



The Development of an Island Wide Conduit System

Solicitation for Expression of Interest and Request for Information

Addendum

Publication Date: October 7, 2024

Deadline for Submissions: November 15, 2024

Addendum Date: October 23, 2024



Addendum

The Request for Information (RFI) submission date is extended to
November 15, 2024.

The Expression of Interest (EOI) submission date is October 25, 2024,
and is unchanged from the original publication of the EOI on October
15, 2024.



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Solicitation for Expression of Interest (EOI) and Request for Information

Project Name: The Development of an Island Wide Conduit System

Issuing Organization: Puerto Rico Broadband Program

Office Date Issued: October 15, 2024

Response Due Date: [October 25, 2024](#)

Introduction

The Puerto Rico Office of Management and Budget (“OMB”), through its Puerto Rico Broadband Program (“PRBP”), collectively further known as “Government Entities,” is requesting Expressions of Interest from potential conduit tenants and is requesting information on existing broadband infrastructure, access locations, and the capacity of facilities owned by carrier or network neutral companies, which provide broadband infrastructure conduits but do not operate network services.

The PRBP was created in 2022 within the OMB to ensure all Puerto Ricans have access to fast and reliable internet service using both local and federal funds. The Government Entity, via its Executive Committee, coordinates, authorizes, and executes the disbursement of Puerto Rico’s broadband funding, working with ISPs and other key stakeholders. The Government Entity was awarded \$334.6 million in federal Broadband, Equity, Access, and Deployment (BEAD) funding for Puerto Rico through the Infrastructure Investment and Jobs Act (IIJA). Using part of these funds, the Government Entity will construct a neutral access, island wide, underground conduit network.

This conduit network will allow multiple carriers, including ISPs, institutional users, and utilities, to collaborate with equal access. Using a “dig-once design,” additional capacity will be built into the conduit network to enable future expansion across the island. From planning through execution, the network will prioritize collaboration between entities to expand access to new routes and end users.

Objectives

To support the efficient use of BEAD funding for the conduit network, the Government Entity is soliciting interest from firms and broadband stakeholders in the use of the constructed infrastructure.

The Government Entity has identified some priority areas and colocation centers but welcomes input for route selection at this time, as the identification of routes



will dictate future planning. Prospective users will have the opportunity to utilize the network and are welcome to request routes and access points that support last-mile, middle-mile, and backhaul services throughout Puerto Rico. The Government Entity is committed to designing a network that can support a large number of tenants and be transformative. The design will be shaped by coordination and input from prospective users to ensure it meets the need.

The Government Entity prefers to interconnect with existing facilities that offer open access interconnection and collocation on reasonable terms rather than building new facilities along those same routes. Identifying these existing facilities will allow the Government Entity to enhance any existing infrastructure and integrate those facilities in the full conduit network. The Government Entity is particularly interested in infrastructure that could reduce or eliminate the need for new construction.

The Government Entity seeks industry expertise to help form the project's scope and identify strategic approaches to achieve its goals. Additionally, the Government Entity is interested in hearing from entities that own or sell dark fiber and spare conduit and are open to making this infrastructure available through swaps, trades, sales, or long-term leases.

Deduplication of Existing Routes

To prevent duplication of existing open access networks and ensure the planned conduit network extends broadband services only to areas where existing networks fall short of addressing the resiliency and hardening objectives of the program, coordination with existing broadband providers is required.

To meet this objective, we are requesting that existing broadband providers share information about the locations of their fiber optic networks, conduit networks, and the like. We understand that providers may be reluctant to provide such information to government entities, so we have arranged for our consultant, Witt O'Brien's (WOB), to collect and anonymize the information before providing it to the Government Entity. WOB will enter into non-disclosure agreements (NDAs) with each provider that supplies network information. This data will help minimize overbuilding and ensure the cooperative nature of the network is maintained.

Submission Format

Responses to this EOI request must be submitted through the secure OMB Broadband Portal by October 25, 2024.

