

41



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Lit Service Order

#36508

JUN 03 2022

NAVARRO COUNTY AUDITOR'S OFFICE

Contact Information		Unite Private Networks, LLC ("UPN")		
COMPANY CONTACT: Colleen Conner EMAIL: colleen.conner@upnfiber.com REMITTANCE ADDRESS: Unite Private Networks, LLC 1511 Baltimore Ave., Floor 2 Kansas City, MO 64108		Navarro County ("Customer") COMPANY CONTACT: Damien Givens EMAIL: damien.givens@texomahidta.org BILLING ADDRESS: Navarro County 6303 Commerce Dr Irving, TX 75063		
Service Type and Term				
Order Type:	UPN ID Number(s):		Service Type(s):	
New	36508		Ethernet Internet Access (EIA)	
Initial Service Order Term:		36 months		
Service and Pricing Schedule				
Type	Service	Term	Monthly Recurring Charge	Non-Recurring Charge
New	Circuit 1: 500 Mbps EIA /27 IPv4 Addresses	36 months	\$ 695.00 \$ 128.00	\$ 0.00 \$ 0.00
Total =			\$ 823.00	\$ 0.00
Circuit 1				
Location A		Location Z		
Site Name: UPN IP Core POP Site Contact: UPN NOC (866) 963-4237 Point of Demarcation: UPN Demarc		Site Name: 6303 Commerce Dr Address: 6303 Commerce Dr, Irving, TX 75063 Point of Demarcation: MPOE		
Acknowledgements: Customer acknowledges and agrees that the services ("Services") provided to Customer in this Lit Service Order ("Service Order") will not be accessible to Customer other than at the Location Z Point of Demarcation listed above. UPN shall have the option to terminate this Service Order without liability if UPN determines that providing the Services to Customer will be commercially unreasonable for UPN				
IP Addresses: Customer shall receive thirty-two (32) total IPv4 Addresses at Circuit 1, Location Z, thirty (30) of which shall be useable. Customer understands that one (1) of the thirty (30) useable IPv4 Addresses may need to be reserved, leaving only twenty-nine (29) useable IPv4 Addresses for Customer				
Appropriation of Funds: Notwithstanding anything in the Terms and Conditions Applying to Lit Services attached hereto, Customer warrants that Customer has funds appropriated and available to pay all amounts due hereunder through the end of Customer's current fiscal period. Customer further agrees to request all appropriations and funding necessary to pay for the Services herein for each subsequent fiscal period through the end of the Service Order Term. In the event funds are not appropriated, budgeted, or otherwise made available to Customer, Customer may terminate this Service Order on the last day of the period for which funds were appropriated or made available for such purposes, 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 Services listed herein; and (iii) Customer has negotiated in good faith with UPN to develop revised terms, an alternate payment schedule, or a new agreement to accommodate Customer's budget. Customer shall provide UPN thirty (30) days' written notice of its intent to terminate Services. Termination of the Services in accordance with this paragraph shall be effective as of the last day for which funds were appropriated or otherwise made available. If Customer terminates the Services under this paragraph, Customer agrees (i) to pay all amounts due for Services incurred through the date of termination, and (ii) to reimburse all unrecovered non-recurring charges, including the actual costs incurred by UPN to provide the Services to Customer, which shall be verified by UPN through the submittal of invoices to Customer.				
Term: The term of this Service Order shall commence upon installation of all Services described herein and continue for the term delineated above ("Initial Service Order Term") Thereafter, this Service Order shall automatically renew for successive one (1) year periods (each such period, an "Additional Service Order Term" and, together with the Initial Service Order Term, the "Service Order Term") unless terminated by either party upon ninety (90) days' written notice to the other party prior to the end of the Initial Service Order Term or Additional Service Order Term, as applicable.				
Points of Demarcation: Unless otherwise specified herein, the point of demarcation at each service location shall be the minimum point of entry ("MPOE"). The MPOE is the point at which UPN's cable enters the building. In the event Customer requires a point of demarcation extension, additional costs may apply. Customer shall be responsible for all cross connects.				
Customer Acknowledgement of Existing Business Relationship: Customer acknowledges it is aware that an agent helped to arrange and facilitate this Service Order between Customer and UPN, information related to which may be shared with the agent. Customer acknowledges and understands UPN has a prior and current business relationship with the agent.				

