BOARD OF COUNTY COMMISSIONERS
SARPY COUNTY, NEBRASKA

RESOLUTION WAIVING REQUIREMENTS OF THE COUNTY PURCHASING ACT FOR SPECIAL PURCHASE OF DARK FIBER SERVICES

WHEREAS, pursuant to Neb. Rev. Stat. § 23-104 (Reissue 2012), the County has the power to do all acts in relation to the concerns of the County necessary to the exercise of its corporate powers; and,

WHEREAS, pursuant to Neb. Rev. Stat. § 23-103 (Reissue 2012), the powers of the County as a body are exercised by the County Board; and,

WHEREAS, pursuant to Neb. Rev. Stat. § 23-3109(3) (Reissue 2012), the County can waive bidding requirements of the County Purchasing Act; and

WHEREAS, the Board has approved the special purchase procedure pursuant to Neb. Rev. Stat. § 23-3109(3) (Reissue 2012), see Resolution number 2013-113; and

WHEREAS, the Papillion-LaVista School District has funded a project with Unite Private Networks (Unite) to link the schools in the district with fiber optic cable (dark fiber) with a substantial portion of the work being done along the 84th Street Corridor; and

WHEREAS, the County has an Agreement with the Cities of LaVista and Papillion to provide connectivity to the each respective City Hall as well as the County Juvenile Justice Center all of which are currently serviced by a wireless system which is not as reliable or capable as fiber optic cable; and

WHEREAS, since Unite is constructing the School District project in proximity to County owned and County serviced facilities, they have offered lower pricing to the County to install fiber optic cable to the aforementioned facilities; and

WHEREAS, taking advantage of this unique opportunity would result is substantial savings over the purchase of a separate private network project to get the same services.

WHEREAS, pursuant to Neb. Rev. Stat. § 23-3109(3) (Reissue 2012) the County published notice on April 24, 2013 of its intention to make such a special purchase, stating the items considered and inviting informal quotes; and

WHEREAS, having considered the special purchase offer and any informal quotes received, the Board wishes to proceed with the special purchase of the offer for service as detailed by Unite in the attached Service Order.

NOW, THEREFORE, BE IT RESOLVED BY THE SARPY COUNTY BOARD OF COMMISSIONERS, that the County Board waives the bidding requirements of the County Purchasing Act; and

BE IT FURTHER RESOLVED that based upon the recommendation by the Purchasing Department and Information Systems and upon the comparison of costs with like services privately acquired, a special purchase for the dark fiber services as detailed in the attached offer for service by Unite Private Networks is hereby authorized and accepted; and

BE IT FURTHER RESOLVED that the Chairman of this Board, together with the County Clerk, is hereby authorized to sign the service agreement with Unite Private Networks, on behalf of this Board a copy of which is attached, and any other related documents, the same being approved by the Board.

The above Resolution was approved by a vote of the Sarpy County Board of Commissioners at a public meeting duly held in accordance with applicable law on the 30th day of April 2013.

DEBRA J. HOUGHTALING, COUNTY CLERK SEAL SARPY COUNTY, NEBRASKA

Attest
SEAL

Sarpy County Board Chairman

County Clerk

Service Order

Dark Services- (SF 13-4677)

Contact Information	
Unite Private Networks ("UPN")	**Sarpy County ("Customer")**
COMPANY CONTACT: **Matthew Simmons**	**COMPANY CONTACT:** Beth Garber
PHONE: 402-326-5039	**PHONE:** (402) 593-4476
EMAIL: matthew.simmons@upnllc.com	**EMAIL: bcunard@sarpy.com**
PAYMENT ADDRESS: Unite Private Networks 950 W. 92 Highway, Suite 203 Kearney, MO 64060	**BILLING ADDRESS:** 1210 Golden Gate Drive Papillion, NE 68046

Billing Information And Service Commitment Period	
Order Type:	New
UPN Service Order ID:	SF 4677
Customer ID:	SF 4677
Service Type/s:	Dark Fiber
Service Term Length (beginning on date of installation):	120 Months
Service Order Monthly Recurring Charge:	$2250.00
Service Order Non-Recurring Charge:	$2700.00
Service Other Charges:	

Locations	Z Location	
See Exhibit A for locations and Dark Fiber Network Route Map	**Site Name: Sarpy Court House** **Address:** 1210 Golden Gate Dr, Papillion NE **Site Contact::** Mark Walters **Bldg Mgr Contact:** Same **Point of Demarcation:** To be Determined **Demarc Medium (optical or copper):** optical **Optical Type: (single or multi)** **Connector Type: Multi** **NOTES: All Demarc will be inside Sarpy's locations**	**Market:** **Phone:** 402-659-0583 **Phone:**

