

## **NOTICE TO VENDORS**

### **INVITATION TO BID**

**The Iowa Telecommunications and Technology Commission operating the Iowa Communications Network (ICN) will be receiving sealed Bid Proposals for the following ITB until **3:00 p.m., Tuesday, December 31, 2024.****

**24-047**

**Dark Fiber Leased Telecommunications Service or Ethernet Service  
at Selected Locations Throughout the State of Iowa**

**Sheri Stephens  
Iowa Communications Network  
Grimes State Office Building  
400 East 14<sup>th</sup> Street  
Des Moines, IA 50319  
Telephone 515-725-4747  
FAX 515-725-4774**

**[sheri.stephens@iowa.gov](mailto:sheri.stephens@iowa.gov)**

**Vendors must comply with all affirmative action/equal employment opportunity provisions of State and Federal laws.**

**THIS INVITATION TO BID CONSISTS OF FOUR CHAPTERS AND FOUR ATTACHMENTS:**

<b>CHAPTER</b>	<b>TITLE</b>
<b>1</b>	<b>Administrative Issues</b>
<b>2</b>	<b>Contractual Terms</b>
<b>3</b>	<b>Technical Specifications</b>
<b>4</b>	<b>Evaluation Criteria</b>
<b>Attachment 1</b>	<b>Contract Terms and Conditions (Sample Lease Agreement)</b>
<b>Attachment 2</b>	<b>Bid Proposal Compliance Form</b>
<b>Attachment 3</b>	<b>Authorization To Release Information</b>
<b>Attachment 4</b>	<b>Bid Proposal Submittal Form</b>
<b>Tab 4A</b>	<b>Bid Proposal Submittal Form for Dark Fiber Optic Cable Service</b>
<b>Tab 4B</b>	<b>Bid Proposal Submittal Form for Ethernet Service</b>

## CHAPTER 1

### ADMINISTRATIVE ISSUES

1.1 Purpose. The State of Iowa, Iowa Telecommunications and Technology Commission, operating the Iowa Communications Network (collectively ICN) is seeking Bid Proposals for Leased Telecommunications Service for Single Mode Dark Fiber Optic Service or Ethernet Service which can be delivered by fiber based from Part III End Point locations to ICN Connection Point of Presence (CPOP) locations. The locations for which service is sought are listed in the Bid Proposal Submittal Form Tab 4A for Dark Fiber Optic Cable Service, Tab 4B Ethernet Service. The ICN intends to award contracts to the Vendors who provide the lowest cost service at each of the locations included in Tabs 4A, 4B. The resulting Contracts will be between the ICN and the Vendor.

1.2 Schedule and Submission of Bid Proposal.

1.2.1 Vendor Conference. **There is no Vendor Conference scheduled for this solicitation.**

1.2.2 Questions and Answers. Vendors are invited to submit written questions and/or requests for interpretation/consideration/acceptance concerning this ITB on or before 4:00 p.m. central time **December 11, 2024**. Vendors with questions concerning this ITB may submit their questions in writing by mail or hand delivery to Sheri Stephens at the address below, facsimile at (515) 725-4774 or electronic mail at [sheri.stephens@iowa.gov](mailto:sheri.stephens@iowa.gov). Oral questions will not be accepted, and verbal communications shall not override written communications. Only written communications are binding on ICN. ICN will prepare a written response to all pertinent questions submitted by Vendors. These questions and responses will be transmitted via fax or e-mail to all Vendors to whom the ITB has been sent, no later than **December 13, 2024**.

1.2.3 Changes and Amendments. In the event it becomes necessary for ICN to amend, add to or delete any part of this ITB, the amendment will be provided to all Vendors to whom the ITB has been sent. Vendor's Bid Proposal must include acknowledgment of all addenda issued by ICN.

1.2.4 Receipt of Bid Proposals. Bid Proposals must be received at ICN's office no later than 3:00 p.m. central time **Tuesday, December 31, 2024**. **This requirement is a mandatory requirement and is not a minor deficiency subject to waiver by the ICN.** No Bid Proposals will be accepted after the date and time specified. A late Bid Proposal shall be returned unopened to the Vendor. Additionally, no Bid Proposal will be accepted by telephone, electronic mail or facsimile. **The Bid Proposals must be mailed (with mailing in sufficient time to arrive on or before this deadline requirement) or be delivered as follows:**

Mailing & Delivery Address:

Iowa Communications Network  
Attn: Sheri Stephens  
Grimes State Office Building  
400 East 14<sup>th</sup> Street  
Des Moines, IA 50319

**If Bid Proposals are delivered by mail service, express courier, delivery service or company, or in person, it shall be the sole responsibility of the Vendor submitting the proposal to insure that such delivery takes place prior to the aforementioned deadline. There shall be no waiving of the deadline due to mis-deliveries on the part of the Vendor, Vendor's delivery staff or Vendor's choice of delivery service(s). Deliveries made directly to ICN must be placed with the ICN Contracting Section or with an ICN staff person able to accept such delivery.**

1.2.5 Bid Proposal Opening. Bid Proposals will be opened at 3:00 p.m. central time on **Tuesday, December 31, 2024**. The Bid Proposals and the evaluation documents created by the ICN will remain confidential subject to Iowa Code Section 72.3 until the evaluation committee has evaluated all of the compliant Bid Proposals submitted in response to this ITB and the selection process is complete. The Bid Proposals submitted and the evaluation documents created by the ICN will be available for inspection subject to the exceptions described in Iowa Code Chapter 22 or other applicable law after the selection process is complete.

1.2.5.1 Failure to comply with or supply any and all information requested to accompany Bid Proposals may be cause for rejection of the proposal as non-compliant.

1.2.5.2 All Bid Proposals shall be firm for a period of 180 days to allow the evaluation committee to fully evaluate all proposals and make an award deemed to be in the best interest of ICN and the State of Iowa.

1.2.5.3 By submitting a Bid Proposal the Vendor agrees to the terms and conditions contained within this ITB.

### 1.3 Proposal Format.

1.3.1 Bid Proposals shall be printed on 8.5" x 11" paper. One original and one (1) copies must accompany each submission. In addition one copy shall be provided on standard USB flash drive using Microsoft Word software. The original Bid Proposal must be in a package CLEARLY MARKED **ITB 24-047** on the outer envelope or wrapping. This is necessary to insure that the response package is handled properly for verification against the ITB deadline. Lack of notation of ITB number may affect the receipt timing and affect the evaluation process. Vendor should consider this item as a critical factor when submitting a response.

1.3.2 To achieve a uniform review process and the maximum degree of comparability, proposals shall be organized in the following manner:

1.3.2.1 Completed Bid Proposal Compliance Form (Attachment 2).

1.3.2.2 Completed Authorization to Release Information Form (Attachment 3).

1.3.2.3 Positive statement of compliance or exception and all information requested in each of the points in Chapter 3, Technical Specifications. The bid proposal must fully address each requirement of Chapter 3 designated as a mandatory requirement and explain how the Vendor will accomplish or fulfill each specification. Merely restating the specifications or generic statements such as "we understand" or "we will comply" may be considered non-responsive and may result in disqualification of the Vendor's proposal. Proposals must identify any deviations from the requirements of this ITB or requirements that the Vendor cannot satisfy. Any deviations from the requirements of the ITB or requirements the Vendor cannot satisfy may result in disqualification of the Vendor's proposal.

1.3.2.4 Completed Bid Proposal Submittal Form (Attachment 4) and:

1.3.2.4.1 Tab 4A for Dark Fiber Optic Cable Service

1.3.2.4.2 Tab 4B for Ethernet Service

1.4 Clarification of Proposals and Obtaining Information. ICN reserves the right to contact a Vendor after submission of Bid Proposals for the purpose of clarifying a Bid Proposal to ensure mutual understanding. This contact may include written questions, interviews, site visits, a review of past performance if the Vendor has provided goods or services to the ICN, or any other political subdivision wherever located or requests for corrective pages in the Vendor's Bid Proposal. This information may be used to evaluate the Vendor's Bid Proposal. However, the information received from the Vendor shall not be considered in the evaluation of a Vendor's Bid Proposal if the information materially alters the content of the Bid Proposal. ICN reserves the right to obtain information concerning any Vendor or any proposal from any source and to consider such information in evaluating the Vendor's Bid Proposal.