This Service Order includes and incorporates by reference the Terms and Conditions Applying to Lit Services attached hereto ("Terms and Conditions"). Customer and UPN agree to be bound by the Terms and Conditions.

Unite Private Networks, LLC:

Navarro County:

Authorized Signature: _____

Authorized Signature:

Name: _____

Name: HM Davenport Jr.

Title: _____

Title: County Judge

Date: _____

Date: June 13 2022



Lit Service Order

#36508



Lit Service Order

#36508

Terms and Conditions Applying to Lit Services

1. **Lit Service Orders.** Services provided under these Terms and Conditions Applying to Lit Services ("Terms and Conditions") will be memorialized on service orders ("Service Orders") executed by and between the parties. Upon the full execution and acceptance of a Service Order, UPN agrees to provide to Customer, and Customer agrees to receive from UPN, certain lit telecommunication services(s) (the "Services"). Each Service Order shall, at a minimum, identify the (i) Point(s) of Demarcation (as "Point(s) of Demarcation" is defined in Section 4); (ii) Service type; (iii) Service Order Term; (iv) monthly recurring charges ("MRC"); (v) non-recurring charges ("NRC"); (vi) bandwidth; (vii) Customer and UPN contact information; and (viii) anticipated installation timeframe.
2. **Installation.** UPN shall issue a Service Commencement Letter (as "Service Commencement Letter" is hereinafter defined) upon installation of a Service. If Customer believes the Services have not been installed in accordance with the Service Order, Customer must provide a written rejection of the Services to UPN within three (3) days of UPN issuing the associated Service Commencement Letter, including a written description reasonably detailing failure of the Service. UPN shall then retest the Service and issue another Service Commencement Letter. This process shall continue until the Service meets industry standards. Failure to properly reject a Service within the prescribed period shall be deemed Customer's acceptance of the Service. Notwithstanding the preceding or anything to the contrary in these Terms and Conditions, in the event UPN is unable to complete installation of a Service due to Customer's failure to complete any applicable tasks necessary to allow UPN to complete installation of the Service, Customer shall be deemed to have accepted the Service as of the thirtieth (30th) day after UPN provides written notice to Customer that UPN is unable to proceed further due solely to Customer's delay. For clarity, Customer's inability to accept a Service shall not constitute a valid reason for rejection. A "Service Commencement Letter" means the written communication sent from UPN to Customer informing Customer that the Services have been installed and are available for Customer's use.
3. **Payment Terms.** Customer shall pay all undisputed charges by ACH, check, or wire transfer of immediately available funds to the account designated by UPN, unless otherwise agreed to by the parties. All undisputed charges shall be paid by Customer within thirty (30) calendar days following receipt of an invoice from UPN. Any undisputed portion of an invoice not paid by the applicable due date shall be overdue and Customer shall incur a fee of 1.5% per month, or the maximum amount permitted by law, until the undisputed portions of the invoice are paid in full. All MRC shall be invoiced in advance on the first day of each month. If the Service Order Term commences on a day other than the first day of the month, Customer shall be invoiced on the first day of the following month and the first invoice shall include the pro-rated amount of the prior month's MRC in addition to the current month's MRC. By way of example only, if Customer's service begins on September 20, Customer will receive its first invoice on October 1 and this invoice will include a full month's MRC for October in addition to the pro-rated ten (10) days' MRC for September. In the event 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 all reasons for disputing the remaining amount. Unless a claim is submitted in this manner and received by UPN within thirty (30) days from the date the invoice is issued, Customer waives all rights to dispute such charges unless otherwise provided by law.
4. **Points of Demarcation, Building Access, Space, and Power.**
 - (a) **Points of Demarcation.** "Point(s) of Demarcation" means the physical point where UPN's obligation to bring and terminate the Services ends. UPN shall only be responsible for implementation of facilities and maintenance activities related to the Services up to the applicable Point of Demarcation. Unless otherwise specified on a Service Order, the Point of Demarcation shall be the minimum point of entry ("MPOE"). The MPOE is the point at which UPN's cable enters the building. If Customer requests extension of the Point of Demarcation beyond the MPOE, such extension shall be memorialized within the applicable Service Order and may include additional charges.
 - (b) **Building Access, Space, and Power.** Customer agrees that it will (i) procure all necessary building entrance rights, private easements, and other property rights between the public right-of-way and the Point of Demarcation ("Access Rights") for UPN to have access and permission to enter the locations noted on the applicable Service Order, and (ii) provide UPN sufficient space ("Space") and power ("Power") on the premises to support the Services at no cost to UPN. Customer understands that any delay in receiving the Access Rights, Space, and/or Power may cause an installation delay. Customer shall be responsible for all costs incurred by UPN related to the Access Rights, Space, and Power, including but not limited to charges imposed on UPN by the property owner or its designee. In the event Customer is unwilling or unable to pay for such charges, UPN shall have the option to cancel the applicable Service Order and Customer shall be responsible for payment of Early Termination Liability pursuant to Section 12.
5. **Routing Maintenance.** UPN shall perform all routine and emergency maintenance related to the Services. UPN shall use commercially reasonable efforts to perform routine maintenance between the hours of 12:00 AM and 6:00 AM, local time, to minimize any potential disruptive impact. Notwithstanding the preceding, UPN may perform maintenance at any time for purposes such as restoration of continuity to a severed or partially-severed fiber optic cable, restoration of dysfunctional power and ancillary support equipment, or correction of any potential jeopardy conditions that could affect the Services or UPN's network.
6. **Notice of Maintenance.** UPN shall provide Customer with notice of all non-emergency planned maintenance to be performed on UPN's network no later than three (3) business days prior to performing maintenance that, in its reasonable opinion, has a substantial likelihood of affecting the Services. If UPN's planned activity is canceled or delayed, UPN shall promptly notify Customer.
7. **UPN Equipment Protection and Notice of Damage.** Customer shall not and shall not 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, interfered with, 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 on any premises where UPN Equipment is being used to provide Services to Customer. Customer shall promptly notify UPN of any matters pertaining to any damage or impending damage to or loss of the use of UPN Equipment, Services, or UPN's network that could reasonably be expected to adversely affect UPN's Equipment or Services.
8. **Internet Data Flow and Warranties.** 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 DISCLAIMS ALL WARRANTIES, EXCEPT FOR THE WARRANTY TO USE COMMERCIALY REASONABLE EFFORTS TO REMEDY IMPAIRMENT, EITHER EXPRESSED, IMPLIED, OR BY OPERATION OF LAW, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE FOR INTERNET SERVICE.
9. **Ownership and Encumbrances.** Customer acknowledges that it has no title to any fiber, facilities, equipment, or materials provided by UPN and shall not in any way encumber the Services, cable, or any property that is the subject of or related to a Service Order.
10. **Term.**
 - (a) **Terms and Conditions.** These Terms and Conditions shall apply immediately upon the full execution of a Service Order between UPN and Customer and shall continue in effect so long as there is an active and related Service Order in effect that is governed by these Terms and Conditions.



Lit Service Order

#36508

(b) Service Order Term. The term of each Service Order shall commence upon installation of all Services listed within the Service Order and continue in effect for the period set forth therein (the "Service Order Term"). If a Service Order contains multiple Services, Customer shall be invoiced for its first monthly recurring charge upon installation of the first Service. Each subsequent monthly recurring charge shall be pro-rated based on the Services that have been installed until all Services have been installed, at which time the monthly recurring charge shall be the total monthly recurring charge listed in the Service Order and this total monthly recurring charge shall continue for the entire Service Order Term listed in the Service Order. For clarity, on a multi-circuit Service Order, the Service Order Term shall commence upon the installation of all circuits.

11. Upgrades, Changes, Additions, and Porting

(a) Changes. These Terms and Conditions specifically contemplate the possibility of Customer adding to or changing Services. Customer acknowledges that changes to the Services may involve changes to MRC or NRC. Unless otherwise agreed upon, changes and additions to the Services will not impact the applicable Service Order Term.

(b) Portability. Subject to fiber availability and UPN's discretion, Customer shall have the option to port the Services to a new location and UPN shall waive any applicable early termination charges so long as:

- (i) the new, ported location is "On-Net," meaning UPN will incur no construction or related costs to provide service to the new, ported location;
- (ii) Customer and UPN enter into a replacement Service Order for a term equal to or greater than the term remaining on the Service Order being replaced;
- (iii) the replacement Service Order contains the same or greater monthly recurring charges as the Service Order being replaced; and
- (iv) Customer pays a non-recurring charge to cover any construction, splicing, or other costs related to the replacement Service Order, if applicable.

Any changes, including ported services, must be memorialized in an amendment, statement of understanding, Service Order, or other document signed by both parties.

12. Early Termination. In the event that UPN cancels or terminates a Service or Service Order for Customer Default (as "Customer Default" is defined in Section 16(a)) or Customer cancels or terminates any Service or Service Order for any reason other than UPN Default (as "UPN Default" is defined in Section 16(b)) ("Early Termination"), (i) UPN may immediately stop work without further notice; (ii) Customer shall not be entitled to a refund of any prior consideration paid; and (iii) Customer shall pay an early termination fee to UPN which shall be equal to (i) 100% of the remaining monthly recurring charges plus (ii) any waived or otherwise unpaid NRC 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 (together, the "Early Termination Liability" or "ETL"). ETL shall be due and payable in accordance with Section 3. The parties agree that ETL is a reasonable estimate of liquidated damages and not a penalty.

13. Relocation Procedures. If UPN determines or is required by a third party with applicable legal authority to relocate all or any portion of the facilities, materials, or equipment used to furnish Services to Customer, UPN shall provide Customer notice of any such relocation, if possible. UPN shall employ commercially reasonable efforts, in coordination with Customer, to accomplish the relocation. If the relocation is necessitated solely by UPN, UPN shall be responsible for the cost of such relocation. If the relocation is necessitated by a third party with legal authority, Customer shall pay its Proportionate Share of the costs. "Proportionate Share" means a fair reasonable amount determined by UPN in good faith.

14. Condemnation and Eminent Domain. In the event that a Service or any portion of a Service becomes the subject of a proceeding by any governmental agency or other party having the power of eminent domain for public purpose or use, UPN and Customer shall be entitled, to the extent permitted by law, to participate in such condemnation or eminent domain proceeding for compensation by either joint or separate awards for the economic value of their respective interests in the Services that are subject to the condemnation or eminent domain proceeding.

15. Termination for Lack of Rights. UPN may terminate any affected Service without liability to Customer if (i) UPN's applicable franchise authority is cancelled or terminated; (ii) UPN is prohibited from furnishing the Services by regulation, statute, court order, or ruling by any other federal, state or local governmental authority; or (iii) UPN's pole attachment, conduit use, or other necessary rights are terminated or become subject to such restrictions or conditions that continuation of the applicable Service is impracticable or prohibited.

16. Default and Cure

a. Customer Default. Customer shall be in default ("Customer Default") under these Terms and Conditions and/or a Service Order in the event of any of the following:

- i. Customer fails to make a payment of any undisputed amount required under a Service Order and such failure continues for more than seven (7) days after Customer receives written notice of such failure from UPN; or
- ii. Customer fails to comply with any material obligation, agreement, term, or provision of these Terms and Conditions or a Service Order not contemplated under subsection (i) above and such failure continues for more than thirty (30) days after receipt of written notice of such failure from UPN; or
- iii. Customer's use of a Service will violate any law or cause UPN to violate any law; or
- iv. Customer becomes the subject of a voluntary petition in bankruptcy or any voluntary proceeding relating to insolvency, receivership, liquidation, or composition;
- v. Customer 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 thirty (30) days of filing;
- vi. Customer's use of the Services would cause a forfeiture of the rights of UPN to occupy the property where such Services or other UPN facilities are located; or
- vii. Customer or Customer's end-user's equipment, or anyone acting on Customer's behalf, interferes with the operational integrity of the UPN's fiber, equipment, or network. In the event of such interference, UPN may immediately suspend the Service(s) and/or take any steps necessary to remedy the interference.

b. UPN Default. UPN shall be in default ("UPN Default") in the event UPN fails to comply with any material obligation, agreement, term, or provision and such failure continues for more than thirty (30) days after receipt of written notice of such failure from Customer; provided however, that if such default cannot reasonably be cured within thirty (30) days and if UPN is proceeding promptly and with due diligence in curing the default, the cure period shall be automatically extended as may be necessary.

Any event of default may be waived at the non-defaulting party's option. Upon the failure of a party to cure a default after notice thereof from the other party and expiration of the above cure periods, the non-defaulting party may, subject to these Terms and Conditions, terminate the affected Service and/or pursue any remedies it may have under applicable law or principles of equity relating to such default. Notwithstanding the foregoing, default by one party with respect to a Service shall not be deemed to be a default with respect to another Service.



Lit Service Order

#36508

17. **Indemnification.** Customer shall indemnify, defend, and hold harmless UPN, its directors, officers, employees, representatives, trustees, and affiliates from and against all costs, liabilities, losses, and expenses (including reasonable attorney's fees) resulting from any third party claim, demand, suit, action, judgment, loss, or proceeding brought against UPN for (a) personal injury, including death; (b) damage to any personal or real property; (c) any unauthorized use of UPN facilities; (d) violation of an intellectual property right arising directly or indirectly from the negligence or intentional acts or omissions of Customer or its representatives or agents; or (e) any breach of UPN's Acceptable Use Policy.
18. **Limitation of Liability.** IN NO EVENT SHALL UPN OR ANY OF ITS RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, MEMBERS, PARTNERS, TRUSTEES, REPRESENTATIVES, AGENTS, AFFILIATES, OR PARENT COMPANIES 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.
19. **Taxes and Governmental Fees.** In the event UPN is assessed taxes, charges, or fees (hereinafter "Taxes") related to a Service being provided to Customer, UPN shall bill such Taxes to Customer in the manner and for the amount permitted by law. Taxes include 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 clarity, Taxes shall not include taxes on UPN's income.
20. **Notice.** All notices and communications concerning or relating to Services shall be in writing and addressed to the other party using the information listed below. If Customer's notice address information is not listed below, the notice address shall be any address listed in a Service Order. 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 electronic mail, or mailed by registered or certified mail, return receipt requested, postage prepaid, in each case to the address of the receiving party 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 electronic confirmation, the day after deposit with a nationally recognized overnight courier, or five (5) days after it was mailed.
 - a. If to Unite Private Networks:

1511 Baltimore Ave., Floor 2
Kansas City, MO 64108
Attn: Legal Department
legaldept@upnfiber.com
 - b. If to Customer:
21. **Splicing.** In order to maintain the integrity of UPN's cable and network, UPN or a contractor operating under UPN's direction shall perform all splicing related the Services. Any splicing not anticipated or accounted for at the time an applicable Service Order is executed ("Additional Splicing") shall be performed by UPN and Customer shall be responsible for the actual cost of splicing which shall include, but not be limited to, all necessary hardware, permitting, engineering, and installation labor. If Customer desires future expansion at splice points other than at the Points of Demarcation listed in a Service Order, then Customer must request such future expansion from UPN. UPN will grant requests in its sole discretion.
22. **Force Majeure.** UPN shall not be in default with respect to any failure or delay in performing its obligations hereunder to the extent that such failure or delay is caused by acts of nature, God, wars, revolution, civil commotion, acts of public enemy, embargo, acts of government in its sovereign capacity, labor difficulties, strikes, slowdowns, picketing or boycotts, damage to fiber or facilities caused by a third party, 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 or any other circumstances beyond the reasonable control and not involving any fault or negligence of the delayed party (each, a "Force Majeure Event"). If a Force Majeure Event occurs, UPN shall be excused from performance under the applicable Service Order on a day-to-day basis during the continuance of such Force Majeure Event.
23. **Assignment.** Customer may not assign or otherwise transfer a Service, Service Order, or its rights or obligations without the prior written consent of UPN. Any attempted assignment in contravention of this provision shall be null and void. UPN may at any time, without consent but on written notice to the other party, assign its rights and obligations under a Service Order and these Terms and Conditions to (i) any Affiliate (as "Affiliate" is hereinafter defined), or (ii) a person, firm, corporation, partnership, association, trust or other entity which purchases all or substantially all of its assets whether via merger, sale, stock purchase, or other similar equity arrangement. Any assignment shall be binding upon and inure to the benefit of the parties and their respective permitted successors and assigns. UPN shall have the right at any time, without the prior consent of Customer, to mortgage, pledge, or grant a security interest in Service Orders or any of UPN's system in connection with any borrowing or financing activity of UPN. "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 direct or indirect ownership or control of more than fifty percent (50%) of the voting interests of the subject entity.
24. **Warranties Relating to Validity.** In addition to any other representations and warranties contained herein, Customer represents and warrants to the other that (a) it has the full right and authority, and has taken all necessary corporate or similar action, to enter into, execute, deliver, and perform its obligations and (b) its execution of and performance shall not violate any applicable existing regulations, rules, statutes, or court orders of any local, state, or federal government agency, court, or body
25. **Confidentiality.**
 - a. **Confidential Information.** For the purposes hereof, "Confidential Information" shall include any and all information that UPN holds as confidential or proprietary, including, without limitation, (i) 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) all business information of or relating to UPN, 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, equipment designs, clients, personnel, know-how, data and material used or licensed by UPN, including computer software, programming, research, financial information and analyses and the like, and documentation relating thereto; (iii) UPN employee or customer information; (iv) UPN's confidential information disclosed to the other by third parties; (v) rates, terms, or other information relating to Services, and (vi) any information which a reasonable person would deem to be confidential. Customer shall not disclose any of the UPN's Confidential Information to any third party or use any of UPN's Confidential Information for any purpose other than in connection with the receipt of services hereunder. Customer will not use UPN's name or the name(s) of any UPN product(s) or service(s) publicly without UPN's prior written consent. UPN's Confidential Information shall remain its property and shall be either returned to UPN or destroyed promptly upon the termination of a Service Order or applicable Service. If Confidential Information is destroyed, Customer must certify to the destruction. Customer shall not appropriate Confidential Information for its benefit or the benefit of any third party.



Lit Service Order

#36508

- b. **Obligation to Disclose.** Customer will promptly notify UPN if Customer receives a demand from a third party for Confidential Information and Customer shall not disclose the same to such third party without the prior written consent of UPN, except as required by law. If Customer believes that it is legally required to disclose any of the Discloser's Confidential Information, Customer will not disclose such Confidential Information until Customer has notified UPN and UPN shall be entitled to seek a protective order or other appropriate remedy. In the event that Customer is required by law to disclose any Confidential Information, Customer will furnish only the 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 herein.

26. **Miscellaneous.**

- a. **Negotiated Agreement.** These Terms and Conditions and any related Service Order have been fully negotiated between and jointly drafted by UPN and Customer.
- b. **Document Precedence.** In the event of a conflict between the provisions of these Terms and Conditions and an applicable Service Order, the provisions of the applicable Service Order shall prevail.
- c. **Limited Effect of Waiver.** Any waiver or failure to enforce a provision of these Terms and Conditions or any Service Order shall not be construed as a general waiver or relinquishment of the provision.
- d. **Governing Law.** All terms shall be construed in accordance with the laws of the state of Missouri, without reference to its conflict of law provision. The obligations, rights, and remedies of the parties hereunder shall be determined in accordance with such laws.
- e. **Exclusive Jurisdiction.** Any suit, action, or proceeding seeking to enforce any provision or based on any matter arising out of or in connection with these Terms and Conditions must be brought in the Jackson County Circuit Court in Jackson County, Missouri. Each of the parties hereby consents to the exclusive jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such suit, action, or proceeding and irrevocably waives any objection which it may now or hereafter have. Without limiting the foregoing, each party agrees that service of process in accordance with Section 20 shall be deemed effective service of process on such party.
- f. **Severability.** If any term or provision is determined to be invalid or unenforceable by a court or body of competent jurisdiction, both parties shall be relieved of all obligations arising under such provision and the applicable term or provision shall be deemed amended by modifying such provision to the extent necessary to make it valid and enforceable while preserving its intent.
- g. **Integration.** This document constitutes the entire and final agreement and understanding between UPN and Customer with respect to the subject matter hereof and may be supplemented with additional provisions as listed or described within a Service Order.
- h. **Amendment.** These Terms and Conditions and any Service Order may only be amended, modified, or supplemented by an instrument in writing executed by duly authorized representatives of UPN and Customer.
- i. **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 UPN Acceptable Use Policy, which is available at www.uniteprivatenetworks.com/acceptable-use-policy/.