Qty	Service	Term	Monthly Recurring Charge	Non-Recurring Charge
3	Dark Fiber Circuits	120 Month	$2250.00	$2700.00* *Once Papillion & Lavista sign agreements the non-recurring fee will be reduced by $100 per site. Which would be from $750 a month to $650 a month.
		Total =	**$2250.00**	

Comments:

Installation Date: Anticipated installation date shall occur approximately one hundred and twenty (120) days after the full exectution of this Service Order and the acquisition of all necessary permits, licenses, pole attachment agreements, needed sold fiber installations and rights of way to complete the project.

Service Order

Dark Services- (SF 13-4677)

Unite Private Networks, LLC	Customer Sarpy County
Signature: Matthew Van Hoesen	Signature: Jim Warren
Print Name: Matthew Van Hoesen	Print Name: Jim Warren
Title: CFO & General Counsel	Title: Chairman, Sarpy County Board
Date: 05/06/2013	Date: 4/30/2013

Service Order

Dark Services- (SF 13-4677)

UPN Fiber Route Map

Location Z: 1210 Golden Gate Dr, Papillion NE
Location A: 9701 Portal Rd, Papillion NE
Location B: 8116 Park View Blvd, La Vista NE
Location C: 122 E 3rd, Papillion NE

Dark Fiber Service: UPN will install one (1) pair of SMF fibers on the below listed routes. UPN will install fiber and FDP to customer's required location on the above listed locations. The FDP will be marked with circuit ID to each location and tested end to end. All tests will be provided to Sarpy County to verify quality of dark fiber circuit.

Dark Fiber Circuit:

1) **Location Z to Location A - 15,500 feet of SMF fiber as shown on the Green route on the above route map.**
2) **Location Z to Location B - 20,500 feet of SMF fiber as shown on the Blue route on the above route map.**
3) **Location Z to Location C – 9000 feet of SMF fiber as shown on the Red route on the above route map.**

Service Order

Dark Services- (SF 13-4677)

Additional Terms and Conditions Applying to Services

1. Conveyance. Subject to these Additional Terms and Conditions Applying to Services ("Agreement") of this dark fiber service order and future dark fiber service orders, and commencing upon the date of Acceptance for the dark fiber service order, UPN hereby grants and conveys to Customer a dark fiber lease (the "Customer Lease") to use the specific strands of fibers ("Customer Fibers") designated by UPN, pursuant to said dark fiber service order. From time to time, additional optical fibers on UPN's Network may be granted from UPN to Customer by executing additional dark fiber service orders in the manner set forth in Section 3 below.

2. Rights Not Granted. Customer agrees to accept said Customer Lease and the rights and obligations pursuant thereto as set forth in this Agreement. Such Dark Fiber Lease grant does not convey or grant any legal title to any real or personal property, including the fibers, the cable, or the system. The Customer Lease does not include any equipment used to transmit capacity over or "light" the fibers. Customer's use of Customer Fibers shall be limited to Customer. Customer may not assign, lease, or allow any other party the right to use the fibers, the cable, or system without UPN's express consent. Any other use by Customer shall be grounds for termination by UPN.

3. Dark Fiber Service Orders. From time to time additional Customer Fibers may be incorporated herein by execution of subsequent dark fiber service orders by UPN and Customer. Each dark fiber service order shall identify the route and specify the number of fibers in which Customer is granted a Dark Fiber Lease. Each dark fiber service order shall incorporate the terms and conditions of this Agreement. Notwithstanding anything to the contrary contained herein, UPN shall not be obligated to accept or execute any order forms submitted by Customer or any customer affiliate.

4. Contract Price. The price for the Customer Fibers shall be set forth in the Service Order for said fibers (the "Contract Price").

5. Method of Payment. Subject to the provisions of Section 19 ("Disputed Amounts"), Customer shall make payment of undisputed charges pursuant to Section 4 ("Contract Price") above by check or by wire transfer of immediately available funds to the account designated by UPN. Customer shall make payment of all other undisputed charges that may become due under this Agreement by check or by wire transfer of immediately available funds to the account designated by UPN in accordance with Section 6 below, unless otherwise agreed to by the parties.

