



10/13/17

Res. 19579

MASTER SERVICES AGREEMENT FOR LIT SERVICES

This Master Services Agreement for Lit Services ("Agreement") is entered into this 2nd day of October 2017 by and between Jackson County ("Customer") with principal offices at 415 E 12th St, Room G-8, Kansas City, MO 64106 and Unite Private Networks, LLC ("UPN") with principal offices at 7200 NW 86th Street, Suite M, Kansas City, MO 64153. Customer and UPN both may hereinafter be referred to individually as a "Party" or jointly as the "Parties."

BACKGROUND

WHEREAS, UPN offers certain telecommunications products and services, including lit Ethernet services;

WHEREAS, Customer desires to acquire from UPN, and UPN desires to provide to Customer, these certain lit Ethernet services hereinafter referred to as "Services";

NOW THEREFORE, in consideration of the mutual promises set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree to the following Terms and Conditions Applying to Service Orders for Services.

Terms and Conditions Applying to Service Orders

1. Service Orders: To order any Service (as "Service" is defined in any service order), Customer shall submit a service order ("Service Order") to UPN, substantially in the form of the attached Exhibit A. Both Parties shall be bound by a Service Order once (i) a paper Service Order is executed by an authorized representative of each Party; or (ii) this properly executed Service Order is submitted electronically by Customer and is executed by an authorized representative of UPN. Upon being bound pursuant to the preceding sentence, Customer shall be committed to payments required hereunder.

2. Provisioning and Acceptance: UPN shall try, but is not obligated, to provide telecom service(s) provided by UPN under this Service Order ("Services") by the requested or otherwise committed delivery dates found within the Service Order. UPN shall issue a Service Commencement Letter (as "Service Commencement Letter" is hereinafter defined) promptly upon completing the installation and testing of a Service. Customer shall either accept or reject the Service within five (5) business days of UPN issuing the associated Service Commencement Letter. If Customer rejects a Service, Customer shall provide a written description reasonably detailing failure of the Service. UPN shall re-test the Service and follow the process above issuing another Service Commencement Letter. In the event that Customer fails to accept or properly reject a Service within the designated 5 business days Customer shall be deemed to have accepted the Service. A "Service Commencement Letter" means the written communication sent from UPN to Customer to the physical address or email address listed in Section 31, informing Customer that Service has been installed and available for Customer's use, which shall be in the form substantially similar to the template found within Exhibit C attached hereto.

3. Porting: Subject to UPN's prior written approval, and at the sole discretion of UPN, Customer may cancel a Service and UPN shall waive any applicable early termination charges, other than for those for an Off-Net Service (as "Off-Net Service" is hereinafter defined, provided that the Customer issues an order for a replacement Service that is (i) of a term equal to or greater than the term remaining on the terminated Service; (ii) for the same or greater monthly services charges as the Service being terminated; and (iii) the replacement Service is ordered within thirty (30) days following UPN's written approval. "Off-Net Service" means any Service that has an end-point location that is not currently connected to UPN's existing fiber network and requires new fiber construction. "On-Net Service" means any Service where both end-point locations are currently connected to UPN's existing network and no additional construction or related outside plant work is required.

4. Monthly Service Invoice: UPN will invoice Customer in advance, on or about the first day of each month, for each Service's Monthly Recurring Charge ("MRC") using UPN's standard form of invoice. For any Service accepted after the first of the month, the initial month's MRCs will be pro-rated.

5. Non-Recurring Charge Invoice: UPN will invoice Customer for any Non-Recurring Charge ("NRC") and any special construction charges associated with a Service, upon the execution of a Service Order pursuant to Section 1.

6. Payment: Customer agrees to pay all undisputed portions of any invoices within thirty (30) days from the date the invoice is issued by UPN ("Due Date"). Any undisputed portion of an invoice not paid by the Due Date shall be overdue and Customer shall incur a fee of 1.0% per month, or the maximum amount permitted by law,

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OCT 12 2017
MARY JO SPINO
COUNTY CLERK

Customer Initial [Signature]



until the undisputed portions of the invoice are paid in full. Additionally, the Customer must maintain a current payment balance in order to retain any agreed-upon discounts or waived fees that have been applied to the Service Order. Customer shall be liable to UPN for all fees and expenses, including reasonable attorney's fees and court costs that UPN incurs to collect, or attempt to collect, charges owed by Customer to UPN.

7. Disputed Bills: If Customer disputes any portion of an invoice, Customer must pay the undisputed portion of the invoice by the Due Date and submit a written claim reasonably documenting the reasons the remaining amount is disputed. After receipt of such claim, the Parties will undertake a good faith investigation of the disputed charges. At the conclusion of the investigation, any amount mutually agreed by the Parties to be correctly charged will become immediately due and payable by Customer. Amounts agreed by the parties to have been owed by Customer will be subject to the fee noted in Section 6. Unless such a claim is submitted in this manner and received by UPN within 45 days from the date the invoice is issued, the Customer waives all rights to dispute such charges, unless otherwise provided by law.