In a document of your creation, please provide the following information with your response:

1. General Company Background



- Legal Organizational Name
- Incorporation Type
- Incorporation Location
- Entity Type (Telecommunications Provider/Internet Service Provider, Non-Profit Organization, Public or Private Utility/Public Utilities District, Public-Private Partnership, Tribal Government Entity, Cooperative, etc.)
- Principal place of business
- Names of principals and partners owning more than 10% of the company
- Company website URL
- Contact information:
 - Point of Contact
 - Phone number(s)
 - Email address)
 - Address (organizational, if responding on behalf of an entity)

2. Organization and Experience

- Brief description of your company
- Professional qualifications and experience of staff and executives at your firm.
- Years in existence
- Any qualifications that would make your firm uniquely qualified to handle this type of work
- Past Involvement with similar projects

3. Type of entity (choose one of the following):

- Municipality/Council of Government
- Government agency
- Neutral carrier or network neutral company
- Broadband service provider
- Economic development organization
- Local business
- Community-based or nonprofit organization
- Coalition/association
- Other (please describe)



4. Questionnaire Responses (See below)
5. Preference of conduit route
 - Where available and relevant, please provide geographically referenced network files (KMZ, Shapefile, GeoJSON, Geodatabase) and a narrative description of conduit network preferences or suggestions.

The Government Entity may schedule follow-up interviews on the topics introduced here or make supplemental information requests, as needed.

Request for Information:

Responses to the Request for Network Information request must be submitted directly to WOB via a secure SharePoint site by **November 15, 2024**, which was previously November 1, 2024.

1. Network Information: If you own and operate a network, please provide routing information the Government Entity can use to overlay the proposed route.
 - a. What is the extent of your current network, and do you have any plans for expansion or overbuilding other providers?
 - b. Indicate the areas within your network where you would consider burying your infrastructure.
 - c. Identify the municipalities covered by your current infrastructure.
 - d. Describe the assets and capabilities you have, including but not limited to fiber, conduits, towers, poles, and other physical infrastructure that would be useful in the open access conduit system.

Where available and relevant, please provide geographically referenced network files (KMZ, Shapefile, GeoJSON, Geodatabase) with any narrative descriptions of existing facilities or conduit network preferences.

Providers who claim that they offer open access at reasonable rates to their facilities as a rationale for rerouting or otherwise revising the conduit network design will be required to provide documentation supporting the claim to the Government Entity during the design phase of the conduit project.

To participate in the RFI, please email Joyce Hager at jhager@wittobriens.com with the subject line "Puerto Rico Conduit Network RFI Participation" and provide the name of your company and the name, title, and email address of the NDA signatory. Witt O'Brien's will provide a copy of the NDA ready for signature with instructions on how to access the secure portal for information upload.



Questions on this expression of interest and request for information can be directed to info@smartisland.pr.gov.

Expression of Interest Questionnaire

The Government Entity is requesting responses to all questions that are applicable to the respondent's expertise. Respondents are not required to answer every question, but the Government Entity encourages respondents to carefully evaluate each question and submit answers to the best of their knowledge.

While each respondent is welcome to answer any of the questions presented, the Government Entity has identified the most relevant questions for each specific entity. Each question is designated for response from a specific entity by the following key:

Owners of Existing Facilities: (O)

Potential Tenants: (T)

Potential Conduit Developer: (D)

The Government Entity has also highlighted questions of particular interest in bold below.

Lease Terms:

The Government Entity will promote the use of the conduit by multiple users and ensure the network remains open access, and affordable, it will also provide model lease terms for the conduit network's competitive bidding process. Priorities for conduit lease terms include:

- Guaranteeing equal participation opportunities;
- Promoting widespread, affordable access; and
- Ensuring competitive term lengths and rates.

Questions for Respondents:

- 1. Please describe any current lease agreement terms for shared conduit network use. (O), (T), (D)**
- 2. Please describe any existing dark fiber lease agreements and the terms of the agreement. (O), (T)**



