

Product-Specific Terms & Conditions

SD-WAN Service

In addition to the general terms and conditions contained in the Agreement between Company and Customer, of which these Product-Specific Terms and Conditions for Software Defined WAN (“SD-WAN”) Service are a part, Customer agrees that the following terms and conditions apply to the SD-WAN Service provided to Customer by Windstream, an affiliate of Company (“WIN”). Unless otherwise defined herein, capitalized terms shall have the same meaning as defined in the Agreement.

- Term.** The Term shall commence on the earlier of (i) the date the Services are activated by Customer or WIN, or (ii) fifteen (15) days after written notice by WIN of its readiness to schedule service turn-up. Billing shall commence on the commencement of the Term.
- Early Termination.** If Customer terminates SD-WAN Services, in whole or in part, or if WIN or Company terminates the SD-WAN Service for a Customer default, Customer shall be subject to an early termination fee in an amount equal to Customer’s monthly recurring charges for SD-WAN Service multiplied by the number of months remaining in the then-current Term.
- Delivery.** Delivery dates for equipment provided as part of the SD-WAN Service (hereinafter, the “Equipment”) are estimates only and are not of the essence.
- Use of the SD-WAN Services and Equipment.** Customer may install any Equipment solely for the purposes of accessing and using the SD-WAN Service during the Term of the Agreement. Any equipment owned and installed by WIN as part of the SD-WAN Services remains the property of WIN; Customer may not sell, lease, abandon or give away the Equipment, allow anyone other than WIN or its third-party vendor to service the Equipment, or allow any third party to use the Equipment, other than on Customer’s behalf in connection with its use of the SD-WAN Service. Customer agrees not to disable or defeat any capacity-limiting feature of the Equipment, or otherwise use the Equipment at a greater capacity rate than the rate contracted-for. Further, Customer agrees not to use the Equipment with any unsupported hardware or software or use the SD-WAN Service other than as prescribed by this Agreement and any supporting documentation or for any unlawful purpose.
- Return of Equipment.** Customer shall provide WIN reasonable access to the Equipment for purposes of repair, maintenance, removal or otherwise. If WIN does not have access to Customer’s premises within thirty (30) days after Customer terminates the SD-WAN Service, or if WIN requires Customer to return the equipment and Customer does not return the equipment to WIN within thirty (30) days of termination or it is returned damaged (during shipping or otherwise), Customer shall reimburse WIN for the replacement cost of the equipment plus processing and shipping fees, as well as any attorney’s fees and costs to collect. Customer’s equipment, software, cables or hardware attached to WIN equipment or WIN’s network is solely the responsibility of Customer and must be compatible with and not cause any interference on WIN’s network, if applicable.
- Wireless Overages.** WIN will provide pooled wireless capacity to customers that select cellular wireless service as a secondary access method. Unless otherwise agreed, Customer will be charged for usage in excess of such pooled capacity at \$0.10 per MB. Such overages will be billed in arrears and may be charged up to twelve (12) months after the overage occurs.
- No Life Support.** The SD-WAN Service is not designed, intended, authorized or warranted for use or inclusion in life support, nor in life endangering applications where failure or inaccuracy might cause death or personal injury. Any such use or inclusion by Customer is solely at Customer’s own risk, and Customer shall indemnify WIN and hold WIN harmless from all resulting or related costs, loss, liability, and expenses (including without limitation court and reasonable attorneys’ fees).
- Use of Customer Data.** Customer acknowledges that WIN has engaged third party vendors to supply components of the SD-WAN Service. Customer agrees that solely for the purposes of rendering the SD-WAN Service, such third-party vendors may use, on an aggregated, non-individually-identifiable basis, all information regarding networking characteristics, usage, performance and related data involved in this use of the SD-WAN Service.
- No Proprietary Rights.** Customer does not acquire any rights in or license to any component of the SD-WAN Service or any intellectual property rights thereto. Software and its documentation provided as part of SD-WAN Service and Equipment or otherwise provided by WIN to Customer shall be used by Customer solely as part of the Services and for no other purpose and Customer acknowledges and agrees that the Software is the exclusive property of WIN or a third-party licensor. Customer may be required to provide WIN or Company with evidence that its use of the software is in compliance with this Agreement and/or third-party software licensor’s terms. Customer agrees it will not: (i) use or make any copies of the software, or install the software on more than one computer at a time; (ii) reverse engineer, decompile, or disassemble the software; (iii) sell, resell, transfer, license, sublicense, distribute the software or otherwise allow third parties to access to use the software; or (iv) create, write, or develop any derivative software or other software program that is based on such software. In addition, Customer shall not, and shall not encourage any third party to, remove, alter, or obscure in any way the proprietary rights notices (including copyright, patent, and trademark notices and symbols) of WIN or its third-party vendors providing components of the SD-WAN Service affixed or contained on or within any Equipment.

10. **Changes.** Customer acknowledges that WIN or its third-party vendor may change the SD-WAN Service and/or Equipment, either by physical replacement or by remote changes to any software or firmware provided as part of the SD-WAN Service, at any time. WIN and its third party vendors will use commercially reasonable efforts to ensure such changes do not detrimentally impact the SD-WAN Service.

11. **Limited Warranty - VeloCloud Equipment.** WIN will provide Equipment from a third-party vendor – VeloCloud – as part of the SD-WAN Service. The following limited warranty shall apply to such VeloCloud Equipment only:

WIN WARRANTS THAT THE EQUIPMENT SHALL BE FREE FROM DEFECTS IN MATERIAL AND WORKMANSHIP (THE “EXCLUSIVE WARRANTY”) FOR A PERIOD OF ONE (1) YEAR FROM THE EARLIER OF: (A) THE DATE OF DELIVERY OF THE EQUIPMENT TO CUSTOMER, OR (B) THREE (3) MONTHS AFTER DELIVERY OF THE EQUIPMENT TO WIN BY VELOCLOUD. WITH RESPECT TO THE EQUIPMENT, THE EXCLUSIVE WARRANTY SHALL APPLY ONLY TO THE EXTENT IT HAS BEEN INSTALLED, USED AND MAINTAINED IN THE CONDITIONS SPECIFIED IN THE AGREEMENT AND SUPPORTING DOCUMENTATION, IN ABSENCE THEREOF, AT LEAST IN CONDITIONS CONSISTENT WITH GENERALLY ACCEPTED PRACTICES FOR THIS TYPE OF PRODUCT; AND NOT BEEN SUBJECT TO ANY UNAUTHORIZED MODIFICATION OR REPAIR OR ATTEMPTS THERETO; AND NOT BEEN CONNECTED TO OR USED IN COMBINATION WITH OTHER INCOMPATIBLE EQUIPMENT OR SYSTEMS. IF ANY EQUIPMENT FAILS TO MEET THE EXCLUSIVE WARRANTY, THEN UPON CUSTOMER’S WRITTEN REQUEST TO WIN, WIN SHALL, AT WIN’S SOLE OPTION AND EXPENSE, PROMPTLY EITHER REPAIR OR REPLACE THE EQUIPMENT IN QUESTION. THE REMEDIES SPECIFIED IN THIS SECTION SHALL CONSTITUTE CUSTOMER’S SOLE AND EXCLUSIVE REMEDY AND WIN’S SOLE AND EXCLUSIVE LIABILITY FOR EQUIPMENT AND WIN’S BREACH OF THE EXCLUSIVE WARRANTY HEREUNDER.

ASIDE FROM THIS LIMITED WARRANTY FOR VELOCLOUD EQUIPMENT, WIN MAKES NO OTHER WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, AND EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES WHICH MAY BE IMPLIED OR OTHERWISE CREATED BY OPERATION OF LAW INCLUDING WITHOUT LIMITATION ALL IMPLIED WARRANTIES OF UNINTERRUPTED OR ERROR-FREE USE OR OPERATION, AND MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE.