

CONDUIT OCCUPANCY
LICENSE AGREEMENT

This License is entered into as of the ____ day of _____, 2011, (the "Effective Date"), by and between the City of Milwaukee, a municipal corporation, having its principal place of business at City Hall, 200 East Wells Street, Milwaukee, Wisconsin 53202 (herein called "Licensor") and Windstream KDL, Inc., having its principal place of business at 8825 Bond Street, Overland Park, KS 66214, (herein called "Licensee").

Whereas, Licensor owns and operates a conduit system located in the City of Milwaukee, County of Milwaukee, State of Wisconsin (herein called the "Conduit System"); and

Whereas, Licensee has registered in accordance with sec. 98-7, Milwaukee Code of Ordinances, for permission to place and maintain telecommunications facilities (herein "Licensee's Facilities") in the portions of the Licensor's Conduit System described on Exhibit A attached hereto; and

Whereas, Licensor has agreed pursuant to sec. 98-5, Milwaukee Code of Ordinances, to permit, under certain conditions and for a 4 year renewable term at the parties' option, on a license basis, the placement of Licensee's Facilities within the portions of the Licensor's Conduit System designated in Licensee's Facilities conduit maps on file in the office of the City Engineer and the Department of Public Works and summarized herein as Exhibit A; and

Whereas, Licensor's Common Council has approved this Conduit Occupancy License Agreement via Common Council Resolution File No. 100953 adopted on December 21st, 2010; and

Now, Therefore, In consideration of the foregoing and of the mutual covenants provided herein, the parties agree as follows:

A. SCOPE OF AGREEMENT

1. Grant of License. Subject to the provisions of this License, Licensor hereby grants to Licensee the right to use the portion of its Conduit System outlined on Exhibit A attached hereto and made a part hereof for the placement of Licensee's Facilities. Upon mutual agreement of the City Engineer on behalf of the Licensor and agreement of the Licensee, Exhibits A & B may be amended from time to time to reflect changes in the use of the Conduit System by Licensee.

2. Non-Vesting Provision. No use of Licensor's Conduit System by Licensee or payment of any charges required under this License shall create or vest in Licensee any easements or other ownership or property rights of any nature in the Conduit System. Furthermore, this License shall not constitute an assignment of any of Licensor's rights to use public or private property in which the Conduit System is located. In the event any property owner or municipal or other public authority terminates any permit or franchise or other right of Licensee to occupy the Conduit System, Licensee shall have the right to protest by appropriate proceedings, or renegotiate the termination of such permit or franchise. In such event, Licensee shall indemnify and hold Licensor harmless from any expense, legal action or cost, including reasonable attorney's fees, resulting from the exercise of its rights under this paragraph. In the event that Licensee has exhausted all its rights of appeal in protesting the above and has failed to obtain the relief sought in such proceedings or appeal or if any renegotiations have failed, Licensor shall have the right to terminate this License by giving at least one hundred twenty (120) days written notice to Licensee. Upon the effective date of termination undertaken in accordance with the provisions of the preceding sentence, this License

shall become null and void and neither party hereto shall have any further obligation to the other with respect thereto.

3. Permits and Approvals Required. Prior to the installation of its Facilities within the Conduit System located upon public/private property, Licensee shall obtain from the appropriate public and/or private authority any required authorization(s), permits or easements to install its Facilities within any portion of the Conduit System.

4. City's Maintenance Right. Licensor's right to maintain its Conduit System and to operate its facilities in conjunction therewith in such a manner as will best enable it to fulfill its own service requirements is in no manner limited by this License.

5. No Restriction on Licensor. Nothing contained in this License shall be construed to compel Licensor to construct, reconstruct, retain, extend, or place its Conduit System for use by Licensee unless needed for Licensor's own service requirements. Notwithstanding the foregoing, Licensee shall have the right to terminate this License Agreement upon ninety (90) days' prior written notice to Licensor in the event Licensee is unable, because of the condition of the Conduit System, to use the Conduit System in the manner originally contemplated herein.