- 3. Describe what the preferred leasing structure should be for leasing the network conduit, including monthly recurring charges and long- term IRU. (T)**
4. What should be the max IRU lease term (5 years, 10 years, 20 years, or longer)? (T), (D)
- 5. Do you participate in swaps and trades for benefits with other providers and broadband stakeholders? (O)**
6. Do you offer any varied lease rates for special crossings, building entrances, or specific areas on the island? (O)
7. Do you have different lease rates on different-sized conduits or inner ducts? (O)
8. Do you charge permitting fees for tenant-requested work? (O)
9. Do you charge any manhole/handhole inspection fees? (O)
10. Do you charge for any specific equipment or slack loops in the handholes? (O)
- 11. Do you have any specific requirements for a tenant to lease dark fiber or conduit (e.g., tax compliance, insurance, licenses, etc.)? If so, please define. (O)**
12. Do you provide subsidized rates to tenants if they participate in a specific trade organization or alliance? (O)
- 13. Do you have pricing lists per kW/Rack, electricity rates, remote hands support services, cross connects, housing racks, providing racks or power strips, and electrical and mechanical services at colocation facilities? If so, please provide details. (O)**
14. What policies should be implemented to ensure adequate revenue for network operations? (D)
15. Please describe other ways a provider could monetize this system. (D)



Route Planning

The Government Entity will be developing a high-level design and cost estimate for the underground open access conduit network that prioritizes the creation of resilient routes.

Priorities for the complete conduit route include:

- Establishing hardened pathways into communities;
- Leveraging existing infrastructure; and
- Facilitating interconnection and high broadband capacity throughout Puerto Rico.

Route selection will be informed by responses to this request and previous BEAD planning data collection. Please provide detailed responses to the following questions as available.

Questions for Respondents:

1. **Are there any areas on the island that currently lack middle mile or backhaul infrastructure, in which you would be interested in using lit services, dark fiber, or open conduit, if it were available? (T)**
2. **What existing colocation facilities, points of presence (POPs), or data hubs should be incorporated into the conduit network? (O), (T)**
3. **Are there any critical facilities that should be connected to the conduit network? (O), (T)**
4. Do you know of any existing tower or public safety infrastructure that needs hardened wireline connectivity? (O), (T)
5. **Are there any existing infrastructure, including electrical conduits, water mains, or gas lines, that could be utilized for the conduit network? If so, how easily accessible and available is this infrastructure? (O)**
6. Please share any existing limited access pathways, including high tension powerlines, Right of Way (ROW), bridge crossings, or tunnel crossings, that may be considered in the conduit network to add new redundant paths. (O)
7. What routes would you utilize for additional redundancy and resiliency? (O), (T)



8. Identify any potential challenges in constructing the proposed routes, including limited ROW, congestion from other utilities, and geography. (O), (D)
9. Which routes could pose a potential problem to the design of the network (i.e. limited access, bridge crossing, environmentally sensitive areas)? (O), (T), (D)
10. Which areas on the island should be built first? (D), (T)
11. Are there any other recommendations that the Government Entity should consider? (O), (T), (D)



Colocation Facility Engineering

The Government Entity is looking to integrate existing colocation facilities to facilitate non-discriminatory access to sites. This will enable broadband stakeholders to leverage these facilities for peering, cloud, and cross connect services, promoting the use of shared infrastructure and improved network sustainability.

Questions for Respondents:

1. Do you own and operate any carrier neutral facilities or operate an open-access facility? (O) If so:
 - a. **Do you have physically diverse service entrances to the facilities, or is there an interest in creating additional pathways into your facility?**
 - b. **As the network grows or consolidates, how can you resize the colocation facility space and power? Describe how you might address resizing.**
 - c. What redundancies are deployed at your facilities (i.e., N+1 for power, cooling, etc.)?
 - d. Please describe existing access control systems.
 - e. Does your facility have TIA-942 certification? If so, what is your rating?
 - f. Do you provide 24x7 security or monitoring at the facility?
 - g. Does your facility have “hot” and “cold” aisles for air flow?
 - h. Please share the maximum power and cooling capacity represented as kW/Rack.
 - i. Please share the maximum cooling capacity of the Vendor facility denoted as currently consumed versus available and the Current Power Usage Effectiveness (PUE) of existing installations per tenant.
2. **Where is there a need to add colocation facilities on the island? (T), (D)**
3. What would be the recommended building size and land parcel for any new colocation facilities to allow for long-term growth? (T), (D)



- a. If you expect to lease space within the colocation facility, please describe preferences for the following (T): Type of space – Racks, Private Suite, Cage, a Dedicated Floor;
 - b. Type of Service – Cloud Service, Edge Computing, Wholesale Enterprise Services, Remote Hands;
 - c. Power;
 - d. Security;
 - e. Environmental;
 - f. Site Amenities – Office Space, Staffing Needs;
 - g. Cost Efficiency
4. Are there any other recommendations that the Government Entity should consider? (O), (T), (D)



Route Engineering

The conduit network will be designed to meet the immediate and long-term resiliency needs of prospective tenants and broadband stakeholders. The Government Entity is looking for recommendations on how to “right size” the conduit network that will support future expansion and enable maximum use of new routes and access points.

Priorities for conduit engineering include:

- Meeting current size and mileage needs;
- Building for anticipated growth; and
- Constructing facilities that allow for long-term growth and operations.

Questions for Respondents:

- 1. Do you have any existing agreements with other providers and broadband stakeholders with swaps or leases for available conduits that could be used for this network? If so, please provide details of the agreement(s). (O), (T)**
2. What type of conduit system architecture (trunk, access, etc.) is best suited to facilitate cable management, multi-tenant access, and fast deployment of infrastructure? (T), (D)
3. What conduit sizes should be considered when planning out a system at this scale? (T)
4. What should be the minimum number of conduits installed on a given route? (T), (D)
- 5. Are you conducting any ongoing large-scale projects or planned broadband initiatives that could benefit from the development of an island-wide conduit network? If so, please share your thoughts on how the network could accommodate your proposal. (O), (T)**
6. Do you participate in any shadow or spare conduit availability programs? (O), (T)
7. How would you approach overbuilding a specific area that has existing conduit infrastructure but does not have the capacity to support additional growth? (T), (D)



8. Do you utilize micro trenching for burying facilities? Please share any thoughts on the pros and cons of the technology and initial reactions to building a middle mile network exclusively with micro trenching. (O), (T), (D)
9. What are the proper depths and spacing requirements for conventional conduit and micro-ducts on the island? (O), (T), (D)
- 10. Please share any thoughts on the use of microfiber and high-density conduits for middle mile networks. (T), (D)**
11. What are your thoughts on high density conduit aerial solutions (i.e., Duraline FuturePath Aerial) in an open access system? Please provide examples of where you would deploy this type of conduit. (O), (T), (D)
- 12. What materials provide the longest lifespan against external threats such as environmental factors, mechanical stress, and accidental damage? (O), (T), (D)**
- 13. Please describe the cost considerations of boring, jetting, hand trenching, micro-trenching, and the average price per foot of each. (O), (D)**
14. What is the cost difference between aerial and underground infrastructure? What technologies can be used to lower the cost of underground infrastructure? (O), (D)
15. What are your thoughts on manhole/handhole sizing for the open access system? What size manholes would accommodate system use? What size handholes are required for breakouts and interconnections? (T), (D)
16. Please share any thoughts on interconnections in and out of the conduit system. How would you prefer to access handholes in the ROW? Would handoffs need to happen in colocation sites? Would you create separate handholes and manholes for trunk and access networks? (T), (D)
17. How often should handholes/manholes be spaced to allow tenant access? (T)
18. What is the proper slack coil size to allow for maintenance and mid-span splicing? (T), (D)
19. Are there any other recommendations that the Government Entity should consider? (O), (T), (D)



Open Access Requirements

The Government Entity and its partners will be responsible for establishing standards governing the operation and expansion of the open access conduit system throughout its lifecycle. The Government Entity requests recommendations on best practices and policies to be implemented to ensure the network's long-term use and sustainability.

Priorities for open access include:

- Cost saving strategies;
- Coordination strategies with other providers and government agencies; and
- Best practices for usability and sustainability of the network.

Questions for Respondents:

- 1. Do you currently participate in any open access or joint-trench programs with other utilities? If so, please describe the process and any difficulties with accessing your facilities, fees, or labor charges, if relevant. (O), (T)**
2. What are your thoughts on dig once policies? Is there a specific type of policy that works best? Please share any thoughts on coordination policies with the Department of Transportation and Public Works, joint trench policies (voluntary or mandatory), or mandated municipality policies. (O), (D)
 - a. How would you manage coordination with providers and entities building infrastructure across major crossings, including bridges, highways, and waterways?**
 - b. What is the best solution for utilities to co-exist within the same trench?**
3. Please share any anticipated challenges of using an open access conduit system. (O), (T), (D)
- 4. What rules should be included in the operation of the open access conduit network to ensure its longevity? (D)**
- 5. Are there other types of interconnection arrangements that would foster innovative models of open access last mile and middle mile networks? If so, please provide examples. (O), (T)**
6. Describe any thoughts on vendor access to the conduit system. Should tenants that lease conduit be permitted to operate on the system, or



should preferred vendors, technicians, and inspectors operate on the system? (O), (T), (D)

7. Are there any other recommendations that the Government Entity should consider? (O), (T), (D)



Estimated Build Timeline

Responses to this request will be utilized throughout the conduit network design process. Upon development of Core and Ancillary routes, cost estimates, model lease terms, and a sample construction timeline, the Government Entity will open the competitive bidding process.

The Government Entities will provisionally select the conduit developer prior to submission of the Final Proposal to the National Telecommunication and Information Administration (NTIA), estimated for early 2025 and subject to NTIA approval. Under federal requirements of the BEAD funding, all construction segments of the conduit network are required to be fully operational within four years of the subgrantee award date.

Questions for Respondents:

1. Please describe any specific geographic considerations or barriers that may impact the development of the network and any proposed solutions. (D)
2. **Please share details of past issues, such as those related to “make ready,” pole attachments, right of way, or trenching, that have delayed construction and any potential solutions the Government Entity can employ to expedite the process. (O), (D)**
3. Are there any regulatory requirements that you believe would pose challenges for achieving the goals of the conduit network? (D)
4. Are there any areas on the island that are prone to delays caused by an extended environmental review? (O), (D)
5. Are there any concerns with receiving materials in a timely manner? If so, what are the issues? (D)
6. For organizations that may bid for the development and operation of the conduit network, how do you plan to scale the workforce to meet the four-year construction timeline and ongoing maintenance? What might the Government Entity do to support timely construction and successful ongoing operations? (D)
7. Are there any other recommendations that the Government Entity should consider? (O), (T), (D)



Network Maintenance & Operations

The Government Entity requests recommendations for the effective long-term maintenance and operations of the network.

Priorities for operations and maintenance include:

- Solutions to ensure minimal downtime during outages;
- Recommendations on staffing and tools that facilitate seamless operations; and
- Best practices that contribute to an extended lifespan of the network.

Questions for Respondents:

- 1. Please describe any best practices that can be implemented to establish a conduit maintenance program. (O), (T), (D)**
2. What tools does your organization currently use to manage and track changes on the network (ex., network monitoring, fiber management systems, and CRM systems)? (O), (D)
3. Do you provide any training for employees to ensure staff is up to date on best practices for maintenance? If you do provide training, what programs would you recommend? (O), (D)
4. What solutions can be deployed to protect assets within the conduit network? (O), (D)
5. Describe your change management process for operations on the network. (O), (D)
6. During emergencies, how would you coordinate the restoration of your tenants' facilities? (O), (D)
 - a. What priorities are assigned?
 - b. How do you communicate with impacted customers?
- 7. What is an acceptable Service Level Agreement (SLA) for the restoration of tenant services on a network with this much capacity? (O), (T), (D)**
- 8. How would you coordinate resources around the island to maintain a high level of service and reliability in the event of an outage? (O), (D)**
9. Are there any other recommendations that the Government Entity should consider? (O), (T), (D)



Protection of Proprietary Information

All responses to this request will be treated as confidential by the Government Entity. The Government Entity will aggregate all data provided by the respondents, including trade secrets, pricing, and proprietary or privileged information. The aggregated data will be compiled into anonymized Geospatial Data, including responses to all questions as de-identified aggregate data files. *Clearly mark the information considered **confidential** trade secrets or non- published financial data within the response documents submitted.* The Government Entity's obligations with respect to the protection and disclosure of such information shall always be subject to applicable law.

Upon completion of the Request for Information process, the Government Entity will make public aggregate and de-identified data collected as relevant in the competitive bidding process for the conduit network. No information marked **confidential** shall be made public in a non-aggregated or de-identified format.