1.4.1 Authorization to Release Information. The Vendor must sign the Authorization to Release Information Form included with this ITB as an attachment. Failure to sign this Authorization will result in the Bid Proposal being rejected outright.

1.5 Waiver of Deficiencies. ICN reserves the right to waive minor deficiencies in a Bid Proposal if, in the judgment of ICN, ICN's best interest will be served. The decision as to whether a deficiency will be waived or will require the rejection of a Bid Proposal will be solely within the discretion of ICN. There is no guarantee or assurance that any deficiency will be deemed minor and that a deficiency will be waived. Each Vendor is specifically notified that failure to comply with or respond to any part of this ITB requiring a response may result in rejection of the Bid Proposal as not responsive.

1.6 Cost of Bid Proposal. ICN is not responsible for any costs incurred by a Vendor which is related to the preparation or delivery of the Bid Proposal or any other activities carried out by the Vendor as it relates to this ITB.

1.7 Bid Proposal Obligations. The contents of the Bid Proposal and any clarification thereto submitted by the successful Vendor shall become part of the contractual obligation and incorporated by reference into the ensuing Contract.

1.8 Bid Proposals Property of ICN. Except as otherwise stated herein, all Bid Proposals become the property of the ICN and the State of Iowa and shall not be returned to the Vendor unless all Bid Proposals are rejected. In the event all Bid Proposals are rejected, Vendors will be asked to send prepaid shipping instruments to the ICN for return of the Bid Proposals submitted. In the event no shipping instruments are received by the ICN, the Bid Proposals will be destroyed by the ICN. Additionally, the evaluation documents created by the ICN will be destroyed in the event all Bid Proposals are rejected. Otherwise, at the conclusion of the selection process, the contents of all Bid Proposals will be placed in the public domain and be opened to inspection by interested parties subject to the exceptions provided in Iowa Code Chapter 22 or other applicable law.

1.9 Rejection of Bid Proposals.

1.9.1 ICN reserves the right to reject any and all Bid Proposals, in whole and in part, received in response to this ITB at any time prior to the execution of a written Contract covering a particular location. Issuance of this ITB in no way constitutes a commitment by ICN to award a Contract for each of the locations included in the Bid Proposal Submittal Form Tab 4A for Dark Fiber Optic Cable Service; Tab 4B for Ethernet Service. This ITB is designed to provide Vendors with the information necessary for the preparation of competitive Bid Proposals. This ITB process is for ICN's benefit and is intended to provide ICN with competitive information to assist in the selection of goods and services.

1.9.2 Disqualification. The ICN may reject outright and may not evaluate proposals for any one of the following reasons:

1.9.2.1 The Vendor fails to deliver the Bid Proposal by the due date and time.

1.9.2.2 The Vendor states that a service requirement cannot be met.

1.9.2.3 The Vendor's response materially changes a service requirement.

1.9.2.4 The Vendor's response limits the rights of the ICN.

1.9.2.5 The Vendor fails to include information necessary to substantiate that it will be able to meet a service requirement. A response of "we understand" or "will comply" or merely repeating the requirement is not sufficient. Responses must indicate present capability; representations that future developments will satisfy the requirement are not sufficient.

1.9.2.6 The Vendor fails to respond to the ICN's request for information, documents, or references.

1.9.2.7 The Vendor fails to include a completed, signed Authorization to Release Information Form (See Attachment 3).

1.9.2.8 The Vendor fails to include a completed, signed Bid Proposal Compliance Form (See Attachment 2).

1.9.2.9 The Vendor presents the information requested by this ITB in a format inconsistent with the instructions of the ITB.

1.9.2.10 The Vendor initiates unauthorized contact regarding the ITB with ICN employees.

1.9.2.11 The Vendor's exceptions to the contract terms and conditions in Attachment 1 materially change the terms and conditions of Attachment 1 or the requirements of this ITB.

1.9.2.12 The Vendor provides misleading or inaccurate responses.

1.9.2.13 The Vendor's proposal is materially unbalanced.

1.9.3 Failure of the Vendor to comply with additional information requests may be cause for rejection of the Bid Proposal as non-compliant.

## 1.10 Public Records and Requests for Confidentiality.

1.10.1 The release of information by ICN to the public is subject to Iowa Code Chapter 22 and other applicable provisions of law relating to the release of records in the possession of a State agency. Vendors are encouraged to familiarize themselves with these provisions prior to submitting a Bid Proposal. All information submitted by a Vendor may be treated as public information by ICN unless the Vendor properly requests that information be treated as confidential at the time of submitting the proposal. **In the event Vendor marks each page of its Bid Proposal as proprietary or confidential without adhering to the requirements of this Section, the ICN may reject the Bid Proposal as noncompliant.**

1.10.2 Any requests for confidential treatment of information must be included in a cover letter with the Vendor's Bid Proposal and must enumerate the specific grounds in Iowa Code Chapter 22 or other legal reasons which support treatment of the material as confidential and must indicate why disclosure is not in the best interests of the public. The request must also include the name, address and telephone number of the person authorized by the Vendor to respond to any inquiries by ICN concerning the confidential status of the materials.

1.10.3 Any documents submitted which contain confidential information must be marked on the outside as containing confidential information, and each page upon which confidential information appears must be marked as containing confidential information. The confidential information must be clearly identifiable to the reader wherever it appears. All copies of the proposal submitted, as well as the original proposal, must be marked in this manner. **Vendor's Submission of a Bid Proposal pursuant to this ITB constitutes Vendor's agreement that the Vendor's failure to properly mark information as confidential shall relieve the ICN from any responsibility if the information is viewed by the public, a competitor, or is in any way accidentally released.**

1.10.4 In addition to marking the material as confidential material where it appears, the Vendor must submit one copy of the Bid Proposal from which the confidential information has been excised. The confidential material must be excised in such a way as to allow the public to determine the general nature of the material removed and to retain as much of the document as possible. These pages must be submitted with the cover letter and will be made available for public inspection.

1.10.5 The Vendor's failure to request in the Bid Proposal confidential treatment of material pursuant to this Section and the relevant laws and administrative rules will be deemed by ICN as a waiver of any right to confidentiality which the Vendor may have had.

1.11 Restrictions on Gifts and Activities. Iowa Code Chapter 68B contains laws which restrict gifts which may be given or received by State employees and requires certain individuals to disclose information concerning their activities with State government. Vendors are responsible for determining the applicability of this Chapter to their activities and for complying with these requirements. In addition, Iowa Code Chapter 722.1 provides that it is a felony offense to bribe a public official.

1.12 Restriction on Communication. In the event that a Vendor or someone acting on the Vendor's behalf attempts to discuss this ITB orally or in writing with any Commission member or any employee of ICN other than the ICN Contracting Officer, Vendor may be disqualified. No questions are to be asked of State of Iowa employees regarding this ITB, except for contact with the State Targeted Small Business Office by Vendors certified as Targeted Small Business Entities, without prior notification and approval by the ICN Contracting Officer, except as otherwise permitted by this ITB. All ITB contacts shall be made through the ICN Contracting Officer only.

1.13 Copyrights. By submitting a Bid Proposal the Vendor agrees that ICN may copy the Bid Proposal for purposes of facilitating the evaluation or to respond to requests for public records. The Vendor consents to such copying by submitting a proposal and warrants that such copying will not violate the rights of any third party. ICN will have the right to use ideas or adaptations of ideas which are presented in the proposals. In the event the Vendor copyrights the Bid Proposal, the ICN may reject the proposal as noncompliant.

1.14 Conflict Between Terms. ICN reserves the right to accept or reject any exception taken by the Vendor to the terms and conditions of this ITB. Substantial variations between the Vendor's terms and conditions and those contained in this ITB may be grounds for rejection of the Vendor's Bid Proposal as non-responsive and non-compliant.

1.15 Release of Claims. With the submission of a Bid Proposal, Vendor agrees that it will not bring any claim or have any cause of action against ICN or the State of Iowa based on any misunderstanding concerning the information provided

herein or concerning ICN's failure, negligent or otherwise to provide the Vendor with pertinent information as intended by this ITB.

1.16 Construction of ITB with Laws and Rules. This ITB is to be construed in accordance with the laws of the State of Iowa, including Iowa Code Chapter 8D and Iowa Administrative Code Chapter 751. Changes in applicable laws and rules may affect the award process or the resulting Contract. Vendors are responsible for ascertaining pertinent legal requirements and restrictions. Vendors are encouraged to visit a web site containing references to the Iowa Code and the Iowa Administrative Code for information. A suggested address is <http://www.legis.iowa.gov> or <http://www.icn.iowa.gov>.

1.17 Soft Copy. Soft copies of the ITB will be available by request to [sheri.stephens@icn.state.ia.us](mailto:sheri.stephens@icn.state.ia.us).

1.18 Downloading ITB from the Internet. All amendments will be posted on the ICN's website at <http://www.icn.iowa.gov/>. Vendors are advised to check the ICN's website periodically for amendments to this ITB, particularly if the Vendor downloaded the ITB from the Internet because the Vendor may not automatically receive amendments if it did not contact the ICN for a copy of the ITB. If the Vendor received this ITB as a result of a written request to the ICN, the Vendor will receive amendments.

1.19 Definition of Contract. The full execution of a written contract shall constitute the making of a contract for services and no Vendor shall acquire any legal or equitable rights relative to the contract services until the Contract has been fully executed by the successful Vendor and the ICN.

1.20 Award Notice and Acceptance Period. The ICN will send the Notice of Intent to Award the Contract to all Vendors submitting a timely Bid Proposal. Negotiation and acceptance of the contracts shall be completed with the successful Vendors no later than sixty (60) days after Notice of Intent issuance date if there are no appeals filed. If an apparent successful Vendor fails to negotiate and deliver the executed contract by that date, the ICN may, in its sole discretion, cancel the award and award the contract for that site to the next highest ranked Vendor offering services for that Part III site. The ICN reserves the right to continue negotiations after sixty days if, in ICN's sole discretion, ICN deems it to be in the best interests of ICN to do so.

## **CHAPTER 2**

### **CONTRACTUAL TERMS**

#### **2.1 Contractual Terms Generally.**

2.1.1 The ICN expects to award separate Contracts for each of the Part III sites identified in Tab 4A, Tab 4B. The Contracts which the ICN expects to award for each location as a result of this Invitation To Bid will be based upon the Bid Proposal submitted by the successful Vendors (Vendors awarded the Contracts) and this solicitation. The Contracts between the ICN and the Vendors shall be a combination of the specifications, terms and conditions of the Invitation To Bid, including those contained in the contract terms and conditions sample lease agreement identified as Attachment 1, the offer of the Vendors contained in their Bid Proposals, written clarifications or changes made in accordance with the provisions herein, and any other terms deemed necessary by the ICN.

2.1.2 The Contract terms contained in Attachment 1 are not intended to be a complete listing of all Contract terms but are provided only to enable Vendors to better evaluate the costs associated with the ITB and the potential resulting Contracts. Vendors should plan on such terms being included in any Contracts awarded as a result of this ITB. All costs associated with complying with these requirements should be included in any pricing quoted by the Vendor.

2.1.3 By submitting a Bid Proposal, each Vendor acknowledges its acceptance of these specifications, terms and conditions without change except as otherwise expressly stated in the appropriate section of the Bid Proposal Compliance Form (Attachment 2). If a Vendor takes exception to a provision, it must state the reason for the exception and set forth in Attachment 2 of its Bid Proposal the specific Contract language it proposes to include in place of the provision. Exceptions that materially change these terms or the requirements of the ITB may be deemed non-responsive by the ICN, in its sole discretion, resulting in possible disqualification of the Bid Proposal. The ICN reserves the right to either award a Contract without further negotiation with the successful Vendor or to negotiate Contract terms with the selected Vendor if the best interests of the ICN would be served.

2.1.4 During the term of the Contract, the ICN may require additional capacity. Vendor shall permit ICN to add additional capacity during the term of the Contract. The additional capacity shall not extend the length of the term of the Lease Agreement.

2.2 Additional Cost Items Not In Contract. ICN is unaware of any additional Contract terms that would add cost. Notwithstanding, should any Contract items arise that would cost additional monies; those costs shall be borne by the Vendor.

2.3 Equipment Delivery Schedule. The equipment shall be delivered as agreed upon between the successful Vendor and the ICN.

2.4 Installation and Implementation. Upon award of a Contract, the ICN shall negotiate an installation and implementation schedule with the successful Vendor. Extended installation time periods may be considered when the extension is in the best interest of ICN.

2.4.1 Installation of the system shall be at the Vendor's expense. Removal of the system upon cancellation or Contract completion shall also be at the Vendor's expense. The Vendor shall be responsible for all equipment and service necessary for installation and removal of the system and shall provide a customer service representative. The Vendor shall be responsible for contacting the End Point(s).

2.4.2 The Vendor shall fully assume the risk of loss and/or damage during shipment, unloading and installation of the system.

2.4.3 The Vendor shall remove all packing crates, boxes, paper, packing materials and all other such extraneous material shall be removed from the premises at the Vendor's expense after installation at each site.

2.4.4 The Vendor shall make no substitutions of materials or services specified without the prior written consent of the ICN.



2.4.5 The Vendor shall be responsible for the performance of any subcontractors who are retained by the Vendor in the performance of this Agreement.

2.4.6 The Vendor shall complete the installation necessary to provide Service to the Part III End Point not later than July 1, 2025. If the Vendor fails to make timely, substantial and material progress toward the completion of the installation necessary to provide Service to the Part III End Point, the ICN may, in its sole discretion, terminate the Agreement. In the event that the Vendor fails to complete the installation as required, and the ICN terminates the Agreement with the Vendor, the performance bond as required in Section 11 shall be forfeited to the ICN.

2.4.7 If the Vendor fails to complete installation of the Service by the date specified above, and the ICN elects to continue the Lease Agreement with the Vendor, the ICN may assess the Vendor liquidated damages in the amount of the monthly lease payment for each partial or complete month in which the Vendor fails to complete installation. The assessment may be deducted from the amount of the Vendor's one time, nonrecurring costs which are due to the Vendor upon completion of the Service and testing and acceptance by the ICN.

2.4.8 Daily, during the installation period and upon completion of the work, the Vendor shall remove from the premises, to the satisfaction of the ICN, all debris and rubbish caused by the work. Immediately following installation, the Vendor shall provide the associated clean up per industry standards and to the reasonable satisfaction of the ICN.

2.4.9 Acceptance Tests: The Vendor shall certify to the ICN when the Service is ready for testing by the ICN and Vendor at the Part III End Point by contacting the ICN Service Desk at 800-572-3940 five (5) days prior for scheduling the acceptance testing with the ICN and shall participate in and cooperate with the ICN in completing testing prior to the ICN accepting Service. Should there be a failure during the test period to perform in accordance with the ICN's specifications and the Vendor's warranty during the test period, the ICN shall notify the Vendor of default under this agreement. The Vendor shall then have fifteen (15) days, or the amount of time remaining in the test period, whichever is greater, for cure of such default. The time allowed for cure of acceptance test failures shall not diminish or eliminate the Vendor's liability for liquidated damages. The ICN may accept service prior to the expiration of the test period if the ICN provides the Vendor with a written notice of acceptance and waiver of the remainder of the test period. Within five (5) working days following completion of the testing at the Part III End Point, the ICN will notify the Vendor in writing of ICN's acceptance of the Service to the Part III End Point or of its rejection of the Service to the Part III End Point. In the event that the ICN rejects the Part III End Point, the ICN shall set forth the reason(s) for rejection in sufficient detail for the Vendor to correct the cause of failure. If the ICN fails to provide the Vendor with the notice required under this provision, the Vendor shall notify the ICN in writing that the ICN has five (5) working days from the date of receipt of notification either to accept or to reject the Service at the Part III End Point or the Part III End Point shall be deemed accepted by the ICN on the sixth (6<sup>th</sup>) working day following the date of receipt of notification by the ICN.

2.4.10 The vendor shall exercise its best efforts to prevent damage to property of the ICN, the Part III End Point and others in the course of performing its obligations under this Agreement. The Vendor shall replace or pay replacement costs of any property damage by its operations. The Vendor shall restore damaged property to its condition prior to the damage at the sole expense of the Vendor. Such restoration shall be completed when judged satisfactory to the ICN.

2.4.11 The Vendor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to:

2.4.11.1 All employees on the job site and all other persons who may be affected thereby;

2.4.11.2 The public, including the ICN's staff and employees and the staff, employees, students or others at the site of the Part III End Point;

2.4.11.3 All the work and all materials and equipment to be incorporated herein, whether in storage or on or off the site, under the care, custody or control of the Vendor or any of its subcontractors;

2.4.11.4 Materials, equipment, supplies or construction of other contractors; and

2.4.11.5 Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other improvements and utilities not designated for removal, relocation or replacement in the course of construction.

2.4.12 All materials, equipment and supplies provided to the ICN must comply fully with all safety requirements as set forth by the Iowa Administrative Code, Rules of the Industrial Commission on Safety and all applicable OSHA Standards. When furnishing toxic or hazardous materials as defined in Subpart "Z" of U.S. Occupational Safety and Health Standards, the Vendor shall furnish the appropriate OSHA Form 20, "Materials Safety and Data Sheet," for each such item furnished.

2.4.13 During the course of performing the obligations imposed on the Vendor under this Agreement, the Vendor shall be responsible for public and private protection while work is in process. Warning devices and/or signs shall be predominantly installed and displayed and shall comply with the aforesaid safety regulations.

2.4.14 In the event that the Vendor encounters toxic or hazardous materials in the performance of its obligations under this Agreement which are not caused by the Vendor's fault or through its negligence, any resulting delays shall be considered to be beyond the reasonable control of the Vendor; and, if the toxic or hazardous materials are located on premises controlled by the ICN or the Part III End Point, the toxic or hazardous materials shall be removed or otherwise corrected by the ICN or the Part III End Point, and the Vendor shall have no obligation, responsibility or liability with respect to such materials.

## CHAPTER 3

### TECHNICAL SPECIFICATIONS

3.1 Scope. ICN will be accepting Bid Proposals for leased telecommunications service for Single Mode Dark Fiber Service or Ethernet Service which can be delivered by fiber based from Part III End Point locations to ICN Connection Point of Presence (CPOP) locations. Vendors are allowed to provide bids for any service options or for any combination of service options they wish. ICN, in its sole discretion, will determine which type of service it will use for each location and the duration of any resulting Contract for each location.

3.2 Criteria for Compliance.

3.2.1 Telecommunication Service Vendors may provide Bid Proposals at the current connection point or alternate connection point(s) (if listed), or both. The Part III End Point locations with their respective CPOP locations are listed in Tab 4A for Single Mode Dark Fiber Service, Tab 4B for Ethernet Service.

3.2.2 Telecommunication Service Vendors providing Bid Proposals for Single Mode Dark Fiber Service are required to provide monthly pricing for, 6 year, 10 year and 20-year term length options.

3.2.3 Telecommunication Service Vendors providing Ethernet Service are required to provide per month pricing for 3 year and 5 year term length options.

3.2.3.1 3- year pricing for Ethernet options.

- 3.2.3.1.1 Monthly price for 100mb service
- 3.2.3.1.2 Monthly price for 200mb service
- 3.2.3.1.3 Monthly price for 500mb service
- 3.2.3.1.4 Monthly price for 1000mb service
- 3.2.3.1.5 Monthly price for 10gig service

3.2.3.2 5-year pricing for Ethernet options.

- 3.2.3.2.1 Monthly price for 100mb service
- 3.2.3.2.2 Monthly price for 200mb service
- 3.2.3.2.3 Monthly price for 500mb service
- 3.2.3.2.4 Monthly price for 1000mb service
- 3.2.3.2.5 Monthly price for 10gig service

3.2.4 Telecommunication Service Vendors may provide an alternative or equal solution and pricing per month if Single Mode Dark Fiber Service, Ethernet Service isn't available.

3.2.5 The ICN, in its sole discretion, will determine which type of service and the term length of service it will use for each location.

3.2.6 Telecommunication Service Vendor may bid any or all sites.

3.2.7 Telecommunication Service Vendor is encouraged, but not required, to combine Ethernet Service from multiple Part III End Point locations that are assigned to the same ICN CPOP location, to be delivered to the CPOP on a single transport system to the ICN CPOP location from a Vendor hub location. ("Requirement Understood" is an acceptable answer to this requirement.)

3.2.8 Telecommunication Service Vendor must be able to provide service by July 1, 2025.

**3.3 Requirements. The purpose of this Section is to identify the requirements and conditions a Bid Proposal must fulfill. The Telecommunication Service Vendor must provide a positive statement of compliance to each of the requirements listed in Sections 3.3.1 through 3.3.10 as it applies to the service type and complete the Bid Proposal Submittal Form 4 and Tab 4A for Dark Fiber Optic Cable Service; Tab 4B Ethernet Service.**

3.3.1 It is the responsibility of the Telecommunication Service Vendor to perform and pay all cost associated with the installation of the service, all future locates of fiber facilities if applicable, any relocations of the fiber Service if applicable any maintenance and repairs, including lightning damage, of the Telecommunication Service (fiber, antennas, towers and any associated equipment providing the service).

3.3.2 Telecommunication Service Vendor shall adhere to a backup power requirement for their transport equipment such that a commercial power outage will not impact service for a minimum of 4 hours.

3.3.2.1 The service provided by the ICN to the Part III location has a backup power standard of 4 hours, and this applies to service provided by the Telecommunication Service Vendor as well. The requirement can be satisfied in multiple ways.

3.3.2.1.1 At some locations, the ICN has a small DC power plant available. It is possible the ICN could provide excess capacity to the Telecommunication Service Vendor, however it is the responsibility of the Telecommunication Service Vendor to review power capacity with ICN Operations/Engineering on capacity and requirements for each site along with their intended transport equipment specifications to accomplish this requirement.

3.3.2.1.2 The Telecommunication Service Vendor shall provide their own DC powered transport and provide their own DC backup power system.

3.3.2.1.2.1 All sites listed in the Site Location are DC powered sites

3.3.2.1.3 The Telecommunication Service Vendor can provide AC powered transport equipment powered through a Vendor supplied UPS capable of meeting the 4 hour backup power requirement.

3.3.2.1.4 Backup batteries must be properly maintained over time to continually achieve the 4 hour backup power requirement.

3.3.3 Telecommunication Service Vendor shall at all times, maintain all parts of the Telecommunication Service equipment in good condition and repair throughout the term of the Capacity Agreement and any extension thereof so as to provide service to the ICN and the Part III End Point on an uninterrupted basis. During the term of the Capacity Agreement and any extension thereof, the Vendor, at its sole expense, shall maintain, repair or replace any and all of its equipment, hardware, software, cable, batteries or other materials necessary to provide service to the ICN.

3.3.4 Telecommunication Service Vendor is required to follow ICN Change Control Standards prior to performing maintenance of Vendors Telecommunication Service equipment or cable that is providing the service to the ICN. ICN Change Control Standards will be provided to the Vendor awarded a contract.