6. Time of Payment. UPN will invoice Customer for all charges due under this Agreement as noted in the applicable dark fiber service order. Except as provided in Section 4 ("Contract Price") and subject to Section 19 ("Disputed Amounts"), all undisputed amounts shall be paid within thirty (30) calendar days following receipt of the invoice, as determined by Section 24 ("Notice and Delivery").

7. Routine Maintenance. During the term of a dark fiber service order, UPN shall perform all routine and emergency maintenance. UPN shall avoid performing routine maintenance between 0600-2200 local time, Monday through Friday, inclusive, that will have a disruptive impact on the continuity or performance level of the Customer Fibers. However, the preceding sentence does not apply to 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.

8. Notice. UPN shall provide Customer with telephone, facsimile, or written notice of all non-emergency planned network maintenance (a) no later than three (3) business days prior to performing maintenance that, in its reasonable opinion, has a substantial likelihood of affecting Customer's traffic. If UPN's planned activity is canceled or delayed, UPN shall promptly notify Customer and shall comply with the provisions of the previous sentence to reschedule any delayed activity.

9. Notice of Damage. Customer shall promptly notify UPN of any matters pertaining to any damage or impending damage to or loss of the use of the System that are known to it and that could reasonably be expected to affect the System adversely. UPN shall promptly notify Customer of any matters pertaining to any damage or impending damage to or loss of the Customer Fibers that are known to it and that could reasonably be expected to adversely affect the Customer Fibers.

10. Preventing Interference with Other Fibers. Neither Customer nor UPN shall use equipment, technologies, or methods of operation that interfere in any way with or adversely affect the System or the use of the System by the other party or third parties or their respective fibers, equipment, or facilities associated therewith. Each party shall take all reasonable precautions to prevent damage to the System or to fibers used or owned by the other party or third parties.

11. Liens. UPN shall not cause or permit any of Customer's rights under this Agreement to become subject to any mechanic's, materialmen's, vendor's or any similar lien, or to any tax lien. Customer acknowledges that it has no title to and cannot and shall not in any way encumber the cable or any other property that is the subject of this Agreement that is not owned by Customer.

12. Notice to Attach Electronics. Subject to UPN's consent, which consent shall not be unreasonably withheld, Customer may attach electronics to Customer Fibers. Customer shall provide UPN no less than ten (10) days' written notice of its intent to attach electronics. Customer will notify UPN of the type of electronics, detailing optical wave and bandwidth associated with such electronics. The ability for electronics to interfere with other fibers shall be grounds for withholding consent.

13. Term. The term of this Agreement shall commence on the date of installation and shall continue in effect for the term delineated in the dark fiber service order ("Initial Term"). Thereafter, the dark fiber service order shall be automatically renewed for successive one (1) year periods (each such period, an "Additional Term" and, together with the Initial Term, the "Term") unless and until terminated pursuant to Section 18 hereof or by either party upon ninety (90) days' written notice to the other party. Notwithstanding the foregoing, the term of the Dark Fiber Lease of a dark fiber service order shall begin on the Acceptance Date for such dark fiber service order and shall, subject to earlier termination pursuant to Section 18 ("Default and Cure"), expire at the end of the time period set forth in the applicable dark fiber service order as the initial term (the "Dark Fiber Lease Initial Term").

14. Effect of Termination. No termination of this Agreement shall affect the rights or obligations of any party hereto:

(a) with respect to any payment hereunder for services rendered or remaining in the contract;

(b) pursuant to the respective obligations of the parties under this Agreement that by their nature would continue beyond the termination, including but not limited to obligations under Section 20 ("Indemnification"), Section 21 ("Limitation of Liability"), Section 22 ("Taxes and Governmental Fees"), Sections 37 to 39 ("Confidentiality"), and Sections 26 to 31 ("Rules of Construction"); or

(c) pursuant to other provisions of this Agreement that, by their sense and context, are intended to survive termination of this Agreement.

15. Relocation Procedures. If UPN determines in its reasonable business judgment, or is required by a third party with legal authority to do so, to relocate all or any portion of the System or any of the facilities used in the provision of the Customer Lease, UPN shall provide Customer sixty (60) calendar days' prior written notice of any such relocation, if possible, and shall proceed with such relocation. UPN shall utilize commercially reasonable efforts, in coordination and cooperation with Customer, to accomplish the relocation.

16. Condemnation and Eminent Domain. In the event that any portion of the Customer Fibers of a dark fiber service order becomes the subject of a proceeding by any governmental agency or other party having the power of eminent domain for public purpose or use, both parties to such dark fiber service order 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 Customer Fibers of such dark fiber service order that are subject to the condemnation or eminent domain proceeding.

17. Warranties Relating to Agreement Validity. In addition to any other representations and warranties contained in this Agreement, UPN and Customer each represents and warrants to the other party 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 under this Agreement and its dark fiber service order(s); and (b) its execution of and performance under this Agreement and its dark fiber service order(s) shall not violate any applicable existing regulations, rules, statutes, or court orders of any local, state, or federal government agency, court, or body; and

18. Default and Cure. Except as set forth in Section 19 ("Disputed Amounts"), a party shall be in default under this Agreement if (i) that party fails to make a payment of any undisputed amount required under this Agreement and such failure continues for more than fifteen (15) days after such party receives written notice of such failure from the non-defaulting party; or (ii) such party fails to perform or comply with any other obligation, agreement, term, or provision of this Agreement applicable to it and such failure continues for more than thirty (30) days after such party receives written notice of such failure from the non-defaulting party; provided, however, that if such default cannot reasonably be cured within such thirty-day (30) period and if the first party is proceeding promptly and with due diligence in curing the same, the time for curing such default shall be extended for a period of time, not to exceed ninety (90) days, as may be necessary to complete such curing. Any event of default may be waived at the non-defaulting party's option. Upon the failure of a party to cure any such default after notice thereof from the other party and expiration of the above cure periods, then the non-defaulting party may, subject to the terms of this Agreement, terminate the Agreement and/or pursue any legal remedies it may have under applicable law or principles of equity relating to such breach. Notwithstanding the foregoing, default by one party with respect to a dark fiber service order shall not be deemed to be a default as to any other dark fiber service order.

19. Disputed Amounts. Notwithstanding any provision to the contrary in Section 18, either party shall have the right to dispute any amount due under this Agreement, provided that (i) the disputing party provides written notice of such dispute to the other party by the date that any such amount is due; (ii) the disputing party presents a written statement of any billing discrepancies to the other party in reasonable detail together with supporting documentation and evidence within fifteen (15) days after the date that any such amount is due; and (iii) the disputing party negotiates in good faith with the other party to resolve any such dispute within sixty (60) calendar days of the date any such amount is due. Customer shall pay disputed amounts mutually agreed upon and in favor of UPN within thirty (30) days of the resolution of such dispute. UPN shall credit disputed amounts mutually agreed upon and in favor of Customer on Customer's next invoice.

20. Indemnification. Each Party (the "Indemnifying Party") shall defend, indemnify and hold harmless the other Party, its parents, subsidiaries and affiliates, and its and their respective directors, officers, partners, employees, agents, successors and assigns ("Indemnified Parties") from any claims, demands, lawsuits, damages, liabilities, expenses (including, but not limited to, reasonable fees and disbursements of counsel and court costs), judgments, settlements and penalties of every kind ("Claims"), that may be made: by anyone for injuries (including death) to persons or damage to property, including theft, resulting in whole or in part from the negligence or intentional wrongdoing of the Indemnifying Party or those persons furnished by Indemnifying Party, including its subcontractors (if any).

21. Limitation of Liability. EXCEPT AS EXPRESSLY AND SPECIFICALLY PROVIDED IN SECTION 20 (INDEMNIFICATION), OR SECTIONS 37 to 39 WITH RESPECT TO AN INTENTIONAL OR GROSSLY NEGLIGENT DISCLOSURE OF CONFIDENTIAL INFORMATION, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY, ITS EMPLOYEES, SUBCONTRACTORS, AND/OR AGENTS, OR ANY THIRD PARTY, FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE DAMAGES, OR LOST PROFITS FOR ANY CLAIM OR DEMAND OF ANY NATURE OR KIND, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE PERFORMANCE OR BREACH THEREOF.

22. Taxes and Governmental Fees. If UPN is required by law to collect any federal, state or local sales, gross receipt, franchise, excise or other similar transfer tax from Customer with respect to an amount to be paid by Customer to UPN under this Agreement, then UPN shall bill such tax to Customer in the manner and for the amount required by law. UPN shall not bill to or otherwise attempt to collect from Customer any tax with respect to which Customer has provided UPN with an exemption certificate.

23. Notice Addresses. All notices and communications concerning this Agreement shall be in writing and addressed to the other party according to the contact information listed in the applicable dark fiber service order.