The Government Entity and the ultimate subgrantee will utilize responses to this request to plan a conduit network design, ensuring that the route is the most robust and free of duplication. Information shared in response to this request will support the success of the conduit network and provide the Government Entity the opportunity to meet the immediate and long-term needs of internet service providers, institutional users, and utilities throughout the island.



Appendix A – Non-Disclosure Agreement

NON-DISCLOSURE AGREEMENT (NDA)

- I. **THE PARTIES.** This Non-Disclosure Agreement, hereinafter known as the "Agreement," entered into on the _day of October 2024, is by and between **Witt O'Brien's Puerto Rico, LLC (WOB PR')**, located at 1225 Ponce de Leon Ave., VIG Tower Suite 1102, San Juan, PR 00907 and _____, a Telecommunications and/or Internet Service Provider (ISP) located at _____ and collectively known as the "Parties."

WHEREAS, WOB PR has been retained by the Government of Puerto Rico to assist with their efforts in developing Puerto Rico's project known as **Development and Management of a Resilient Open Access Underground Conduit System** (project) and as a part of the development of the project, certain information is required to ensure that deduplication efforts are managed during the project's design.

WHEREAS, WOB PR recognizes that the ISP's business involves specialized and proprietary information peculiar to its security and growth and that any unauthorized disclosure of such proprietary information would substantially injure its businesses, impair its investments and goodwill, and jeopardize its relationship with clients and customers.

WHEREAS, the Parties presently desire to consult with each other with respect to certain information, problems, and recommendations and, in the course of such consultation, anticipate disclosing to each other information of a novel or proprietary nature.

WHEREAS, WOB PR will request from each ISP, which will provide to WOB PR through a secure portal, certain raw data (collectively, the "Data") described and delivered as follows: (1) locations of telecommunications and broadband conduit, fiber optic cabling, coax cabling, interconnection points, points of presence, data centers and other facilities owned or controlled by the ISP and necessary for the delivery of telecommunications and broadband services and (2) ISP data will be uploaded to WOB PR via a secure upload portal provided by WOB PR.

WHEREAS, WOB PR will be taking said Data, removing all ISP identifying information (anonymized Data), turning said anonymized Data into Geospatial Data, and in accordance with its duties under its agreement with the Government of Puerto Rico, will be providing said data along with all data provided from all



other sources in a bulk manner to the Government of Puerto Rico for its use in the above said project.

The Parties agree as follows:

II. TYPE OF AGREEMENT.

Unilateral - This Agreement shall be Unilateral, whereas ISP shall have sole ownership of the Confidential Information, with WOB PR being prohibited from disclosing confidential and proprietary information that is to be released by the ISP except as described in the preamble above.

III. RELATIONSHIP. The ISP relationship to WOB PR can be described as **Broadband Asset Owner**, and the WOB PR relationship to ISP can be described as **Compiler of Data**. This Agreement shall not serve in any instance as an agreement between the Parties for employment or services.

IV. DEFINITION. For the purposes of this Agreement, the term "**Confidential Information**" shall include, but not be limited to, documents, records, information and data (whether verbal, electronic or written), drawings, designs, specifications and other business information, relating to ISP's business, plans, assets or contracts, furnished to WOB PR and/or its affiliates, employees, officers, owners, agents, consultants or representatives, in the course of their work contemplated in this Agreement, regardless of whether such Confidential Information has been expressly designated as confidential or proprietary.

The Parties should use common judgment when deciding if the information is confidential and, above all else, shall request approval from the other Party prior to the release of any questionable information.

Confidential Information does not include:

1. information generally available to the public;
2. widely used programming practices or algorithms;
3. information rightfully in the possession of the Parties prior to signing this Agreement; and
4. information independently developed without the use of any of the provided Confidential Information.
5. information that the disclosing Party discloses to others on an unrestricted basis.

V. OBLIGATIONS. NOW, THEREFORE, the Parties hereto, in consideration of the premises and other good and valuable consideration, agree that disclosure of any proprietary information related to the Program shall be subject to the terms and conditions set forth below (the "Agreement"):



1. Proprietary or novel information ("Information") shall, without limitation, include all financial and statistical data, sales and client information, techniques, strategies, tactics, oral presentations, marketing plans, samples, prototypes, drawings, computations, processes, technical data, know-how and business plans pertaining to the above Program. All Information shall be clearly marked as proprietary when disclosed, and any Information disclosed orally or visually shall be identified as proprietary at the time of disclosure and further identified in writing within seven (7) days of such original disclosure.
2. Information shall not include material that the recipient Party can by reasonable proof:
 - a. Show such Information, in its disclosed combination(s), is in the public domain through no fault of the recipient.
 - b. Show such Information is contained in a written record in the recipient's files prior to the date of its receipt hereunder.
 - c. Show the recipient had at any time lawfully obtained said Information from a third party under the circumstances permitting its disclosure and use.
 - d. Show that the disclosing Party discloses the information to others on an unrestricted basis.
 - e. Demonstrate those of the recipient Party's employees independently developed such Information without access to the Information disclosed hereunder.
3. Disclosures made under this Agreement that are specific shall not be deemed to be within the preceding exceptions merely because they are embraced by general disclosures in the public domain or the recipient's possession. In addition, any combination of features shall not be deemed to be within the preceding exceptions merely because individual features are in the public domain or the recipient's possession, but only if the combination itself and its principle of operation are in the public domain or the recipient's possession.
4. Except as otherwise provided in this Agreement, each Party agrees not to use, disclose, or publish any Information received hereunder without prior written consent from an authorized representative of the original disclosing Party or pursuant to a subsequent agreement between the Parties, notwithstanding any termination dates or conditions expressed elsewhere in this Agreement.
5. Each Party and its subsidiaries and related organizations will treat all Information received from the other Party during any preliminary



negotiations involved with this Agreement, the consulting arrangements, or the subject matter as proprietary, and they will not use, disclose, divulge, or publish such Information; provided however, that nothing in this Agreement shall prohibit or prevent WOB PR from using Data as provided elsewhere in this agreement.

6. Each Party agrees not to use the Information, either directly or indirectly, to solicit business from any individual, company, agency, or institute or to interfere with, impair, or hinder any relationship between the disclosing Party and any of its customers, prospective customers, suppliers, strategic partners, affiliates or investors, or in any other manner to compete against the disclosing Party. Each Party further agrees not to solicit, persuade, or encourage any non-clerical employee of the other Party to leave the employment of the other Party during the term of this Agreement, provided that a general advertisement in the ordinary course of business shall not be deemed a solicitation prohibited by this paragraph.
7. Neither Party shall, without the written approval of the other Party, publish, copy, or use the Confidential Information for their sole benefit. If requested, either Party shall be bound to return any and all materials to the Requesting Party within thirty (30) days. Any information that is unable to be returned must be destroyed immediately following the termination or conclusion of this Agreement.
8. Except as otherwise provided in this Agreement, each Party agrees not to use, disclose, or publish any Information received hereunder without prior written consent from an authorized representative of the original disclosing Party or pursuant to a subsequent agreement between the Parties, notwithstanding any termination dates or conditions expressed elsewhere in this Agreement.
9. No license to the other Party, under any trademark, patent, or copyright, is either granted or implied by the conveying of Information or Data to that Party. None of the Information or Data which may be submitted or exchanged by the respective Parties shall constitute any representation, warranty, assurance, guarantee, or inducement by either Party to the other with respect to the Information's or Data's validity, merchantability or the infringement of trademarks, patents, copyrights or any other right of privacy, or other rights of third persons. This Agreement shall not be construed as a waiver by BSP of any objection to a request for information it reasonably deems beyond the scope of the Program or otherwise objectionable to it.



10. The Parties shall notify all employees, subsidiaries, and affiliates of the recipient to whom any such Information or Data is communicated or disclosed of the terms of this Agreement in advance of such disclosure and to have nondisclosure agreements with such persons. The Parties agree that they will not publish, disclose, divulge, communicate, offer, or reveal any Information or Data to any person, corporation, or other third party or to any of their employees who do not need to know of the Information or Data for the performance of their duties or for purposes of the Program. The Parties agree to give each other forty-eight (48) hours notice if required by court order or subpoena to turn Information or Data over to a third party.
11. The Parties agree to take all reasonable and necessary steps to protect the proprietary status of the Information and Data disclosed and agree to use their best efforts to regain any Information or Data that has been inadvertently transmitted to a third party. In addition, each Party recognizes that its remedy at law for this Agreement's breach would necessarily be inadequate, and they thus stipulate that in the event of any such breach, they shall be entitled to seek appropriate equitable relief (including but not limited to injunctive relief or specific performance) in addition to monetary damages.
12. The Parties acknowledge that they are aware and that they will advise anyone working for or on behalf of them that under the United States securities laws, persons who have received material, nonpublic information from an issuer are prohibited from purchasing or selling securities of such issuer or from communicating such information to any person under circumstances in which it is reasonably foreseeable that such person is likely to purchase or sell such securities in reliance on such information.
13. The Parties agree that any Information or Data revealed to the other by them remains the exclusive property of the disclosing Party and its successors and assigns unless expressly stated otherwise or subsequently in writing. Upon termination, each Party agrees to return or destroy all Information or Data furnished hereunder (and copies thereof) and to destroy all notes, extracts, studies, compilations, memoranda, and other documents containing such Information or Data and shall inform the disclosing Party of having done the same.
14. The recitals to this Agreement are incorporated therein and shall be deemed a material part thereof.



15. This Agreement constitutes the entire agreement and understanding between the Parties, superseding any prior understandings, commitments, or agreements, oral or written, with respect to the subject matter thereof. Any changes or modifications must be in writing.
- VI. **TIME PERIOD.** The bounded Party's(ies') duty to hold the Confidential Information in confidence shall remain in effect until such information no longer qualifies as a trade secret or written notice is given releasing such Party from this Agreement. Otherwise, this Agreement of nondisclosure shall automatically terminate five (5) years after the date of the last of the parties to sign below or upon the end of the Program and the destruction or return of all Information and Data in accordance with Article 10, whichever is later.
- VII. **INTEGRATION.** This Agreement expresses the complete understanding of the Parties with respect to the subject matter and supersedes all prior proposals, agreements, representations, and understandings. This Agreement may not be amended except in writing with the acknowledgment of the Parties.
- VIII. **SEVERABILITY.** If a court finds that any provision of this Agreement is invalid or unenforceable, the remainder of this Agreement shall be interpreted so as best to affect the intent of the Parties.
- IX. **ENFORCEMENT.** The Parties acknowledge and agree that due to the unique and sensitive nature of the Confidential Information, any breach of this Agreement would cause irreparable harm for which damages and/or equitable relief may be sought. The harmed Party in this Agreement shall be entitled to all remedies available at law.
- X. **NOTIFICATIONS.** Any notice required or permitted to be given hereunder shall be (a) in writing, (b) effective on the first business day following the date of receipt, and (c) delivered by one of the following means: (i) by personal delivery; (ii) by prepaid, overnight package delivery or courier service; or (iii) by the United States Postal Service, first class, certified mail, return receipt requested, postage prepaid. All notices given under this Agreement shall be addressed to the addresses stated at the outset of this Agreement or to new or additional addresses as the Parties may be advised in writing.
- XI. **GOVERNING LAW.** This Agreement and any dispute relating to the Services will be governed by and construed, interpreted, and enforced in accordance with the laws applicable to the Commonwealth of Puerto Rico. Each Party hereby further waives any claim that any such court lacks personal jurisdiction over the same, and each Party consents to the service of process



out of any of the aforementioned courts by the mailing of copies thereof by certified mail, return receipt requested, to the principal business address of the other Party, such service to become effective thirty (30) days after such mailing. Nothing herein shall affect the right of either Party to serve process in any other manner permitted by law. The Parties agree that in case of a breach by a Party, the other Party shall be entitled to an award by the court of its costs and expenses in the prevailing action, including reasonable attorney's fees and experts' costs.

IN WITNESS WHEREOF the Parties hereto have caused this Agreement to be executed by a duly authorized officer and the Agreement shall take effect on the date the Party last to sign executed this Agreement.

Witt O'Brien's Puerto Rico, LLC	ISP:
By:	By:
	Printed Name:
<u>Date:</u>	Title:
	Date: