credits do not apply to any locations outside Service Address.
- 4. Service Level Guarantee and Commitment.** Service Level Guarantees are available to commercial Customers only and do not apply to residential Customers. Residential Customers acknowledge and agree that the Services are provided "as is, where is" and credit allowances for interruption of the Services shall not be provided. For commercial Customers, Data Services described herein applies to either Internet transit or private line connections and is measured from Customer's origination site demarcation point to Customer's termination site demarcation point. In the case of WiLine's Internet transit Data Service, the Customer's origination site demarcation point is defined as the point at which WiLine interconnects with the customer's MPOE in said Service Address and the Customer's termination site demarcation point is defined as the point at which WiLine interconnects with the Internet. In the case of WiLine's private line connection Data Service, the Customer's origination site is defined as the point at which WiLine interconnects with the Customer's MPOE in said Service Address at one location and the Customer's termination site is defined as the point at which WiLine interconnects with the Customer's MPOE at the second location. In the case where the private line connection does not interconnect with WiLine's network, then Data Service Level Guarantees shall not apply. Voice Service described herein applies to the availability of 'dial-tone' and associated voice features at the demarcation point between the WiLine network and the Customer's MPOE in said Service Address. If Voice Service is operating over a non-WiLine network, then Voice Service Level Guarantees shall not apply.

### 4.1 Definition.

"End-to-End Network Availability" or "Network Availability" or "Data Availability" is the number of minutes in each calendar month during which a Service is available to exchange data between the Customer's origination and termination points and "Voice Availability" is defined as the availability of 'dial-tone' and shall be determined as follows:

$$\frac{[(\text{Total Minutes in Calendar Month}) - (\text{Total Minutes of Non-Availability})]}{(\text{Total Minutes in Calendar Month})}$$

"Total Minutes in Calendar Month" is determined by multiplying 24 hours times number of days in the month times 60 minutes.

"Total Minutes of Non-Availability" means the total of all minutes of service Non-Availability for a specific Service in a calendar month.



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

**"Mean Time to Repair" or "MTTR"** is the monthly average time to repair all Trouble Tickets on a specific Service, with the same severity level, during a Service Outage. The length of all Service Outages related to Customer is totaled at the end of the billing month and is divided by the total number of Trouble Tickets opened by the Customer for that billing month: (Cumulative Length of Service Outage(s) per Service) / (Total Number of Trouble Tickets per Calendar Month per Service)

**"Service Outage"** is an unscheduled period in which one or more of Customer's Service(s) is interrupted and not usable for sixty (60) or more seconds within a 15- minute period as measured by WiLine. A Service Outage will commence when the Customer reports a Service Outage to WiLine via a Trouble Ticket and will end when the affected Service is restored and WiLine issues a Service Restoration Notice. If the Customer fails to initiate a Trouble Ticket with WiLine, or does not release the Service to WiLine for testing, WiLine will not be obligated to issue credits for the Service Outage.

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

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

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

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

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

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

#### 4.2 SERVICE LEVEL GUARANTEES.

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

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

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

#### 4.3 SERVICE CREDITS.

Customer will be entitled to the applicable credits (the "Service Credits" or "Credits") should WiLine fail to meet the Service Level Guarantee. These Credits are the customer's sole and exclusive remedy for Service related claims. Eligibility for any credit is subject to the Customer's account being held current and having no outstanding balance due.

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

For every hour of Network or Voice Service Non-Availability, Customer is eligible for one day of credit for any service affected up to a maximum of one full month service credit in any given calendar month. Should Customer receive the maximum service credit for three (3) consecutive months, Customer may terminate the Agreement without liability for Early Termination Charges but liability for Services through the effective date of termination for that Service.

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

#### 4.4 SERVICE CREDIT ELIGIBILITY.

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

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

Guarantee.

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

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

The Service Level Guarantee shall not apply and a period of Service Non-Availability shall not be deemed to have occurred (and a Service Credit not due Customer) in the event a Service is unavailable due to any of the following:

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

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

Customer agrees not to upload, post, email, or otherwise transmit through the Services: (a) any unlawful, harassing, libelous, privacy invading, abusive, threatening, harmful, vulgar, obscene, indecent, tortuous, or otherwise objectionable material of any kind; (b) any material that violates the rights of another, including, but not limited to, the intellectual property rights of another; (c) any material that violates any applicable local, state, national, or international law or regulation; (d) contains any viruses, Trojan horses, worms, time bombs, cancelbots, easter eggs or other computer programming routines that may damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data, or personal information; or (e) create liability for us or cause us to lose (in whole or in part) the services of our ISPs or other suppliers. In the event of such an occurrence, WiLine shall notify Customer of the occurrence and reserves the right to terminate the Service should Customer not rectify the occurrence in a timely manner and to WiLine's satisfaction.

WiLine reserves the right to immediately suspend Service of any Customer in violation of any part of the Federal CAN-SPAM Act of 2003. The sending of any form of unsolicited bulk email ("UBE") through the WiLine network is prohibited. Similarly, the sending of UBE from another service provider advertising a website, email address or utilizing any resource hosted on WiLine's network, is prohibited. The Service may not be used to solicit customers from, or collect replies to messages sent from other Internet service providers where those messages violate this Acceptable Use or that of the other provider.

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

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

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

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

WiLine does not monitor on-line content; nevertheless, WiLine may suspend Service in order to remove content that WiLine deems to be in violation of this AUP. The AUP applies to e-mail, USENET postings, chatting, and browsing. In the event

WiLine is notified of the existence of child pornography being transmitted over the WiLine network, WiLine may immediately suspend Service.

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

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

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

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

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

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

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

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

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

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

For Residential Customers, WiLine's Service's for residential Customers are for the reasonable personal residential use of Customer only. This means that Customer is not to resell or transfer the Service or Equipment to any other person for any purpose, without express written permission from WiLine in advance. Customers shall not use the Services for commercial or governmental purposes, or for profit or non-profit activities, including, but not limited to, home office, business, sales, telecommuting, autodialing, continuous or extensive call forwarding, continuous connectivity, fax broadcast, fax blasting, telemarketing, junk faxing, fax spamming, calling/faxing any person (through the use of distribution lists or otherwise) who has not given specific permission to be included in such a process or any other activity that would be inconsistent with personal and residential usage. Customer shall not transmit through the Service any unlawful, harassing, libelous, abusive, threatening, harmful, vulgar, obscene or otherwise objectionable material of any kind or nature. Customers further agree not to transmit any material that encourages conduct that could constitute a criminal offense, give rise to civil liability or otherwise violate any applicable local, state, national or international law or regulation. Customer agrees to notify WiLine immediately if usage changes from personal residential to business use and to subscribe to a business plan. WiLine reserves the right to immediately terminate or modify the Services of any Customer if WiLine determines, in its sole discretion, that Customer is not using Services for Customer's reasonable personal residential use.

- 6. Service Agreement. Services. WiLine Equipment. Other Products.** Customer will approve a WiLine-issued Service Agreement describing the Services for the Term at the corresponding price to be used at the Site. WiLine will accept the Service Agreement and provide the Services subject to this Agreement and any applicable tariffs if Customer qualifies and Customer complies with this Agreement. WiLine may modify or discontinue, temporarily or permanently, the Services upon 60 days prior written notice to Customer. Customer agrees that WiLine shall not be liable to Customer or any third party for



any modification or discontinuance of the Services. WiLine will provide the hardware and software listed on the Service Agreement ("WiLine Equipment") which Customer agrees will be used only in conjunction with the Services. At all times, title and risk of loss or damage remain with WiLine (excluding loss or damage caused by or attributable to Customer or Customer employees, agents, or subcontractors). Customer will keep the WiLine Equipment free and clear of all liens, attachments and other encumbrances. Customer will not assign, otherwise transfer or dispose, remove or relocate the WiLine Equipment without WiLine's written consent. Unless the parties otherwise agree, Customer will make the WiLine Equipment available for return within 5 days from the expiration or earlier termination of the Agreement at Customer's expense.

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

Customer may be required, at Customer's expense, to provide and maintain Other Products.

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

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

- 7. Payment.** Service Monthly Fees, Install and Set-up Fees, and other charges begin for each Service as each Service is made available to Customer, regardless of whether multiple Services may have been ordered on a single Service Agreement. Where non-standard installation or Professional Services charges are incurred, WiLine, at its sole discretion, may invoice for these charges prior to installation and activation of Service. For Voice services, activation may occur after dial tone is provisioned to customer's location but before number porting, if applicable, is complete. Each month, WiLine will send or make available online an electronic invoice that will include all recurring, fixed Monthly Fees and charges billed one month in advance. CUSTOMER AGREES TO PAY THE TOTAL AMOUNT OF EACH INVOICE BY THE INVOICE DUE DATE SHOWN ON THAT INVOICE. Customer agrees to electronically pay invoices either by authorizing WiLine to charge Customer's credit card or to debit Customer's bank account using Automated Clearing House ("ACH"). Invoiced charges are due and payable within twenty (20) days of the date of invoice. If Customer fails to pay any charges when due, WiLine may collect a \$50 late fee for commercial customers or \$10 late fee for residential customers or the greater of 1-1/2% of the amount then due or the maximum allowed by law plus all amounts then due, any of WiLine's costs or expenses (including bank fees charged for insufficient funds or the like). Customer agrees to notify WiLine of any change to the credit card information including, but not limited to, changes in account number, expiration date or billing address. WiLine shall not be responsible for any charges made by the Credit Card issuer or financial institution to Customer's credit card account for exceeding credit limit, insufficient funds or other reasons. Customer will advise WiLine of any billing discrepancies or disputes within 20 days after receiving notice of the charge or the amount charged shall be deemed due and payable. Prices quoted on Service Agreement remain valid for the Initial Term stated on Service Agreement. WiLine reserves the right, in its sole discretion, to apply an annual price adjustment based on the Consumer Price Index (CPI) as published by United States Department of Labor, Bureau of Statistics. After the Initial Term, prices quoted on the Service Agreement may be subject to price adjustments to the then prevalent price for such services. WiLine reserves the right to change from time to time its list price for services.

Currently, WiLine is not required to and does not collect taxes for WiLine's broadband services. In the future, WiLine and/or Federal, State and Local governments may assess taxes, surcharges and/or fees on Customer's use of WiLine service. These charges may be a flat fee or a percentage of Customer's WiLine charges and may change from time to time without notice. These charges are based on the rates applicable to the address Customer provided to us. Customer is responsible for all applicable federal, state, provincial, municipal, local or other governmental sales, use, excise, value-added, personal property, public utility or other taxes, fees or charges now in force or enacted in the future, that arise from or as a result of Customer's subscription or use or payment for the Service. Such amounts are in addition to payment for the Service and will be billed to your payment method as set forth in this Agreement. If Customer is exempt from payment of such taxes, Customer must provide us with an original certificate that satisfies applicable legal requirements attesting to tax-exempt status. Tax exemption will only apply from and after the date WiLine receives such certificate.

- 8. Terms and Termination.** The Term of this Service will be stated on the Service Agreement. At the end of the Initial Term, this Agreement will be automatically renewed for successive Term periods ("Renewal Term") until either party terminates this Agreement upon 30 days prior written notice, and such written notice must be sent to [contracts@wiline.com](mailto:contracts@wiline.com).

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

Customer may, however, terminate its Services at any time (with liability for Early Termination Charges) by written, 30-day notification. To terminate its Services, Customer must send a notice of cancelation to [contracts@wiline.com](mailto:contracts@wiline.com).

This Agreement will be immediately terminated, without notice, for a material breach, if Customer becomes insolvent, is unable to pay its debts when due, files for bankruptcy, is the subject of involuntary bankruptcy, has a receiver appointed, or has Customer's assets assigned. Upon termination of this Agreement for any reason except for WiLine's termination of the



contract without cause or Customer's termination due to a material default by WiLine and WiLine failed to cure within such notice period, WiLine may cancel any unfulfilled obligations and is entitled to collect all sums due resulting from such termination, including Early Termination Charges.

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

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

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

- 9. Early Termination Charges.** Except for proper termination of this Contract under Section 6 above, in every other instance in which this Agreement terminates before the end of the Initial Term or Renewal Term, Customer is responsible to pay an early termination charge ("Early Termination Charge"). The amount of the Early Termination Charge will be calculated as follows:

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

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

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



perform these services ("Professional Services") on a time and materials basis. WiLine will perform a Site survey and provide Customer with the installation and maintenance specifications required for installation of the Service. Customer is solely responsible for providing, installing, operating and maintaining Other Products. After Customer prepares the Site including installing Other Products, at Customer's expense, as required by the Site survey, WiLine will install the Service. Customer must provide WiLine and its authorized installers such ongoing access to the Site as required to complete installation. Customer also grants WiLine, and its authorized representatives, the right to enter Customer's Site during normal business hours, Monday through Saturday, subject to Customer's security policies, to install, repair, replace or remove WiLine Equipment. WiLine is not responsible for any Site alterations or holes because of installation or removal of WiLine Equipment.

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

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

**REQUIRED FEDERAL COMMUNICATIONS ("FCC") WARNING.** THE FCC REQUIRES THAT WILINE INFORMS YOU OF POTENTIAL LIMITATIONS TO 911 SERVICES DELIVERED VIA WILINE. 911 AND/OR E911 SERVICES WILL NOT BE AVAILABLE OF FUNCTION IF (A) THE TELEPHONE DEVICE TO WHICH A PARTICULAR TELEPHONE NUMBER HAS BEEN ASSIGNED IS MOVED TO A LOCATION OUTSIDE THE PREMISES WHERE THE TELEPHONE DEVICE WAS ORIGINALLY INSTALLED; (B) THERE IS A LOSS OF ELECTRICAL POWER TO THE TELEPHONE AND/OR TO EQUIPMENT NECESSARY TO MAINTAIN YOUR BROADBAND CONNECTION; OR (C) THER IS AN OUTAGE, DEGRADATION OR OTHER DISRUPTION TO YOUR BROADBAND CONNECTION. YOUR SIGNATURE TO THIS AGREEMENT WILL BE YOUR ACKNOWLEDGEMENT THAT WILINE HAS ADVISED YOU OF THESE LIMITATIONS AND THAT YOU ACCEPT THE SERVICES WITH THESE LIMITATIONS. WILINE WILL ALSO PROVIDE YOU WITH LABELS TO YOU THAT ALERT USERS TO THE LIMITATIONS IN THIS PARAGRAPH. THE FCC RECOMMENDS THAT YOU PLACE THESE LABELS ON OR NEAR THE TELEPHONE AND OTHER EQUIPMENT ASSOCIATED WITH YOUR WILINE VOICE SERVICE.

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

- 15. Force Majeure.** WiLine will not be in violation of this Agreement or otherwise liable for any delay, failure to perform or equipment or property damage, loss, destruction or malfunction, or any consequence thereof, caused in whole or in part by anything beyond our reasonable control, including, without limitation, fire; earthquake; flood; weather; acts of God; public health emergency or pandemic; labor disputes; utility curtailments; power failures; cable cuts; failure caused by telecommunications or other Internet provider(s); worms; Trojan horses; viruses or other destructive code or software; explosions; civil disturbances; terrorism; vandalism; governmental actions; property access denial; or shortages of equipment or supplies (collectively, "Events of Force Majeure").
- 16. Relocation of Services.** If Customer desires to transfer Service location for any Service to a different location, Customer must request that move in writing to WiLine at least 30 days in advance. If the new location is within WiLine's service area, the Customer and WiLine must enter into a new Agreement with a term of no less than the Initial Term. That new Agreement may include additional or different installation, recurring and other charges and fees. After the Service is provided to the new location, the Agreement in the original Service Address will be terminated with no liability for Early Termination Charges. If your new location is not within WiLine's service area and a new Agreement for the new location is not entered into by the parties, then Customer will be deemed to have terminated this Agreement and Early Termination Charges will apply.
- 17. Use of Service and Equipment Outside the United States.** WiLine may or may not support the use of its Equipment and Service by customers located in other countries. If Customer's or any of its Users' removal of the Equipment from the United States violates any export control law or regulation, Customer will be solely liable for such violation and Customer agrees to defend, indemnify and hold WiLine, its affiliates, and their agents and suppliers harmless against any and all claims, losses, or liability arising under this section. The foregoing sentence will survive termination or expiration of the Agreement for any reason.

**18. Disclaimers. Limitation of Liability.** CUSTOMER EXPRESSLY AGREES THAT USE OF THE SERVICES IS AT CUSTOMER'S SOLE RISK. THE WILINE EQUIPMENT AND SERVICES ARE PROVIDED ON AN "AS-IS" AND "AS AVAILABLE" BASIS WITHOUT WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR INFRINGEMENT. NO ADVICE OR INFORMATION GIVEN WILL CREATE A WARRANTY. WILINE AND ITS LICENSORS AND SUPPLIERS DO NOT WARRANT THAT SERVICES WILL MEET CUSTOMER'S REQUIREMENTS OR THAT THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE OR ERROR FREE; NOR DOES WILINE OR ITS LICENSORS OR SUPPLIERS MAKE ANY WARRANTY AS TO THE RESULTS WHICH MAY BE OBTAINED FROM THE USE OF THE SERVICES OR WILINE EQUIPMENT OR AS TO THE ACCURACY OR RELIABILITY OF ANY INFORMATION OBTAINED THROUGH THE SERVICES, THAT DEFECTS IN SOFTWARE WILL BE CORRECTED, OR THAT ANY SOFTWARE OR SERVICES ARE FREE FROM VIRUSES. CUSTOMER IS SOLELY RESPONSIBLE FOR ANY DAMAGE TO CUSTOMER'S COMPUTER, OTHER PRODUCTS OR ANY LOSS OF DATA RESULTING FROM USE OF THE SERVICE OR WILINE EQUIPMENT. Some jurisdictions do not allow the exclusion of certain warranties, therefore some of the above exclusions do not apply. CUSTOMER AGREES THAT WILINE AND ITS LICENSORS AND SUPPLIERS SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES RESULTING FROM THE USE OR THE INABILITY TO USE THE SERVICES, OR FOR COST OR COVER, COST OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES, OR RESULTING FROM ANY GOODS OR SERVICES PURCHASED OR OBTAINED, OR FROM MESSAGES RECEIVED OR TRANSACTIONS ENTERED INTO THROUGH OR FROM THE SERVICES, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, USE, DATA, OR OTHER INTANGIBLES, EVEN IF WILINE, ITS LICENSORS OR THIRD PARTY SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CUSTOMER FURTHER AGREES THAT WILINE AND THEIR THIRD PARTY SERVICE PROVIDERS SHALL NOT BE LIABLE FOR ANY DAMAGES ARISING FROM INTERRUPTION, SUSPENSION, OR TERMINATION OF SERVICES FOR ANY REASON, INCLUDING, BUT NOT LIMITED TO, DIRECT, INDIRECT, INCIDENTAL, SPECIAL CONSEQUENTIAL, OR EXEMPLARY DAMAGES, WHETHER SUCH INTERRUPTION, SUSPENSION, OR TERMINATION WAS JUSTIFIED OR NOT, NEGLIGENT OR INTENTIONAL, INADVERTENT OR ADVERTENT. IN NO EVENT SHALL WILINE BE LIABLE FOR ANY AND ALL MATTERS RELATING TO THIS AGREEMENT FOR ANY AGGREGATE AMOUNT IN EXCESS OF THE CHARGES FOR THE INITIAL TERM. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, THEREFORE SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO CUSTOMER.

**19. RESOLUTION OF DISPUTES.** In the event a dispute arises between Customer and WiLine, WiLine's goal is to provide Customer with a neutral and cost effective means of resolving the dispute quickly. Accordingly, we agree that, except for a claim in equity relating to the payment of fees or breach caused by Customer's Representations and Conduct, any claim or controversy at law arising out of this Agreement ("Claims") shall be resolved, in the first instance, by first contacting WiLine directly to seek a resolution. WiLine will consider reasonable requests to resolve the dispute through alternative dispute resolution procedures, such as mediation, as an alternative to litigation.

**20. GENERAL.** Customer and WiLine are independent contractors, and no agency, partnership, joint venture, employee-employer or franchiser-franchisee relationship is intended or created by this Agreement. Sections 2, 5, 6 (return of WiLine Equipment), 7, 8, 9, 17, 18, 19 survive any termination or expiration of this Agreement. WiLine shall not be liable to Customer for any breach by its licensors or suppliers of this Agreement. This Agreement shall be governed by the laws of the State of California without regard to its conflict of law provisions with venue lying in the federal and state courts of Alameda County, California. The failure of WiLine to exercise or enforce any right or provision of this Agreement shall not constitute a waiver of such right or provision. If any provision of this Agreement is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision and rule that the other provisions of this Agreement remain in full force and effect. Customer agrees that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to this Agreement must be filed within 1 year after such claim or cause of action arose or be forever barred. All notices will be provided in writing to WiLine at the address stated on the Service Agreement or as updated on our Website. Notice is effective upon receipt. Except for the payment of any amounts due hereunder, performance will be suspended for force majeure.

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



## DRAFT EXHIBIT B

1. **Acceptable Use Policy ("AUP").** Customer agrees: (a) not to use the services provided by WiLine (the "Services") for illegal purposes; (b) to comply with local, state and federal laws governing use of the Services; (c) that if the Vendor is notified of the existence of child pornography being transmitted over the Vendor network, Vendor may immediately suspend Service; (d) not to interfere with or disrupt the services or servers or networks connected to the Services.
2. **IP Address.** Vendor will assign to Customer, on a temporary basis, one or more Internet Protocol Address ("IP Address") either from the address space assigned to Vendor or a non-public NAT address. This IP Address belongs to Vendor and is not portable. Vendor reserves the right to change the IP Address at any time, for any reason without notice or liability; however in the event that such change is required Vendor shall coordinate with the Customer so as to minimize impact to Customer's use of Service.
3. **Force Majeure.** Neither Customer nor Vendor will not be in violation of this Agreement or otherwise liable for any delay, failure to perform or equipment or property damage, loss, destruction or malfunction, or any consequence thereof, caused in whole or in part by anything beyond their reasonable control, including, without limitation, power failures; cable cuts; failure caused by telecommunications or other Internet provider(s); worms; Trojan horses; viruses or other destructive code or software (collectively, "Events of Force Majeure").
4. **Mutual Indemnification.** (a) WiLine shall defend, indemnify, and hold the Customer, its officers, employees, and agents harmless from and against any and all liability, loss, expense (including reasonable attorneys' fees), or claims for injury or damages arising out of the performance of this Agreement but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of WiLine, its officers, employees or agents. (b) The Customer shall defend, indemnify, and hold WiLine, its officers, employees, and agents harmless from and against any and all liability, loss, expense (including reasonable attorneys' fees), or claims for injury or damages arising out of the performance of this Agreement but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of the Customer, its officers, employees or agents.
5. **Limitation of Liability.** IN NO EVENT WILL WILINE BE LIABLE FOR LOST PROFITS, OR FOR ANY INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT, EVEN IF WILINE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. WILINES LIABILITY UNDER OR ARISING OUT OF THIS AGREEMENT FOR DIRECT DAMAGES SHALL NOT EXCEED THE AMOUNTS PAID BY THE CUSTOMER FOR THE SERVICE. THE FOREGOING LIMITATION OF LIABILITY IS NOT APPLICABLE TO WILINE'S INDEMNIFICATION OBLIGATIONS SET FORTH ELSEWHERE IN THIS AGREEMENT. FURTHER, THE FOREGOING LIMITATION IS NOT APPLICABLE TO ANY PERSONAL INJURY CLAIM.
6. **Termination.** The District may, by written notice to Contractor, terminate this Contract in whole or in part at any time at the District's convenience after initial 12 month term or for Contractor default at any time. The District shall hold Contractor liable and responsible for all damages which may be sustained because of the Contractor's default. If Contractor fails or neglects to furnish or deliver any of the deliverables listed herein at the prices named and at the time and places stated herein or otherwise fails or neglects to comply with the terms of the Contract, the District may, upon written notice to the Contractor, cancel the Contract in its entirety, or cancel any or all items affected by such default; and may, whether or not the Contract is cancelled in whole or in part, purchase the Deliverables elsewhere without notice to the Contractor. The prices paid by the District at the time such purchase is made shall be the prevailing market prices. Any extra costs incurred by such default may be collected by the District from the Contractor.