3.3.5 Telecommunication Service Vendor shall limit any interruption of service for the purpose of preventive maintenance, repairs or upgrading the Service to periods of minimum use by the ICN and the Part III End Point. Vendor shall develop and adopt a preventive and routine maintenance schedule for the Telecommunication Service, which is subject to approval by the ICN. Any preventive or routine maintenance shall be performed by Vendor in accordance with the schedule adopted unless Vendor obtains the ICN's prior written approval to deviate from the adopted schedule.

3.3.6 Telecommunication Service Vendor shall notify the ICN Service Desk and the Part III End Point of any significant interruption in the operation of the Telecommunication Service. For purposes of this Section, "significant interruption" means an interruption in service for duration of ten (10) consecutive minutes or longer. When the ICN or the Part III End Point first discovers or learns about an interruption in service, the Vendor shall commence repair to the Telecommunication Service to correct the interruption in service immediately and shall complete repairs necessary to restore the service to operation within four (4) hours from the time of discovery or notification by the ICN or the Part III End Point to the Vendor. In the event that the Vendor is unable to restore the service within two (2) hours of discovery or notification, it shall escalate its internal procedures for restoring the service. Vendor shall at all times, keep and maintain a service interruption log, which shall be available for inspection by the ICN.

3.3.7 In the event that service to the ICN and the Part III End Point is interrupted for reasons including but not limited to, equipment malfunction or failure, severed cable, repairs or maintenance to the service, or negligence of

the Telecommunication Service Vendor, its subcontractors, agents or employees, for a period of time which exceeds four (4) hours from the date and time of notification to the Vendor, the ICN shall impose disincentives as described in Section 5 of Attachment 1. For service interruptions due to severed or damaged fiber optic cable, a maximum period of six (6) hours from the time of service interruption to restoration is acceptable prior to imposing the disincentives described in Section 5. In all cases, once the service interruption is resolved, the Vendor shall inform the ICN Service Desk that the issue has been resolved and give the solution for resolving the incident.

### 3.3.7.1 Service Credits

3.3.7.1.1 Service Interruptions, including, but not limited to, equipment malfunction or failure, repairs or maintenance to the Single Mode Dark Fiber Service, Ethernet Service or negligence of the Vendor, its subcontractors, agents or employees, for a period of time which exceeds four (4) hours from the date and time of notification to the Vendor of a service interruption, or 6 hours due to a fiber cut, shall result in a Service Credit equal to one (1) day of Single Mode Dark Fiber/Ethernet Service computed as 1/30 of the Monthly Charge;

3.3.7.1.2 For each twenty-four hour period in which service is interrupted as stated above, the ICN will withhold an additional one thirtieth (1/30<sup>th</sup>) of the monthly lease amount.

3.3.7.1.3 Service interruptions at a single location deemed to be chronic, which is defined as more than 3 incidents of service interruption of any duration in a single twenty-four hour period, shall result in a Service Credit equal to one (1) day of Single Mode Dark Fiber/Ethernet Service computed as 1/30 of the Monthly Charge.

3.3.7.1.4 Service Credits due to ICN will be applied to the next scheduled monthly invoice issued by Vendor and ICN; however, if the Service Credit is applied to the last month Single Mode Dark Fiber/Ethernet Service under this Agreement, Vendor will pay the amount of the Service Credit to ICN with 30 days of the termination of this Agreement.

3.3.8 During the term of the Capacity Agreement and any extension thereof, the Telecommunication Service Vendor agrees that it shall not take any action, which would or does impair the operation of the service obtained by the ICN. The Vendor further agrees that, during the term of the Agreement or any extension thereof, it will not take any action, which would or does impair the capacity or bandwidth of the service obtained by the ICN, except for routine and preventive maintenance of the service as described above.

### 3.3.9 Single Mode Dark Fiber Service.

#### 3.3.9.1 Single Mode Dark Fiber Service Requirements

3.3.9.1.1 The Single Mode Dark Fiber Service shall be One (1) Pair (2 fibers) of Single Mode Fiber that complies with ITU-T G652 specifications from the Part III end-point to the ICN CPOP.

3.3.9.1.2 The End-to-End distance of the fiber, from the Part III End Point location to the ICN CPOP location, must be less than 23.2 miles (37.1 km).

3.3.9.1.3 The End-to-End span loss of the fiber, from the Part III End Point Location to the ICN CPOP location, must be less than/equal to .39dbm/km at the 1310nm wavelength and less than/equal to .25dbm/km at the 1550nm wavelength.

3.3.9.1.4 Telecommunication Service Vendor fiber cable shall be installed in compliance with current Telecommunications Industry Standards/Practices and all applicable local building and electrical codes.

3.3.9.1.5 Telecommunication Service Vendor outside plant fiber cable must be terminated in a Telecom Standard Fiber Termination Panel (FTP), Wall Mount Type with FC/PC or SC termination connectors (location of the wall mount FTP in FOTS room to be assigned by ICN). The FC bulkhead connector in the Vendor wall mount FTP will be considered the Demarcation Point of the Single Mode Dark Fiber Service.

3.3.9.1.6 Telecommunication Service Vendor outside plant cable field splices shall be of fusion type, with less than .10db of loss per field splice. No mechanical type field splices are allowed.

3.3.9.1.7 Telecommunication Service Vendor shall provide to the ICN the as-built documentation of the fiber path route and distance (in feet and kilometer), the field splice point locations and the Optical Time Domain Reflectometer (OTDR) fiber traces showing the bi-directional end-to-end span loss for both 1310 and 1550nm wavelengths of the fiber.

3.3.9.1.8 Telecommunication Service Vendor shall be responsible for obtaining all applicable permits and right of way access for any new fiber construction.

3.3.9.1.9 Telecommunication Service Vendor shall be responsible for all of the maintenance aspects of the fiber cable.

3.3.9.1.10 Telecommunication Service Vendor shall exercise its best efforts to prevent damage to property of the ICN, the Part III End Point and others in the course of performing its obligations under this Agreement. The Vendor shall replace or pay replacement costs of any property damage by its operations, by Vendor, its officers, employees, agents, contractors, or subcontractors. The Vendor shall restore damaged property to its condition prior to the damage at the sole expense of the Vendor.

3.3.9.1.11 Telecommunication Service Vendor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to;

3.3.9.1.11.1 All employees on the job site and all other persons who may be affected thereby;

3.3.9.1.11.2 The public, including the ICN's staff and employees and the staff, employees, students or others at the site of the Part III End Point;

3.3.9.1.11.3 All the work and all materials and equipment to be incorporated herein, whether in storage or on or off the site, under the care, custody or control of the Vendor or any of its subcontractors;

3.3.9.1.11.4 Materials, equipment, supplies or construction of other contractors; and other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other improvements and utilities not designated for removal, relocation or replacement in the course of construction.

3.3.9.1.12 All materials, equipment and supplies provided to the ICN must comply fully with the all safety requirements as set forth by the Iowa Administrative Code, Rules of the Industrial Commission on Safety and all applicable OSHA Standards. When furnishing toxic or hazardous materials as defined in the Subpart "Z" of U.S. Occupational Safety and Health Standards, the Vendor shall furnish the appropriate OSHA Form 20, "Materials Safety and Data Sheet," for each such item furnished.

3.3.9.1.13 The Telecommunications Service Provider during the course of performing the obligations imposed on the Vendor under this Agreement, the Vendor shall be responsible for public and private protection while work is in process. Warning devices and/or signs shall be predominantly installed and displayed and shall comply with the aforesaid safety regulations.

3.3.9.1.14 In the event that the Telecommunication Service Provider encounters toxic or hazardous materials in the performance of its obligations under this Agreement which are not caused by the Vendor's fault or through its negligence, any resulting delays shall be considered to be beyond the reasonable control of the Vendor; and, if the toxic or hazardous materials are located on the premises controlled by the ICN or the Part III End Point, the toxic or hazardous materials shall be removed or otherwise corrected by the ICN or the Part III End Point, and the Vendor shall have no obligation, responsibility or liability with respect to such materials.

3.3.9.1.15 The Delivery of Equipment.

3.3.9.1.15.1 The Equipment shall be delivered as agreed upon between the Telecommunications Service Vendor and the ICN.

3.3.9.1.15.2 ICN shall negotiate an installation and implementation schedule with the Telecommunication Service Provider. Extended installation time periods may be considered when the extension is in the best interest of ICN.

3.3.9.1.15.3 Installations of the system shall be at the Telecommunication Service Providers expense. Removal of the system upon cancellation or Contract completion shall be also at the Telecommunication Service Providers expense. The Telecommunication Service Provider shall be responsible for all equipment and service necessary for installation and removal of the system and shall provide a customer service representative. The Telecommunication Service Provider shall be responsible for contacting the End Point.

3.3.9.1.15.4 The Telecommunication Service Provider shall fully assume the risk of loss and/or damage during shipment, unloading and installation of the system.

3.3.9.1.15.5 The Telecommunication Service Provider shall remove all packing crates, boxes, paper, packing materials and all other such extraneous material shall be removed from the premises at the Vendor's expense after installation.

3.3.9.1.15.6 The Telecommunication Service Provider shall make no substitutions of materials or services specified with the prior written consent of the ICN.

3.3.9.1.16 The Telecommunication Service Provider shall be responsible for the performance of any subcontractors who are retained by the Vendor in the performance of this Agreement.

3.3.9.2 ICN will provide the following at the Part III End-point locations for Single Mode Dark Fiber Service.

3.3.9.2.1 Wall space for the mounting of the Vendor provided Fiber termination panel and site layout and floor plan drawings for construction purposes.

3.3.9.3 ICN will provide the following at the CPOP locations for Single Mode Dark Fiber Service.

3.3.9.3.1 The ICN will provide a Telecommunications Equipment room with a Master Ground Bar (MGB), for grounding of the cable, and wall space for the mounting of the Telecommunication Service Vendor provided Fiber Termination Panel (FTP). The Telecommunication Service Vendor awarded a contract will be provided the site layout and floor plan drawings with logistic assignments for fiber installation purposes.

3.3.9.3.2 The ICN will provide the Telecommunication Service Vendor with access to the ICN Multi-cell duct connecting Telecommunications Equipment room building to the public right-of-way. The Telecommunication Service Vendor awarded a contract will be provided the Multi-cell duct as-built drawings and duct assignment for fiber installation purposes.

3.3.10 Ethernet Service.

3.3.10.1 Ethernet Service Requirements.

3.3.10.1.1 Ethernet interface to be 100MB or 1G

3.3.10.1.2 Ethernet Service to adhere to is IEEE 802.2 and the service will need to pass RFC 2544 testing.

3.3.10.1.3 Ethernet connection should be one of the following:

3.3.10.1.3.1 FDP/WIC – SC Connector

3.3.10.1.3.2 SFP – LC Connector

3.3.10.1.3.3 Ethernet port – RJ-45 Connector.

## **CHAPTER 4**

### **EVALUATION CRITERIA**

#### **4.1 Award Process.**

4.1.1 An evaluation committee assigned by personnel within the ICN will review the Bid Proposals. The evaluation committee will consider all information provided when making its recommendation and may consider relevant information from other sources. By virtue of statutory authority, a preference will be given to products and provisions grown and coal produced within the state of Iowa.

4.1.2 The evaluation committee will make a recommendation to the Executive Director of the ICN indicating the committee's recommendations for which Vendors and which services it believes the ICN should select to receive Contracts for each of the sites listed in Attachments 4A and 4B. The Executive Director will select the Vendors to receive the awards. The Executive Director is not bound by the committee's recommendation. All Vendors submitting Bid Proposals will receive notification of the awards.

4.1.3 All applicable contracting requirements imposed by this ITB and Iowa law shall be met by the Vendors. The successful Vendors must, in a timely manner, enter into Contracts with the ICN to implement the services contemplated by this ITB. Failure of a successful Vendor to agree to the terms of a Contract within a timely manner may be grounds for the ICN to award to the next compliant Vendor for that Part III site.

#### **4.2 Evaluation Criteria.**

4.2.1 Bid Proposals will be evaluated based on cost and overall benefit to the State of Iowa. The ICN will determine, in its sole discretion, which type of service and resulting Contract duration is the most cost-effective for the ICN.

4.2.1.1 In the event the ICN receives Bid Proposals for Fiber Based Ethernet Service and Dark Fiber Service for the same location, the ICN will take the costs associated with leasing equipment to light dark fiber into account when comparing the costs of the Bid Proposals for Fiber Based Ethernet Service and Dark Fiber Service.

4.2.1.2 In the event the ICN receives Bid Proposals for both the connection point and the alternate connection point on any particular location, the ICN will take any cost savings to the ICN attributable to using the alternate connection point into account when comparing costs of the proposals for the connection point and the alternate connection point.



## ATTACHMENT 1

### CONTRACT TERMS AND CONDITIONS ITB 24-047

#### Sample Capacity Agreement For Dark Fiber Leased Telecommunications Service Or Ethernet Leased Telecommunications Service

24-047 Merged Area - Site - Ring

SECTION 1. TERM. This agreement is effective July 1, 2025 and will continue through [date will be determined after the evaluation of Bid Proposals].

SECTION 2. DOCUMENTS INCORPORATED BY REFERENCE. Invitation To Bid 24-047 for Leased Telecommunications Service at Selected Locations Throughout the State of Iowa and the Vendor's Bid Proposal in response to the ITB, together with any clarifications, attachments, appendices, amendments or other writings of the ICN or the Vendor (collectively Bid Proposal) are incorporated into this Agreement by this reference as if fully set forth in this Agreement. However, Vendor objections in its Bid Proposal to ICN's model language shall not be considered as a part of this Agreement unless those objections are explicitly accepted in writing by ICN.

2.1 Contractual Obligations of Vendor. The terms and conditions of the Bid Proposal and of the ITB are made contractual obligations of the Vendor.

2.2 Contents of Agreement. The parties acknowledge that this Agreement consists of this document as well as the ITB and the Bid Proposal and that the parties are obligated to perform as set forth in the ITB and the Bid Proposal to the same extent that they are obligated to perform the specific duties set forth in this document.

2.3 Order of Preference. In the case of any inconsistency or conflict between the specific provisions of this document, the ITB or the Bid Proposal, any inconsistency or conflict shall be resolved as follows:

2.3.1 First by giving preference to the specific provisions of the Agreement.

2.3.2 Second, by giving preference to the specific provisions of the ITB.

2.3.3 Third, by giving preference to the specific provisions of the Bid Proposal.

2.4 Intent of References to Bid Documents. The references to the parties' obligations, which are contained in this document, are intended to change, supplement or clarify the obligations as stated in the ITB and the Bid Proposal. The failure of the parties to make reference to the terms of the ITB or Bid Proposal in this document shall not be construed as creating a conflict and will not relieve the Vendor of the contractual obligations imposed by the terms of the ITB and the Bid Proposal. Terms offered in the Bid Proposal, which exceed the requirements of the ITB, shall not be construed as creating an inconsistency or conflict with the ITB or this document. The contractual obligations of the ICN cannot be implied from the Bid Proposal.

SECTION 3. DEFINITIONS. The following words shall have the meanings set forth below. Words in the singular shall be held to include the plural and vice versa, and words of gender shall be held to include the other gender as the context requires. For the purposes of this Agreement, the following terms and all other terms defined in this Agreement shall have the meanings so defined unless the context clearly indicates otherwise.

3.1 "State" shall mean the State of Iowa and all of its departments, agencies, boards, and commissions including the ICN.

3.2 "ICN" shall mean the Iowa Telecommunications and Technology Commission operating the Iowa Communications Network.

3.3 "Vendor" shall mean [Vendor will be listed].

3.4 "Part III End Point" shall mean [Part III End Point will be listed].

3.5 "Single Mode Dark Fiber Service" shall mean two (2) continuous single mode fiber strands from the Part III End Point location to the ICN CPOP location.

OR

"Ethernet Service" shall mean a Local Area Network or Wide Area Network that supports the specified data transfer rate. The Service complies with IEEE 802.3 standards; which specify the physical layer and data link layer's media access control (MAC) of wired Ethernet. Ethernet uses the CSMA/CD access method to handle simultaneous demands. Physical connections are made between nodes and/or infrastructure devices by various types of copper or fiber cable. The provided data transport signal complies with the IEEE 802.2 standard that defines the software layers of the LAN and must pass RFC 2544 testing.

#### SECTION 4. SCOPE OF WORK.

##### 4.1 Scope of Services.

4.1.1 The services to be performed pursuant to and as a result of this Agreement by the Vendor are described on Schedule A attached hereto and made a part hereof by this reference.

4.1.2 The Vendor shall prepare and deliver specifications to the ICN which will detail the design, technical and functional capabilities, look and feel, and other attributes related to the project, all as more fully described in Schedule A.

4.2 Amendments to Scope of Services and Specifications. The parties agree that Schedule A, Scope of Services, and the specifications, may be revised, replaced, amended or deleted at any time during the term of this Agreement to reflect changes in service or performance standards upon the mutual written consent of the parties.

4.3 Industry Standards. Services rendered pursuant to this Agreement shall be performed in a professional and workmanlike manner in accordance with the terms of this Agreement and with generally acceptable industry standards of performance for similar tasks and projects. In the absence of a detailed specification for the performance of any portion of this Agreement, the parties agree that the applicable specification shall be the generally accepted industry standard. As long as the ICN notifies Vendor promptly of any services performed in violation of this standard, Vendor will re-perform the services, at no cost to ICN, such that the services are rendered in the above-specified manner.

4.4 Non-Exclusive Rights. This Agreement is not exclusive. The ICN reserves the right to select other Vendors to provide services similar or identical to the Scope of Services described in this Agreement during the term of this Agreement.

4.5 Additional Capacity. ICN reserves the right to add capacity during the term of the Agreement. The additional capacity shall not extend the length of the term of the Lease Agreement.

4.6 Performance Standards. The parties agree to the performance standards and related payment, monitoring and review provisions as set forth in Section 5. [Service awarded will be listed: Dark Fiber or Ethernet] Service must operate in accordance with the terms of the Lease Agreement 100% of the time, 24 hours daily, seven days per week, except for scheduled downtime for system maintenance. System maintenance is to be scheduled in accordance with ICN Maintenance Window Standards.

#### SECTION 5. COMPENSATION.

5.1 Payment Terms. The Vendor shall submit an invoice on a monthly basis at a fixed rate of \$[Cost will be determined after the evaluation of Bid Proposals] per month. All invoices submitted by Vendor shall contain appropriate documentation as necessary to support the fees or charges included on the invoice and shall comply with all applicable rules concerning payment of such fees, charges or other claims and shall contain all information reasonably requested by ICN. ICN shall pay all approved invoices in arrears and in conformance with Iowa Code. ICN may pay in less than 60 days as provided in Iowa Code. However, an election to pay in less than sixty (60) days shall not act as an implied waiver of Iowa Code. Any sums owed to ICN by the Vendor shall be itemized and deducted from the Vendor's invoice prior to submission. Notwithstanding anything herein to the contrary, ICN shall have the right to dispute any invoice submitted for payment and withhold payment of any disputed amount if ICN believes the invoice is inaccurate or incorrect in any way. Invoices shall be submitted to ICN Finance - Accounts Payable, Grimes State Office Building, 400 East 14<sup>th</sup> Street, Des Moines, IA 50319.

5.2 Payment Tied to Performance. If Vendor fails to comply with the performance standards described in Section 5 and Schedule A, the ICN shall withhold one thirtieth (1/30<sup>th</sup>) of the monthly lease amount of each twenty-four hour period in which service is interrupted if service to the ICN and the Part III End Point is interrupted for any reason, including, but not limited to, equipment malfunction or failure, severed cable, repairs or maintenance to the [Service awarded will be listed: Dark Fiber or Ethernet] or negligence of the Vendor, its subcontractors, agents or employees, for a period of time which exceeds 4 hours from the date and time of service interruption. For the purpose of this Section, "service interruption" shall not include a failure or malfunction of equipment at the ICN access point or the Part III End Point which was not installed or maintained by the Vendor or an affiliate, vandalism by third parties (except that severed cable shall be included in this Section for purpose of deducting monthly lease amounts as a service interruption), or an interruption due to circumstances beyond the reasonable control of the Vendor. Scheduled routine and preventative maintenance which is performed in accordance with Section 5 and Schedule A shall not be included in calculating withholdings for service interruptions.

5.3 Monitoring and Review. The ICN will monitor the Vendor's compliance with the performance standards using methods of periodic inspection and keeping track of complaints received at the ICN's Network Operation Center. The ICN will review the Vendor's compliance with the performance standards at the end of each month and will subtract the appropriate amount from the Vendor's monthly fee in accordance with the disincentive schedule provided in Section 5 if the Vendor failed to meet any of the performance standards during the month.

5.4 Reimbursable Expenses. There shall be no reimbursable expenses associated with this Agreement separate from the compensation referred to in this section. Vendor shall be solely responsible for all costs and expenses, including, but not limited to, travel, mileage, meals, lodging, equipment, supplies, personnel, training, salaries, benefits, insurance, conferences, long distance telephone, and all other costs and expenses of Vendor.

5.5 Set Off. In the event that the Vendor owes ICN or the State of Iowa any sum under the terms of this Agreement, any other agreement, pursuant to any judgment, or pursuant to any law; ICN may set off the sum owed to ICN or the State against any sum billed to ICN by the Vendor in ICN's sole discretion unless otherwise required by law. The Vendor agrees that this provision constitutes proper and timely notice under the law of setoff.

5.6 The Vendor shall audit the invoices presented to the ICN to ensure that they are proper, current and correct. The Vendor has 30 days from the date of invoice to present and resolve any discrepancies with the ICN. The Vendor shall notify the ICN of any and all discrepancies that the audit(s) reveals.

5.7 Delay of Payment Due To Vendor's Failure. If the ICN in good faith determines that the Vendor has failed to perform or deliver any service or product as required by this Agreement, the Vendor shall not be entitled to any compensation under this Agreement until such service or product is completed or delivered. In the event of partial performance, the ICN may withhold that portion of the Vendor's compensation, which represents payment for the unsatisfactory services.

## SECTION 6. PART III END POINT COLOCATION SPACE.

6.1 The Part III End Point shall provide the ICN with an adequate and reasonable amount of appropriately enclosed floor space which may be secured by lock and key in which to install and maintain its equipment for the fiber optic cable service. Further, the (Endpoint) shall, at its sole expense, provide the Vendor and the ICN with heating, air conditioning, commercial electric power and solid waste removal associated with the operation of the fiber optic cable service.

6.2 Vendor shall understand that it is accessing the End Point location under the permissions obtained by the ICN.

6.3 Vendor will ensure that its personnel accessing the End Point property, on behalf of the ICN will follow all rules, regulations and laws while provisioning and or maintaining services.

## SECTION 7. CONFIDENTIAL INFORMATION.

7.1 During the course of this Agreement each party may disclose, to the other either directly or indirectly, certain data which is proprietary which shall be referred to as "Confidential Information" of the disclosing party and which must remain confidential. Confidential Information may include without limitation, among other things, such items as security information, user information, data, knowledge, trade secrets and other proprietary information, methodologies, developments, software, software documentation, inventions, processes, and other nonpublic information in oral, graphic, written, electronic or machine readable form.

7.2 The parties acknowledge that information and material in the hands of the ICN is generally public information unless it is specifically allowed by law to be maintained as Confidential Information.

7.3 The parties acknowledge that some information in the hands of the ICN is strictly confidential and is not subject to release as a matter of law. The Vendor shall abide by all such statutory provisions when handling sensitive ICN information identified as confidential.