8. Taxes and Governmental Fees: Where UPN is assessed taxes, charges, or fees (hereinafter "taxes") related to the construction, installation, and/or services being provided through this Agreement, UPN shall bill such taxes to Customer in the manner and for the amount required by law. These taxes shall include and are not limited to federal, state or local sales, gross receipts, occupation, franchise, governmental assessments, regulatory charges, state and federal USF charges, excise or other similar transfer taxes. UPN shall not bill to or otherwise attempt to collect from Customer any tax with respect to which Customer has provided UPN with a valid exemption certificate. For the sake of clarity, taxes shall not include taxes on UPN's income.

9. Access Charges: Notwithstanding any term contained herein to the contrary, in the event that charges to access any premises where Customer shall receive the Services or where Customer's facilities are located are imposed upon UPN by a third party after the acceptance of a Service Order by UPN, UPN shall pass along all such charges to Customer without mark-up by UPN and Customer shall pay the same to UPN, and for the sake of clarity, such charges may be in addition to the NRC, MRC and special construction charges provided for in an accepted Service Order. The terms of payment of Section 6 shall apply to the same.

10. Term. The initial term of this Agreement shall be three (3) years with two (2) 12-month mutual options to extend, to be exercised by written agreement of the parties, commencing on the date this Agreement is fully executed by both parties ("Initial Term"). The term for each Service Order shall be listed within the applicable Service Order. Notwithstanding the Term of this Agreement as

described above, this Agreement shall be active so long as there is an existing Service Order active.

11. Internet Data Flow: Customer acknowledges and agrees that because the flow of data to or from and through the Internet is dependent upon the performance of services provided or controlled by third parties, UPN cannot guarantee uninterrupted Service for Internet access and use, and UPN warrants that it will use commercially reasonable efforts to remedy impairment or disruption of Customer's access to the Internet through UPN's Equipment, provided however, that any such interruption or impairment is directly attributable to UPN's Equipment. Customer also acknowledges and agrees that the actual transmission speeds for Internet transmissions delivered by UPN may vary from the transmission speeds otherwise expected by Customer based on such factors as the length and gauge of the line servicing Customer, and other operational characteristics of facilities used by UPN and/or Customer. UPN DOES NOT WARRANT THAT INTERNET SERVICE WILL BE UNINTERRUPTED, UNIMPAIRED, ERROR FREE, OR SECURE, AND UPN DISCLAIMS ALL WARRANTIES, EXCEPT FOR THE WARRANTY FROM THIS SECTION TO USE COMMERCIALY REASONABLE EFFORTS TO REMEDY IMPARIMENT OR DISRUPTION, EITHER EXPRESSED OR IMPLIED OR BY OPERATION OF LAW INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE FOR INTERNET SERVICE.

12. Acceptable Use: Customer represents and warrants that it shall comply with all relevant laws pertaining to the Services and Customer's use thereof. Customer further represents and warrants that at all times Customer shall conform its use of the Service to the current version of the UPN Acceptable Use Policy, which shall be provided to the Customer by UPN.

13. Protection: Customer must not cause or allow any facility, equipment, software, hardware, system, or material that is owned, leased, or otherwise operated or maintained by UPN ("UPN Equipment") to be rearranged, tampered with, moved, removed, disconnected, altered, maintained or repaired without UPN's prior written consent. Customer is responsible for providing and maintaining at no charge to UPN an appropriate operating environment consistent with generally accepted industry standards for any UPN Equipment at Customer's premises.

14. Facility Access: Customer is responsible for granting or obtaining permission for UPN employees, contractors, representatives, agents and/or suppliers to enter premises where Customer receives services or locates Customer's facilities as reasonably necessary to install, inspect, maintain, and repair Services and any UPN Equipment. Any charges associated with such permission shall be paid by Customer.

15. Liens: Customer may not create or allow any liens or other encumbrances to be placed on any UPN Equipment. In the event that any such lien is placed upon UPN Facilities and which lien is attributable either directly or indirectly to Customer, Customer shall immediately remove such lien by a surety bond.

16. Title: Customer shall have no title, ownership right or interest in any UPN Equipment of any Service. For any goods sold to Customer as part of a Service, title to such goods shall only vest in Customer upon payment in full for the same.

17. Maintenance: UPN will perform routine network maintenance for network improvements and preventive maintenance. UPN will use commercially reasonable efforts to provide seven (7) days' notice to Customer of all such maintenance that is expected to result in a service outage. "Emergency Maintenance" means maintenance activities that constitute unscheduled repair required to prevent or minimize a disruption in Customer Service. These repairs are initiated within a very short period of time from when the need is identified. For Emergency Maintenance, UPN shall notify Customer as soon as is commercially practical under the circumstances. Unless otherwise agreed to between the parties, routine network maintenance is performed during UPN's standard maintenance windows. Maintenance windows are as follows: 10 p.m. – 6 a.m. Local Time, Monday through Friday. If planned service outages are expected during these specified times, Customer will be notified via email to the contact designated by the Parties. This notification will inform the Customer of the anticipated time, duration and reason for the network maintenance. While the specified maintenance window is eight (8) hours in length, it is rare that a given maintenance would require use of this entire window.

18. Termination By Either Party: Either party is entitled to terminate this Agreement: (i) if the other party breaches any material term or condition of this Agreement and fails to cure such breach within thirty (30) days after receipt of written notice of the same (except as otherwise provided in this Section 18); (ii) immediately if the other party becomes the subject of a voluntary petition in bankruptcy or any voluntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors; or (iii) if the other party becomes the subject of an involuntary petition in bankruptcy or any involuntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors, and such petition or proceeding is not dismissed within sixty (60) days of filing.

19. Termination for Nonpayment: After written notice to Customer that its account is past due, UPN may terminate the associated Service, or the Service Order at UPN's sole and absolute discretion,

pursuant to such notice if Customer fails to cure such breach within 30 (30) days after receipt of such notice.

20. Termination For Violations of Law: UPN reserves the right to terminate an associated Service or the Service Order immediately (i) if the provision or Customer's use a Service will violate any law or cause UPN to violate any law or (ii) to prevent and protect against Customer fraud or acts or omissions that may cause immediate harm to third parties, UPN Equipment or any Services.

21. Payment Obligations when Customer Terminates For Cause: If Customer terminates any Service pursuant to Section 18, Customer shall be liable for payment of such Services through the date that UPN receives Customer's notice of termination. Invoicing and payment terms of Section 6 shall apply to payments for the terminated Services.

22. Intrastate Traffic: Customer acknowledges and certifies that for the duration of this Service Order, the interstate traffic (including Internet and international traffic) will constitute ten percent (10%) or less of the total traffic on the private line that has been provided by UPN. Customer is responsible for notifying UPN if the Customer's average usage exceeds this ten percent (10%) threshold.

23. Early Termination Charges: In the event that Customer terminates any Service for any reason other than through Customer's rights granted under Section 18 or Section 41, Customer shall pay an early termination fee to UPN which shall be (i) 100% of the remaining monthly recurring charges plus (ii) any waived or otherwise unpaid non-recurring charge or special construction charges, plus (iii) any fees payable to third parties and attributable to the terminated Services, if any, to the extent such fees are not captured by the amounts in subsection (i) of this section, (the "ETL"). This ETL shall be due and payable within ten (10) days of the date of an invoice for the same, notwithstanding Sections 4-10. The parties agree that the ETL provided for under this Section 23 is a reasonable estimate of damages and is a liquidated damage and is not a penalty.

24. Service Order Cancellation: In the event that, subsequent to the execution of this Service Order but prior to the Service Commencement Letter, Customer cancels or terminates this Service Order ("Early Cancellation") for any reason other than for UPN Default: (i) UPN may immediately stop work without further notice to Customer; (ii) such services shall terminate and Customer shall not be entitled to a refund of any prior consideration paid; (iii) Customer shall immediately reimburse UPN for any third party termination charges incurred by UPN as a result of such Early Cancellation; (iv) Customer shall pay an amount equal to 50% of all remaining future monthly recurring charges for the full term of this Service Order and shall be immediately due and



payable to UPN by Customer; and (v) UPN shall owe Customer no further duties, obligations or consideration with regard to this Service Order.

25. Warranties: EXCEPT AS OTHERWISE EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, UPN DISCLAIMS ALL WARRANTIES, EITHER EXPRESSED OR IMPLIED OR BY OPERATION OF LAW INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

26. Limitations of Liability: NOTWITHSTANDING ANYTHING ELSE TO THE CONTRARY IN THIS AGREEMENT, AND EXCEPT FOR CUSTOMER'S PAYMENT OBLIGATIONS, EITHER PARTY'S MAXIMUM AGGREGATE LIABILITY TO THE OTHER PARTY RELATED TO OR IN CONNECTION WITH THIS AGREEMENT SHALL BE LIMITED TO THE TOTAL AMOUNT PAID BY CUSTOMER TO UPN, IN THE PRIOR SIX (6) MONTH PERIOD, UNDER SERVICE ORDERS ENTERED INTO PURSUANT TO THIS AGREEMENT AND EFFECTIVE AS OF THE DATE THAT THE LIABILITY WAS INCURRED. IN NO EVENT SHALL EITHER PARTY OR ANY OF ITS RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, MEMBERS, PARTNERS, TRUSTEES, SERVANTS, REPRESENTATIVES, AGENTS, AFFILIATES OR PARENT COMPANY BE LIABLE FOR LOST PROFITS, LOST REVENUES, LOSS OF GOODWILL, LOSS OF ANTICIPATED SAVINGS, LOSS OF DATA, THE COST OF REPLACEMENT SERVICES, OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, RELIANCE, PUNITIVE OR EXEMPLARY DAMAGES OR LOSSES, WHETHER IN CONTRACT, TORT OR OTHERWISE, EVEN IF THIS PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. IN THE EVENT OF ANY CLAIM THAT MAY BE BROUGHT BY CUSTOMER, CUSTOMER COVENANTS TO SEEK SATISFACTION OF SUCH CLAIM AGAINST ONLY UPN AND NOT AGAINST ANY TRUSTEE OF UPN.

27. Intentionally Omitted.

28. Force Majeure: Other than with respect to failure to make payments due hereunder, neither Party shall be responsible or liable under this Agreement for any delay, failure to perform, damages, losses or destruction, or malfunction, or any consequence thereof due to circumstances beyond its reasonable control including, but not limited to, acts of God, acts of nature, utility curtailments, power failures, civil disturbances, or emergency governmental actions, expropriation or confiscation of facilities, compliance with any order or decree of any governmental authority; acts of war or terrorism, floods or abnormal severe weather; riots, rebellion, or sabotage; fires or explosions; labor disputes, strikes, or other concerted acts of workmen; accidents or other casualty; third party fiber cuts; and failures of utilities, local

exchange carriers, cities, municipalities, and other political subdivision to follow laws, agreements, or contracts. Further, neither party will be liable for delays caused by the inaction of utilities, local exchange carriers, cities, municipalities, or other political subdivisions in granting access to rights of way, poles, or any other required items needed for the installation or operation of the Services or Network. In the event a Party asserts a force majeure event, that Party shall be obligated to use its commercially reasonable efforts to mitigate the consequences of the force majeure event.

29. Assignment or Transfer of Service: Neither Party may assign or otherwise transfer this Agreement or its rights or obligations under this Agreement without the prior written consent of the other Party, and any attempt by a Party to do so will be null and void. However, UPN may at any time without consent of the other Customer, on written notice to Customer, assign this Agreement and all of its rights and obligations under this Agreement to (i) any affiliate, or (ii) a person, firm, corporation, partnership, association, trust or other entity which purchases all or substantially all of its assets or stock. Customer shall not assign, transfer, or delegate this Agreement or any of its rights or duties in connection with this Agreement either in whole or in part without the prior written consent of UPN, which shall not be unreasonably withheld or delayed. Any attempted assignment, transfer, or delegation in contravention of this prohibition will be null and void. Any assignment, transfer and delegation approved by UPN will not affect or diminish Customer's rights and obligations which arose prior to the assignment, transfer, or delegation. UPN may assign its rights and duties in whole or in part and UPN is entitled to pledge this Agreement as collateral for financing. This Agreement and the rights and obligations created hereunder shall bind and inure to the benefit of each party's successors and permitted assigns.

30. Governing Law: This Agreement shall, in all respects, be construed and enforced in accordance with the laws of the State of Missouri, excluding its choice of law provisions. The parties hereby agree and consent to the exclusive jurisdiction of the state courts of the State of Missouri with respect to any matter arising under this Agreement or in connection herewith.

31. Notices: Any notice or communication required or permitted to be given hereunder shall be in writing and may be delivered by hand, deposited with a nationally recognized overnight courier, sent by confirmed facsimile, or mailed by registered or certified mail, return receipt requested, postage prepaid, in each case to the address of the receiving party indicated above, or to such other address as either party may notify the other in writing from time to time. Such notice will be deemed to have been given as of the date given by hand or facsimile confirmation, the day after deposit with a nationally recognized overnight courier, or five (5) days after it was mailed. Notices shall be sent to the following addresses:





If to UPN:  
7200 NW 86th Street, Suite M  
Kansas City, MO 64153  
Attn: Legal Department  
Email: legaldept@upnfiber.com

If to Customer  
Jackson County, MO  
415 E 12<sup>th</sup> St, Room G-8  
Kansas City, MO 64106  
Attn: Mike Lear  
Email: mlear@jacksongov.org

32. Severability: If any provision of this Agreement shall for any reason be held illegal, invalid or unenforceable, such provision shall be deemed separable from the remaining provisions of this Agreement and shall in no way impair the validity or enforceability of the remaining provisions of this Agreement.

33. Entire Agreement: This entire agreement of the parties consists of: 1.) This Agreement and any Service Orders placed under it; 2), UPN's proposal submitted in response to Customer's Request for Proposals (RFP) 31-17; and Customer's RFP 31-17. Each party agrees that it has been represented by counsel in negotiating and entering into this Agreement and further agrees that no provision of this Agreement shall be interpreted in favor of one party to the detriment of the other party.

34. Dispute Resolution: Any dispute which arises out of or in relation to the terms of this Agreement shall be resolved first by good faith discussions between designated representatives of UPN and of Customer. If the matter is not resolved within fifteen (15) days, it shall be escalated to an executive officer of each Party within fifteen (15) days of a written request by either Party to the other. If the matter is not resolved within 45 days then either Party may pursue an action or other relief in a court of competent jurisdiction consistent with Section 30.

35. Confidential Information: For the purposes hereof, "Confidential Information" shall include any and all information that either Party holds as confidential or proprietary, including, without limitation, (i) any and all technical information, including, without limitation, product data and specifications, know-how, formulae, software, source codes and other software information, processes, inventions, research projects, derivative works and product development; (ii) any and all business information of or relating to either Party, including, without limitation, accounting and financial information, sales and marketing information, research, investment analyses, investment strategies and techniques, investment transactions and holdings, plans or strategies, processing, or equipment designs, clients, personnel,

shareholders and information concerning funds and clients advised by either Party, "know-how", data and material used or licensed by either party, including, but not limited, to, computer software, programming, research, financial information and analyses and the like, and documentation relating thereto; (iii) any and all employee or customer information of either Party; (iv) confidential information of a Party disclosed to the other Party by third parties; (v) rates, terms or any other information regarding this Agreement, and (vi) any other information which a reasonable person would deem to be confidential. Neither Party shall disclose any of the other Party's Confidential Information to any third party, or use any of the other Party's Confidential Information for any purpose other than the performance of or receipt of Services hereunder. Notwithstanding the foregoing, the Parties may disclose Confidential Information (a) to its attorneys, accountants, consultants or professional advisors on a "need to know basis", provided that the agreement of such third party to hold such information confidential is first obtained, and (b) as required in connection with any litigation or arbitration matters arising out of this Agreement. In addition, neither Party will use the other Party's name, or the name(s) of any of the other Party's product(s) or service(s) in publicity or press releases without that Party's prior written consent. Each Party's Confidential Information shall remain its property and shall be either returned to such Party or destroyed promptly upon the termination of this Agreement or at such Party's earlier request. If Confidential Information is destroyed, the destroying Party must certify to the destruction. The recipient of Confidential Information shall not appropriate for its benefit or the benefit of any third party any of the other Party's Confidential Information. All of Customer's obligations under this paragraph are subject to the requirements of the Missouri Open Records Act, chapter 610, RSMo, as set out in paragraph 30 of the general conditions of Customer's RFP 31-17.

36. Obligation to Disclose: The recipient of the other Party's Confidential Information ("Recipient") will promptly notify the disclosing Party ("Discloser") if Recipient receives a demand from a third party for Confidential Information and, except as required by law, the Recipient shall not disclose the same to such third party without the prior written consent of the Discloser, except as otherwise permitted herein. If Recipient believes that it is legally required to disclose any of the Discloser's Confidential Information, Recipient will not disclose such Confidential Information until Recipient has notified Discloser and Discloser shall be entitled to seek a protective order or other appropriate remedy relating to the Confidential Information sought. In the event that Recipient is required by law to disclose any such Confidential Information, Recipient will furnish only that portion of the Confidential Information that is legally required and will exercise commercially reasonable efforts to obtain a protective order or other reliable assurance that the Confidential Information

will be treated as confidential upon terms substantially the same as contained in this Service Order.

Each Party agrees that the wrongful disclosure of Confidential Information may cause irreparable injury that is inadequately compensable in monetary damages. Accordingly, either Party may seek injunctive relief in any court of competent jurisdiction for the breach or threatened breach of this Agreement in addition to any other remedies in law or equity. The Recipient will not raise the defense of an adequate remedy at law. This provision does not alter any other remedies available to either Party.

37. Exclusions: Confidential Information shall not include information that is (i) proven to be previously known or in the possession of the Recipient, free of any confidentiality obligation, at the time of receipt from the Discloser; (ii) publicly available or otherwise in the public domain by means other than unauthorized disclosure; (iii) proven to be independently developed by or on behalf of Recipient without use of the Discloser's Confidential Information; (iv) is rightfully obtained by the Recipient from a third party without restriction and without breach of a similar agreement; or (v) released by the Discloser to any third party without restrictions.

38. Service Level Agreement. This Agreement, and any related Service Order, shall be subject to a Service Level Agreement which is attached and referenced hereto as Exhibit B.

39. Order of Precedence. In the event of any conflict among the provisions of any of the applicable documents, the provision of the document listed first in the following order shall prevail: 1.) the applicable Service Order; 2.) this Agreement; 3.) UPN's proposal submitted in response to Customer's RFP 31-17; and 4.) Customer's RFP 31-17.

40. Affiliates. Subject to UPN's sole discretion, any Affiliate of Customer (as "Affiliate" is hereinafter defined) may purchase Services from UPN under the terms and conditions of this Agreement provided that (i) the Services are codified in a Service Order or other similar document signed by UPN and Affiliate; (ii) Affiliate certifies that it has all necessary approvals and legal authority to order services from UPN under this Agreement; and (iii) at UPN's request, Affiliate enters into a separate participation agreement with UPN binding the parties to the terms and conditions of this Agreement. "Affiliate" means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. "Control," for purposes of this section, means (i) direct or indirect ownership or control of more than fifty percent (50%) of the voting interests of the subject entity or (ii) under the authority of the same governmental body.

41. Appropriation of Funds. By executing this Agreement, Customer warrants that it has funds appropriated and available to pay all amounts due under applicable Service Orders through the end of Customer's current fiscal period. Customer further agrees to request all appropriations and funding necessary to pay for services ordered through this Agreement for each subsequent fiscal period through the end of this Agreement. In the event Customer is unable to obtain necessary appropriations or funding for an applicable Service Order, Customer may terminate the applicable Service Order without liability under Section 23 upon the following conditions: (i) Customer has taken all actions necessary to obtain adequate appropriations or funding; (ii) despite Customer's best efforts, funds have not been appropriated and are otherwise unavailable to pay for the applicable services; and (iii) Customer has negotiated with UPN in good faith to develop revised terms or an alternative payment schedule. Customer must provide UPN ninety (90) days' written notice of its intent to terminate services pursuant to this Section 41.

IN WITNESS WHEREOF, and in confirmation of their consent to the terms and conditions contained in this Agreement and intending to be legally bound hereby, the parties have caused this Agreement to be executed by their duly authorized officers or representative.

**For Unite Private Networks, LLC:**

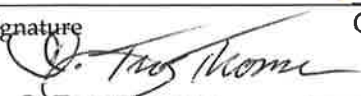
  
 \_\_\_\_\_  
 Signature  
 \_\_\_\_\_  
 Jason Adkins  
 \_\_\_\_\_  
 Print Name

\_\_\_\_\_  
 President  
 \_\_\_\_\_  
 Title

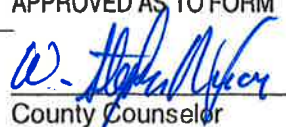
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 02 OCT 2017  
 \_\_\_\_\_  
 Date

**For Customer:**

**ATTEST:**  
  
 \_\_\_\_\_  
 Clerk of the County Legislature

  
 \_\_\_\_\_  
 Signature  
 Q. Troy Thomas  
 \_\_\_\_\_

\_\_\_\_\_  
 Chief Financial Officer  
 \_\_\_\_\_  
 Title

**APPROVED AS TO FORM**  
  
 \_\_\_\_\_  
 County Counselor



9/21/17

Date



**Exhibit B – Service Level Agreement**

1. UPN maintains a goal of 99.99% availability on all Lit services and strives to repair all service impacting conditions within four (4) hours of discovery. Convergence/ Healing/ Recover/ Loss time for a failed node would be less than one (1) second on a protected self-healing ring. All UPN services are non-protected unless otherwise noted in the Service Order.
2. Customer acknowledges the possibility of an interruption in Service that results in a partial or total disruption of Service which, subject to the exclusions and restrictions noted below, constitutes an "Outage." If a Service experiences an Outage ("Affected Service"), UPN, upon discovery of the Outage, will immediately commence work to repair the Affected Service. UPN will provide to Customer a good faith estimate of time to complete repair and provide regular updates of the status of repair.
3. Customer may be entitled to a credit based upon the amount of monthly Outage time experienced by the Affected Service. The credit amount is calculated by determining the percentage of time (calculated in minutes) that the Affected Service experiences an Outage, within a calendar month, in relation to the total calendar monthly minutes of Affective Service ("Outage Minutes %"). The amount of the credit shall be the Outage Minutes % multiplied by the Customer Monthly Recurring Charge ("Customer MRC"), as identified in the Service Order, for the Affected Service ("Outage Credit").
4. To receive an Outage Credit, Customer must initiate a trouble ticket at the time of the Outage by contacting UPN at the Escalation Contact List noted below. The Outage shall be deemed to have commenced upon verifiable notification of outage and initiation of trouble ticket. The Outage shall end upon restoration of the Affected Service as evidenced by appropriate network tests by UPN.
5. Customer's request for an Outage Credit shall be submitted, within thirty (30) calendar days of the end of the calendar month in which the Outage occurs. Request shall be submitted to Unite Private Networks, 7200 NW 86<sup>th</sup> Street, Suite M, Kansas City, MO 64153, Attn: Billing Dept. In no case shall UPN provide credit to Customer that exceeds the Customer MRC for the Affected Service.
6. All approved Outage Credits shall be credited on the next monthly invoice for the Affected Service following UPN approval of the Outage Credit.
7. The Outage Credits described herein shall be the sole and exclusive remedy of the Customer in the event of any Outage or other disruption of Service, and under no circumstances shall either be deemed an event of Default under this Agreement or that certain Service Order. UPN, or its representatives, make no warranties, express or implied, including warranties for fitness of use for a particular purpose. It is the explicit intention of the Parties hereto that no Person other than the Parties hereto is or shall be entitled to bring any action to enforce any provision of this Agreement against any Party hereto, and that covenants, undertakings, and agreements set forth in this Agreement shall be enforceable only by the Parties hereto or their respective successors or permitted assigns.
8. EXCEPT FOR THE WARRANTIES CONTAINED IN THIS AGREEMENT, UPN DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
9. Intentionally Omitted.
10. An Outage shall not be deemed to have occurred in the event that the Service is unavailable or impaired due to any of the following:
  - 10.1 Interruptions on a Service for which the start of Service has not yet commenced.
  - 10.2 Interruptions caused by the negligence, error or omission of Customer or others authorized by Customer to access, use or modify the Service or equipment used by Customer.
  - 10.3 Interruptions due to power failure at Customer premises, or the failure or poor performance of Customer provided equipment (CPE).
  - 10.4 Interruptions during any period in which UPN or its agents are not afforded access to the premises where the access lines associated with the Service are terminated, provided such access is reasonably necessary to prevent a degradation or to restore Service.





- 10.5 Interruptions during any period that UPN has communicated to Customer that the Service will be unavailable for maintenance or grooming purposes, or Customer has released the Service to UPN for the installation of a Customer service order.
- 10.6 Interruptions during any period that Customer elects not to release the Service for testing and/or repair and continues to use it on an impaired basis.
- 10.7 Interruptions resulting from Force Majeure.
- 10.8 Interruptions resulting from Customer's use of Service in an unauthorized or unlawful manner.
- 10.9 Interruptions resulting from a UPN disconnect for cause.
- 10.10 Interruptions resulting from incorrect, incomplete or inaccurate Service orders from Customer (including without limitation Customer's over subscription of circuits).
- 10.11 Interruptions due to improper or inaccurate network specifications provided by Customer.
- 10.12 Special configurations of the standard Service that have been mutually agreed to by UPN and Customer, provided however that UPN or a 3<sup>rd</sup> party vendor may provide a separate service level agreement to Customer for those special configurations.
- 10.13 UPN's inability to initiate Service by the Service start date.
- 10.14 Interruptions in service not caused by failure of the UPN network (e.g., Interruptions caused by Customer internal Local Area Network (LAN) or equipment or caused by a third party network service provider).

through these contacts.

1-866-963-4237

Twenty-four hours a day/seven days a week

The escalation process provides the next step for obtaining information and resolutions in the event that Customer is unable to receive a satisfactory resolution by contact through the phone numbers listed above.

**Service Escalation Contact List**

<b>Region= Nebraska</b>		
<b>Level</b>	<b>Name</b>	<b>Cell#</b>
1 <sup>st</sup>	Jerome Simoneau, Manager-Operations <a href="mailto:jerome.simoneau@upnfiber.com">jerome.simoneau@upnfiber.com</a>	816-365-9435
2 <sup>nd</sup>	Shanon Morris , Regional Vice President <a href="mailto:shanon.morris@upnfiber.com">shanon.morris@upnfiber.com</a>	402-575-1239
3 <sup>th</sup>	Jimmy Chapman Vice President-Operations <a href="mailto:jimmy.chapman@upnfiber.com">jimmy.chapman@upnfiber.com</a>	816-656-1281
4 <sup>th</sup>	Chad Senglaub Chief Operations & Technology Officer <a href="mailto:chad.senglaub@upnfiber.com">chad.senglaub@upnfiber.com</a>	816-500-9935

<b>Region = Iowa</b>		
<b>Level</b>	<b>Name</b>	<b>Cell#</b>
1 <sup>st</sup>	Jerome Simoneau, Manager-Operations <a href="mailto:jerome.simoneau@upnfiber.com">jerome.simoneau@upnfiber.com</a>	816-365-9435
2 <sup>nd</sup>	Clark Lundy, Regional Vice President <a href="mailto:clark.lundy@upnfiber.com">clark.lundy@upnfiber.com</a>	515-321-3336
3 <sup>th</sup>	Jimmy Chapman Vice President-Operations <a href="mailto:jimmy.chapman@upnfiber.com">jimmy.chapman@upnfiber.com</a>	816-656-1281
4 <sup>th</sup>	Chad Senglaub Chief Operations & Technology Officer <a href="mailto:chad.senglaub@upnfiber.com">chad.senglaub@upnfiber.com</a>	816-500-9935

<b>Region = Kansas, Missouri, Colorado</b>		
<b>Level</b>	<b>Name</b>	<b>Cell#</b>
1 <sup>st</sup>	Jerome Simoneau, Manager-Operations <a href="mailto:jerome.simoneau@upnfiber.com">jerome.simoneau@upnfiber.com</a>	816-365-9435
2 <sup>nd</sup>	Sean Brown, Regional Vice President <a href="mailto:sean.brown@upnfiber.com">sean.brown@upnfiber.com</a>	816-533-2611
3 <sup>th</sup>	Jimmy Chapman Vice President-Operations <a href="mailto:jimmy.chapman@upnfiber.com">jimmy.chapman@upnfiber.com</a>	816-656-1281
4 <sup>th</sup>	Chad Senglaub Chief Operations & Technology Officer <a href="mailto:chad.senglaub@upnfiber.com">chad.senglaub@upnfiber.com</a>	816-500-9935

<b>Region = Texas</b>		
<b>Level</b>	<b>Name</b>	<b>Cell#</b>
1 <sup>st</sup>	Jerome Simoneau, Manager-Operations <a href="mailto:jerome.simoneau@upnfiber.com">jerome.simoneau@upnfiber.com</a>	816-365-9435

11. **Escalation Contact List:**

To assist in tracking and coordinating all necessary activities for resolving issues expeditiously, the following phone numbers are the first contacts for trouble resolution. All dispatches, if deemed necessary, will be generated



2 <sup>nd</sup>	Bill Tyler, Regional Vice President <a href="mailto:bill.tyler@upnfiber.com">bill.tyler@upnfiber.com</a>	469-354-3214
3 <sup>th</sup>	Jimmy Chapman Vice President-Operations <a href="mailto:jimmy.chapman@upnfiber.com">jimmy.chapman@upnfiber.com</a>	816-656-1281
4 <sup>th</sup>	Chad Senglaub Chief Operations & Technology Officer <a href="mailto:chad.senglaub@upnfiber.com">chad.senglaub@upnfiber.com</a>	816-500-9935

<b>Region = All States, except Nebraska, Iowa, Kansas, Missouri, Colorado, Texas</b>		
<b>Level</b>	<b>Name</b>	<b>Cell#</b>
1 <sup>st</sup>	Jerome Simoneau, Manager-Operations <a href="mailto:jerome.simoneau@upnfiber.com">jerome.simoneau@upnfiber.com</a>	816-365-9435
2 <sup>nd</sup>	George Forbes, Regional Vice President <a href="mailto:george.forbes@upnfiber.com">george.forbes@upnfiber.com</a>	478-832-0669
3 <sup>th</sup>	Jimmy Chapman Vice President-Operations <a href="mailto:jimmy.chapman@upnfiber.com">jimmy.chapman@upnfiber.com</a>	816-656-1281
4 <sup>th</sup>	Chad Senglaub Chief Operations & Technology Officer <a href="mailto:chad.senglaub@upnfiber.com">chad.senglaub@upnfiber.com</a>	816-500-9935



Exhibit C – Service Commencement Letter



**Service Commencement Letter**

Date

Customer Contact  
Customer Name  
Customer Address

Account Name:  
Contract Number:

Service Type:  
Circuit Address:  
Circuit ID:  
Service Commencement Date:

It is a pleasure to inform you that we have completed the installation phase of the above contract. The installation criteria have been satisfied and tested in accordance with the terms and conditions of the contract. At this time, Unite Private Networks will commence billing all charges associated with this service.

At Unite Private Networks, we are committed to providing superior communications and service in order to deliver results for your business. Should you experience any service difficulties or have questions regarding billing, please refer to the customer contact information below.

We appreciate your business and look forward to building a partnership that exceeds your expectations.

Regards,

UPN Contact  
UPN Contact Title  
Unite Private Networks, LLC  
UPN Contact Email







# Service Order

## Lit Services- (17-16597)

Customer understands that they must acquire these rights and any delay or additional costs in receiving these rights may cause a corresponding delay in the requested install date or additional costs passed on to the customer.

**Installation Date:** Anticipated installation date shall occur approximately sixty to ninety (60-90) days after the following events have occurred: (1) the acquisition of all necessary permits, licenses, pole attachment agreements, and rights of way to complete the project; and (2) the full execution of this Service Order.

Customer approves and accepts this Service Order which includes and incorporates by reference the Master Services Agreement for Lit Services executed by and Customer and UPN on Oct. 2, 2017 (the "MSA"). Customer agrees to be bound by the terms and conditions of the MSA.

Unite Private Networks, LLC

Jackson County

Signature

Signature

Print Name **Jason Adkins**

Print Name **Q. Troy Thomas**

Title **President**

Title **Chief Financial Officer**

Date **10/6/2017**

Date **10/4/17**

**PC 51012017031**

ATTEST:

Clerk of the County Legislature

APPROVED AS TO FORM

County Counselor