24. Notice and Delivery. Unless otherwise provided herein, notices shall be hand delivered, sent by registered or certified U.S. Mail, postage prepaid, or by commercial overnight delivery service, or transmitted by facsimile, and shall be deemed served or delivered to the addressee or its office when received at the address for notice specified above when hand delivered, upon confirmation of sending when sent by facsimile, or on the day after being sent when sent by overnight delivery service. A notice that is sent by facsimile shall also be sent by one of the other means set out by this Section 24.

25. Force Majeure. Neither party shall be in default under this Agreement or a dark fiber service order with respect to any failure or delay in performing its obligations hereunder to the extent that such failure or delay is caused by reason of acts of God, wars, revolution, civil commotion, acts of public enemy, embargo, acts of government in its sovereign capacity, labor difficulties, strikes, slowdowns, picketing or boycotts, 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 any such Force Majeure Event occurs, the party delayed or unable to perform ("Delayed Party"), upon giving prompt notice to the other party, shall be excused from such performance or non-performance, as the case may be, under the Agreement or the impacted dark fiber service order on a day-to-day basis during the continuance of such Force Majeure Event (and the other party shall likewise be excused from performance of its obligations on a day-to-day basis during the same period); provided, however, that the party so affected shall use its best reasonable efforts to avoid or remove such Force Majeure Event, and both parties shall proceed immediately with the performance of their obligations under this Agreement or the impacted dark fiber service order whenever such causes are removed or cease.

26. Agreement Fully Negotiated. This Agreement has been fully negotiated between and jointly drafted by UPN and Customer.

27. Document Precedence. In the event of a conflict between the provisions of this Agreement and those of any dark fiber service order, the provisions of the dark fiber service order, shall prevail and the Agreement shall be corrected accordingly.

28. Industry Standards. Except as otherwise set forth herein, for the purpose of this Agreement, construction, testing, acceptance, and maintenance practices shall be consistent with industry standards and as provided in this Agreement or the dark fiber service order.

29. Limited Effect of Waiver. The failure of either UPN or Customer to enforce any of the provisions of this Agreement, or the waiver thereof in any instance, shall not be construed as a general waiver or relinquishment on its part of any such provision, but the same shall nevertheless be and remain in full force and effect.

30. Applicable Law. The domestic laws of the State of Nebraska, without reference to its choice of law principles, shall govern this Agreement and all dark fiber service orders.

31. Severability. If any term or provision of this Agreement shall, to any extent, be determined to be invalid or unenforceable by a court or body of competent jurisdiction, then (i) both parties shall be relieved of all obligations arising under such provision and this Agreement shall be deemed amended by modifying such provision to the extent necessary to make it valid and enforceable while preserving its intent, and (ii) the remainder of this Agreement shall be valid and enforceable.

32. Right to Assign. Neither party shall assign any right or interest under this Agreement without the prior written consent of the other party, except as provided hereinafter. Such consent may not be unreasonably withheld, conditioned or delayed. Any attempted assignment in contravention of this provision shall be void and ineffective. This Agreement shall be binding upon and inure to the benefit of the parties and their respective permitted successors and assigns. The foregoing notwithstanding, UPN shall have the right at any time, without the prior consent of Customer, to mortgage, pledge, grant a security interest in its interest in this Agreement and/or any of UPN's System in connection with any borrowing or financing activity of UPN. Notwithstanding the prohibitions set forth above, either party may, with prior written consent, which shall not be reasonably withheld, from the other party, assign this Agreement or any of its dark fiber service orders to an affiliate or to an entity acquiring substantially all of the party's assets, provided, however, that in such event UPN will make commercially reasonable efforts to ensure that Customer's rights under this Agreement and the dark fiber Service orders to use the Customer Fibers will not be materially impeded.

33. Integration; Exhibits. This Agreement constitutes the entire and final agreement and understanding between UPN and Customer with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect.

34. Amendment. This Agreement may only be amended, modified, or supplemented by an instrument in writing executed by duly authorized representatives of UPN and Customer, and any such amendment shall be effective with respect to all dark fiber service orders, unless otherwise provided by such amendment. No such amendment, modification, or supplement shall result in any modification of any indemnity benefiting any facility owners, lenders or their respective affiliates.

35. Counterparts. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument.

36. Facsimile Delivery. This Agreement may be duly executed and delivered by a party by execution and facsimile delivery of the signature page of a counterpart to the other party, provided that, if delivery is made by facsimile, the executing party shall promptly deliver a complete counterpart that it has executed to the other party.

37. 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.

38. 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.

39. 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.