6. Compliance with Law. Nothing contained in this License shall be construed as a limitation, restriction or prohibition against Licensor with respect to any agreement or arrangement which Licensor has heretofore entered into with others not parties to this License regarding the Conduit System covered by this License.

The parties hereto shall at all times observe and comply with, and the provisions of this License are subject to, all laws, ordinances and regulations which in any manner affect the rights and obligations of the parties hereto under this License, so long as such laws, ordinances or

regulations remain in effect. Licensee specifically agrees to comply with all the provisions of Chapter 98, Milwaukee Code of Ordinances, which provisions are specifically incorporated herein and made a part hereof.

B. TERM OF LICENSE

This License shall become effective on the Effective Date and shall continue in effect for 4 years unless terminated as provided herein or by operation of law. This License's term may be extended for additional four year periods, upon the terms and conditions (except for the License Fee which shall be reasonably recomputed by Licensor for each successive four year term) herein provided, if a written extension agreement is executed by Licensor's Commissioner of Public Works and Licensee.

C. LICENSEE OPTION ON RELOCATION

1. In the event Licensor is required for any reason to relocate its Conduit System, or any portion thereof, by any governmental authority and Licensor elects to relocate its Conduit System, or any portion thereof, Licensee shall have the option to:

(a) request the relocation of Licensee's Facilities along with Licensor's Conduit System and Licensee shall bear its pro rata share of any and all reasonable costs attributable to such relocation, or

(b) terminate this Conduit Occupancy License Agreement, without any further obligation to Licensor.

2. Cost Sharing Formula. In the event Licensee requests the relocation of Licensee's facilities as provided in Section C.1(a) above, Licensee's pro-rata share of any and all costs attributable to such relocation shall be calculated by multiplying Licensor's total cost of relocating

the Conduit System by a fraction, the numerator of which shall be the number of innerducts Licensee is occupying within the Conduit System, and the denominator of which shall be the total possible number of innerducts located within the Conduit System.

D. CONSTRUCTION AND MAINTENANCE

1. Conditions for Make-ready. Licensee shall provide to Licensor a copy of its construction design drawings (including any excess cable storage requirements) and installation schedule for Licensor's approval not less than 3 weeks prior to Licensee's requirement for Facilities installation within the Conduit System. Upon Licensor's receipt of a request submitted by Licensee to place its Facilities in Licensor's Conduit System, Licensor shall perform the necessary make-ready work for Licensee's use of the Conduit System. As used herein, the term "make-ready" work shall be limited to the act of rearranging existing cable or conduit material and shall not include repairs of current conduit or the construction of new conduit. Licensor shall conduct a survey to determine the charges for necessary make-ready work and for placement of Licensee's Facilities in the Conduit System, shall inform Licensee in writing of the good-faith estimate of charges for such work and commence the make-ready work only after receiving the written approval from Licensee. Licensee shall pay all direct and documented costs reasonably incurred by Licensor in performing such make-ready work. Licensee shall make payment to Licensor within thirty (30) days from Licensee's receipt of Licensor's itemized invoice and supporting documentation therefor.

2. Notice to Proceed. After the completion of the make-ready work, Licensee shall request in writing that Licensor place Licensee's Facilities in Licensor's Conduit System. Licensor shall commence the placement of Licensee's Facilities in an expeditious manner after notification from Licensee to proceed with the placement of its Facilities. Licensee shall pay Licensor for all direct

and documented costs reasonably incurred by Licensor in placing Licensee's cable in Licensor's Conduit System. Licensee shall make payment to Licensor within thirty (30) days from Licensee's receipt of Licensor's itemized invoice and supporting documentation therefor.

3. Construction Practices. Licensee shall, at its own expense, during the term of this License, maintain its Facilities covered by this License in a safe condition, properly identified and tagged, in accordance with regulations established by Licensor, so as not to physically conflict or electrically interfere with the Facilities placed in the Conduit System by Licensor or others.

4. Construction Management. Licensee shall notify Licensor ten (10) days in advance by written notice as provided in paragraph L., infra, or by telephone notice to Licensor's City Engineer at (414)286-2400 before any routine repair or maintenance of its Facilities. Except in the event of a Licensee emergency, as described in Section E.2 below, Licensee's employees, agents or contractors will be permitted to enter or work in Licensor's manholes/handholes only when an authorized employee or agent of Licensor is present. Licensor's agents shall have the authority, without subjecting Licensor to any liability therefor, to suspend Licensee's work or operations in and around Licensor's manholes/handholes if, in the sole discretion of said employee or agent, any hazardous conditions arise or any unsafe practices, including unsafe practices which may threaten the integrity of Licensor's facilities, are being followed by Licensee's employees, agents or contractors. In the event of a Licensor imposed suspension of Licensee's work, authorized representatives of Licensor and Licensee shall promptly meet at the earliest mutually possible time but no more than twelve (12) hours after the imposition of the suspension, to take all steps necessary to continue. Within that time, Licensor shall provide to Licensee written notice of steps to be taken by Licensee to eliminate any hazardous conditions or to revise any practices deemed to be unsafe. The presence of

Licensor's authorized agent shall not relieve Licensee of its responsibility to conduct all of its work in and around Licensor's manholes/handholes in a safe and workmanlike manner.

5. Each year, after the first year, of the term of this Agreement and any extensions thereof, Licensee shall provide the Licensor with an updated map indicating all City conduit occupied by the Licensee along with the payment of the Licensee Fee.

E. EMERGENCY PROCEDURES

1. Licensor Emergency. In the event of a Licensor emergency:

(a) Licensor's work shall take precedence over any and all operations of Licensee in Licensor's Conduit System;

(b) Licensor may rearrange Licensee's Facilities in a reasonable manner. Licensee shall reimburse Licensor for all reasonable and direct costs associated with such rearrangement of Licensee's Facilities.

2. Licensee Emergency. In the event of a Licensee emergency, Licensee shall promptly notify Licensor at its Department of Public Works City Engineer at (414)286-2400 during normal business hours or (414)286-3481 after 5:00 p.m. and before 8:00 a.m., prior to performing any maintenance or repair necessary to correct the emergency situation. After such notice is given, Licensee may enter the manholes, handholes and conduits of Licensor to perform any emergency repair or maintenance.

F. MAINTENANCE AND INSPECTION RIGHTS

1. Maintenance upon Licensee Default. If any part of Licensee's Facilities is not placed and maintained in accordance with the terms and conditions set forth in this License and Licensee has not corrected the violation within thirty (30) days from receipt of written notice thereof from

Licensor, then, in such event, Licensor may, at its option, correct said condition and notify Licensee in writing prior to performing such work. However, in the event such conditions pose an immediate threat to the safety of Licensor's employees or the public, interfere with the performance of Licensor's service obligations, or pose an immediate threat to the physical integrity of Licensor's Facilities, and prior notice to Licensee before Licensor performs such work is not possible or reasonable under the circumstances, Licensor may perform such work and/or take such action that it deems necessary without first giving written notice to Licensee and without subjecting itself to any liability for damage to Licensee's Facilities or for any interruption of Licensee's services. As soon as practicable thereafter, Licensor will advise Licensee in writing of the work performed or the action taken. Licensee shall be responsible for all direct expenses reasonably incurred by Licensor associated with any work or action performed by Licensor pursuant hereto and shall reimburse Licensor within thirty (30) days from its receipt of Licensor's itemized invoice and supporting documentation therefor.

2. Inspection Rights. Licensor reserves the right to make periodic inspections of any part of Licensee's Facilities in the Conduit System. Licensee shall have the right to have its employees or representatives present during the time of any such inspection. Licensor shall give Licensee at least five (5) business days' advance written notice of such inspections, except in those instances where, in the sole judgment of Licensor, safety considerations justify the need for such an inspection without the delay of providing five (5) business days' advance written notice. In that event, Licensor shall provide telephone notice to Licensee by calling 1-800-497-5578. The making of periodic inspections or the failure to do so shall not operate to impose upon Licensor any liability of

any kind whatsoever nor relieve Licensee of any responsibility, obligations or liability assumed under this License.

3. Occupancy Audit. At Licensee's written request to Licensor and deposit with Licensor of sufficient funds to cover the cost thereof (as determined by Licensor), Licensor shall provide within a reasonable time, a detailed audit of the actual Conduit System usage by Licensee including the percentage portion of use of each conduit by all parties occupying the relevant segment of conduit. Any funds deposited but not used in the preparation of such audit shall be promptly returned to Licensee.

G. FEES AND CHARGES

1. License Fee. The License fee due for Conduit Occupancy shall be \$10,539.04/year ("License Fee") established in accordance with sec. 98-13, Milwaukee Code of Ordinances. The License Fee has been calculated in accordance with the worksheet attached as Exhibit B.

2. Other Fees. Fees will be charged for all work pre-approved in writing by Licensee and performed by Licensor or its authorized representative in connection with furnishing the Conduit System accommodations as covered by this License and shall be based upon the Licensor's reasonable and direct cost, plus fifteen percent (15%) of such amount. Such charges will include, but not be limited to, prelicense survey, design, engineering, make-ready work, installation of Licensee telecommunications cable and inspection and, if required, removal of Licensee's Facilities. Licensee shall make payment to Licensor within thirty (30) days from its receipt of Licensor's itemized invoice and supporting documentation therefor.

3. Invoices. Licensor shall promptly invoice Licensee for all work performed hereunder by Licensor on behalf of or for the benefit of Licensee with respect to the Conduit System, but in no event later than ninety (90) days after the completion of such work.

H. LIABILITY AND INDEMNIFICATION

1. Licensor Liability. Licensor shall exercise caution to avoid damaging Licensee's Facilities and shall make an immediate report to Licensee of any and all damage caused by its employees, agents or contractors. Licensor agrees to reimburse Licensee for all reasonable, actual and direct costs incurred by Licensee for the physical repair of its Facilities damaged by the negligence of Licensor, its employees or agents. However, Licensor shall not be responsible or liable for damages to Licensee's Facilities caused by the negligence of other licensees whom Licensor has given permission to occupy its Conduit System. Licensor shall establish construction standards and practices for all licensees so as to avoid damage to Licensee's Facilities in the Conduit System.

2. Licensee Liability. Licensee shall exercise caution to avoid damaging Licensor's or other licensees' facilities and shall make a prompt report to Licensor of any and all damage caused by its employees, agents or contractors. Licensee agrees to reimburse Licensor or other licensees for all reasonable, actual and direct costs incurred by Licensor or other licensees for the physical repair of its Facilities damaged by the negligence of Licensee, its employees or agents.

3. Licensee Indemnification Obligation. Licensee assumes entire responsibility and liability for losses, expenses, demands and claims in connection with or arising out of an injury, or alleged injury (including death) to any person, or damage, or alleged damage, to property of Licensor or others sustained or alleged to have been sustained in connection with or to have arisen

out of, or resulting from the exercise by Licensee of its rights granted herein, including losses, expenses and damages sustained by Licensor, provided that Licensor shall have given prompt written notice to Licensee of the facts giving rise to such losses, expenses, damages or claims. Licensee hereby agrees to indemnify and hold harmless Licensor, its agents and employees from any and all suits or actions brought against them, or any of them, based on any such alleged injury or damage, except for loss caused by direct or negligent action or omission of Licensor, its agents or employees or other licensees, including any failure to comply with Paragraph A3 of this License, and pay all damages, costs, and expenses (including reasonable attorney's fees) in connection therewith. Licensee shall have complete control over defense of any claim and over the terms of any proposed settlement or compromise thereof. Licensor shall cooperate in every reasonable way to facilitate the defense or settlement of claims.

4. No Liability for Consequential Damages. Notwithstanding the above, neither party shall be liable to the other for indirect or consequential damages of the other party or of third parties, including, but not limited to, any interruption of service or for any loss of revenues resulting therefrom, whether caused by the negligence of either party or not.

I. TERMINATION

1. Mutual Termination. This License may terminate at any time upon written mutual agreement of the parties hereto.

2. Termination by Default. If at any time either party fails or refuses to perform any of the covenants or conditions contained in this License, and such failure or refusal shall continue for thirty (30) days after receipt of written notice by such party from the other party (or, in the event of Licensee's default from Licensor's Commissioner of Public Works), the non-defaulting party, at its

election and upon ten (10) days' advance written notice to the other party, may terminate this License. Notwithstanding the above, where a default cannot reasonably be cured within thirty (30) days, if the defaulting party shall proceed promptly to cure the same and prosecute such cure with all due diligence, the time for curing such defaults shall be extended for such a period of time as may be reasonably necessary to complete such cure. The waiver by either party of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained.

3. Removal upon Termination. Upon termination of this License for any reason, Licensee shall remove its Facilities within ninety (90) days following such termination. In the event Licensee fails to remove its Facilities within such ninety (90) day period, said Facilities shall be deemed abandoned and Licensor, at its sole discretion and without liability, may remove the Facilities and Licensee shall reimburse Licensor for all actual and direct costs reasonably associated with such removal or Licensor may retain the Facilities in place and utilize the same for its own purposes.

4. Liability Not Extinguished. Termination of this License shall not affect either party's liabilities and obligations incurred hereunder prior to the effective date of such termination.

J. INSURANCE

1. Insurer Qualification. Licensee shall carry comprehensive or commercial general liability insurance together with coverage for contractual liability, issued by insurance carriers licensed to do business in the State of Wisconsin and maintaining an A- or better rating as established by A.M. Best & Company. The amounts of such insurance shall be in the amount of not less than \$1,000,000 as to any one occurrence and \$2,000,000 general aggregate. Licensee shall

also carry such insurance as will protect it from all claims under any Worker's Compensation Law in effect that may be applicable to it. Licensee shall submit to Licensor certificates by each company insuring Licensee to the effect that it has insured Licensee for all liabilities of Licensee covered by this License Agreement.

2. Liability Not Reduced. The required minimum limits of coverage shown above do not limit or diminish Licensee's liability under this License.

3. Form of Certification. Licensee shall submit to Licensor a standard "ACORD" insurance certificate (or comparable form reasonably acceptable to Licensor) signed by an authorized representative of its insurance company, certifying that the insurance coverage required hereunder is in effect for the purposes of this License. Said insurance certificate shall certify that no material alteration, modification or termination of such coverage shall be effective without at least thirty (30) days' advance written notice of Licensor.

4. City as Additional Named Insured. All policies (excluding worker's compensation) shall include Licensor, as an additional insured.

5. Insurance Document Review. At Licensor's sole cost, Licensee shall permit any authorized representative of Licensor to examine Licensee's original insurance policies should Licensor so reasonably request. In the event Licensor reviews Licensee's insurance policies, Licensor shall keep all information concerning Licensee's insurance policies confidential to the extent permissible under law.

6. Failure to Provide Insurance. Should Licensee at any time neglect or refuse to provide the insurance required herein, or should such insurance be canceled or non-renewed, Licensor shall have the right to terminate this License or secure substitute coverages and Licensee shall reimburse

Licensors for all actual and direct expenses and premiums reasonably paid in connection with such substitute coverage.

7. Effective Period. All insurance required in accordance with this License must be effective before Licensors will authorize installation of Licensee's Facilities within the Conduit System and shall remain in force until such time as this License has terminated and such Facilities have either been removed from the Conduit System or abandoned by Licensee.

8. Alternate Coverage. A combination of primary and excess/umbrella liability policies will be acceptable as a means to meet the limits required under this License.

K. ASSIGNMENT

1. Assignment Requires Consent. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors or permitted assigns; provided, however, that no assignment hereof or of any rights or obligations hereunder shall be valid for any purpose without the prior written consent of each party hereto, which consent shall not be unreasonably withheld or unduly delayed; provided, further, however, that without such consent, Licensee shall have the right upon written notice to Licensors, to (a) assign or transfer this Agreement, in whole or in part, to any entity controlling, controlled by, or under common control with Licensee, or to any entity acquiring all or substantially all of Licensee's stock or assets, and/or (b) collaterally assign, mortgage, hypothecate, pledge or otherwise grant a security interest in this Agreement, in whole or in part, to secure a debt. In the event of any assignment or transfer by Licensee described in subsections (a) or (b) above, the assignee or transferee shall assume in full the obligations of Licensee under this Agreement, and Licensee shall be released from its obligations hereunder.

2. Obligations After Assignment. In the event of any assignment by either party undertaken pursuant to subparagraph (1) above, except as expressly set forth therein, the assigning or transferring party shall remain liable for all its obligations under this Agreement, unless: (a)(i) the other party consents to release, by written instrument, the assigning or transferring party from such obligations, and (ii) the assignee or transferee shall have affirmatively assumed in writing all of the obligations of the assigning or transferring party under this Agreement.

L. NOTICES. Except as expressly indicated in this Agreement, all notices and other communications to be given pursuant to this License shall be in writing and shall be deemed to have been duly given (i) if personally delivered to the person being served or to an officer of the corporate party being served; (ii) if mailed by United States certified mail, return receipt requested, postage prepaid; or (iii) if delivered by overnight carrier, delivery receipt requested, to the parties at the following addresses:

Licensor:

City of Milwaukee
Attention: Commissioner of Public Works
Room 501, Zeidler Municipal Building
841 North Broadway
Milwaukee, Wisconsin 53202

Licensee:

Windstream KDL, Inc.
8825 Bond Street
Overland Park, Kansas 66214
Attention: Legal

With Copy Via E-mail to
Bob Martin
Robert.P.Martin@Windstream.com
(920) 344-0098

or at such other address as the parties hereto may specify from time to time by written notice delivered in accordance herewith.

M. GENERAL PROVISIONS

1. Liens and Encumbrances. Except as otherwise provided in this Agreement, Licensee has no power, authority or right to create and will not permit any lien or encumbrance, including, without limitation, tax liens, mechanics liens, or other liens or encumbrances with respect to work performed or equipment furnished, in connection with the installation, repair, maintenance or operation of its Facilities installed within the Conduit System.

2. Governing Law. This License shall be governed by and construed in accordance with the laws of the State of Wisconsin without giving effect to its choice of law principles.

3. Severability. In the event that any one or more of the clauses, covenants or provisions contained in this License should be held to be unenforceable under any federal, state or city law, statute, code, administrative or regulatory rule, such invalidity or unenforceability shall not affect the remainder of this License, which shall remain in full force and effect.

4. Limitation on Use. Licensee shall not use the Licensor's Conduit System for the provision of "cable service" as that term is defined in federal or state law unless Licensee has obtained a Franchise to provide cable service from the City under the terms of Chapter 99, Milwaukee Code of Ordinances, or as a "cable communications system" or "cable system" as that term is defined in sec. 99-3-5, Milwaukee Code of Ordinances. Licensor's grant of this License is not intended nor should it be construed to be a grant of a cable television franchise under federal law or under Chapter 99, Milwaukee Code of Ordinances.

In Witness Whereof, The parties hereto have executed this License as of the day and year first above written.

IN THE PRESENCE OF:

CITY OF MILWAUKEE

Commissioner of
Public Works

COUNTERSIGNED:

Comptroller

WINDSTREAM KDL, INC.

Date

Approved as to form and execution
this ____ day of _____, 2011.

Assistant City Attorney