7.4 All written or electronic Confidential Information shall be clearly marked as Confidential Information by the party providing the Confidential Information at the time of disclosure to the other party.

7.5 If the Confidential Information is disclosed orally, and reduced to writing, the receiving party must treat the information as Confidential Information.

7.6 The Vendor shall limit such identification to information it reasonably believes it is entitled to confidential treatment pursuant to Iowa Code Chapter 22 or other applicable law.

7.7 In the event a public records request is made to the ICN pursuant to Iowa Code Chapter 22, regarding the Confidential Information of the Vendor, the ICN shall immediately notify the Vendor of the request by telephone and fax. The ICN will respond to the request for information within 15 days thereafter with a release of the information unless the Vendor has obtained an injunction preventing release of the requested information.

7.8 The obligations of this Agreement do not apply to Confidential Information which:

7.8.1 Was rightfully in the possession of the receiving party from a source other than the disclosing party prior to the time of disclosure of the Confidential Information to receiving party;

7.8.2 Was known to the receiving party prior to the disclosure of the Confidential Information from the disclosing party;

7.8.3 Was disclosed to the receiving party without restriction by an independent third party having a legal right to disclose the Confidential Information;

7.8.4 Becomes public knowledge, other than through an act or failure to act of the disclosing party;

7.8.5 Is publicly available or in the public domain when provided;

7.8.6 Is independently developed by the disclosing party; or

7.8.7 Is disclosed pursuant to law, subpoena or the order of a court or government authority.

7.9 The parties shall have the following duties relating to the Confidential Information:

7.9.1 The Vendor shall designate one individual who shall remain the responsible authority in charge of all data collected, used or disseminated by the Vendor in connection with the performance of the Agreement. The Vendor shall accept responsibility for providing adequate supervision and training to its agents and employees to ensure compliance with the terms of this Agreement. The private and confidential data shall remain the property of the ICN at all times.

7.9.2 The Confidential Information of either party shall be held in strict confidence by the receiving party and shall not be disclosed or used by the receiving party without the prior written consent of the disclosing party, except as provided in this Agreement or as may be required by law pursuant to available confidentiality restrictions.

7.9.3 The parties shall use their best efforts to protect the Confidential Information in its possession.

7.9.4 The parties shall restrict disclosure of the Confidential Information solely to those of its employees, agents, consultants and attorneys with a need to know in order to accomplish the purpose of this Agreement.

7.9.5 The parties shall protect the Confidential Information from disclosure to or access by unauthorized persons.

7.9.6 The parties shall use the Confidential Information solely for the purpose of this Agreement and for no other purpose.

7.9.7 The parties shall not duplicate the Confidential Information in any form, except as may be necessary to accomplish the purpose of this Agreement.

7.9.8 The parties shall advise each of its employees, agents, consultants and attorneys who receive the Confidential Information of the obligations of confidentiality and restrictions on the use set forth herein

7.9.9 The parties shall immediately return the Confidential Information and all copies thereof, to each other upon the earlier of the expiration of the need therefore in order to accomplish the purpose.

7.10 The provisions of this Agreement shall apply to all Confidential Information disclosed by the parties to each other over the course of this Agreement. The parties' obligations under this provision shall survive termination of this Agreement and shall be perpetual.

7.11 The Vendor shall indemnify the ICN for a violation of this Section. The Vendor shall notify the ICN prior to the destruction of these materials and shall provide the ICN with the opportunity for proper destruction of these materials.

7.12 No Confidential Information will be exported to any country in violation of the United States Export Administration Act and the regulations thereunder.

## SECTION 8. VENDOR WARRANTIES.

8.1 Construction of Warranties Expressed in this Agreement with Warranties Implied by Law. All warranties made by the Vendor in all provisions of this Agreement and the Bid Proposal by the Vendor, whether or not this Agreement specifically denominates the Vendor's promise as a warranty or whether the warranty is created only by the Vendor's affirmation or promise, or is created by a description of the materials and services to be provided, or by provision of samples to the ICN, shall not be construed as limiting or negating any warranty provided by law, including without limitation, warranties which arise through course of dealing or usage of trade. The warranties expressed in this Agreement are intended to modify the warranties implied by law only to the extent that they expand the warranties applicable to the goods and services provided by the Vendor.

8.2 The Vendor warrants that the all the concepts, materials produced, the work product and the information, data, designs, processes, inventions, techniques, devices, and other such intellectual property furnished, used, or relied upon by the Vendor or the ICN will not infringe any copyright, patent, trademark, trade dress, or other intellectual property right of the Vendor or others. Any intellectual property provided to the ICN pursuant to the terms of this Agreement, shall be wholly original with the Vendor or the Vendor has secured all applicable interests, rights, licenses, permits, or other intellectual property rights in such concepts, materials and work.

8.3 The Vendor represents and warrants that the concepts, materials and the ICN's use of same and the exercise by the ICN of the rights granted by this Agreement shall not infringe upon any other work, other than material provided by the ICN to the Vendor to be used as a basis for such materials, or violate the rights of publicity or privacy of, or constitute a libel or slander against, any person, firm or corporation and that the concepts, materials and works will not infringe upon the copyright, trademark, trade name, literary, dramatic, statutory, common law or any other rights of any person, firm or corporation or other entity.

8.4 The Vendor warrants that all of the services to be performed hereunder will be rendered using sound, professional practices and in a competent and professional manner by knowledgeable, trained and qualified personnel.

8.5 The Vendor warrants that the deliverables under this Agreement will operate in conformance with the terms and conditions of this Agreement.

8.6 The Vendor warrants that it has full authority to enter into this Agreement and that it has not granted and will not grant any right or interest to any person or entity which might derogate, encumber, or interfere with the rights granted to the ICN.

8.7 The Vendor warrants that all obligations owed to third parties with respect to the activities contemplated to be undertaken by the Vendor pursuant to this Agreement are or will be fully satisfied by the Vendor so that the ICN will not have any obligations with respect thereto.

8.8 The Vendor warrants that it is the owner of or otherwise has the right to use and distribute the software, the materials owned by the Vendor and any other materials, and methodologies used in connection with providing the services contemplated by this Agreement.

8.9 The Vendor expressly warrants to the standards in the industry all aspects of the goods and services provided by it or used by the Vendor and the ICN in performance of this Agreement.

8.10 The Vendor unconditionally warrants that all equipment supplied and installed for the purpose of fulfilling its obligations under the Lease Agreement are fit for the purpose intended, that it complies with industry standards and that the equipment is compatible with the ICN's equipment.

8.11 The Vendor warrants that the [Service awarded will be listed: Dark Fiber Service's capacity (Dark Fiber circuit) or Ethernet Service capacity (bandwidth)] will be available to comply with the requirements of the ITB and the Vendor's response to the ITB, and further the Vendor warrants that during the term of the Lease Agreement and any extension thereof, that the capacity will not be diminished or impaired except as permitted for routine or preventive maintenance as outlined in Schedule A, Scope of Services.

8.12 The Vendor warrants that upon notification by the ICN or the Part III End Point, it will respond immediately to correct any failure of performance of the [Service awarded will be listed: Dark Fiber Service or Ethernet Service] as required in Schedule A, Scope of Services. In the event that the Vendor is unwilling or unable to correct the failure within the time allowed, the ICN may make or cause to have made any repair necessary for the continued operation of the [Service awarded will be listed: Dark Fiber Service or Ethernet Service] and shall charge the Vendor for such repair or replacement. The charges made to the Vendor by the ICN may be offset from lease payments due or to become due to the Vendor.

SECTION 9. INDEMNIFICATION BY VENDOR. The Vendor agrees to defend, indemnify and hold the ICN, and the State of Iowa, its employees, agents, board members, appointed officials and elected officials, harmless from any and all demands, debts liabilities, damages, loss, claims, suits or actions, settlements, judgments, costs and expenses, including the reasonable value of time expended by the Attorney General's Office, and the costs and expenses and attorney fees of other counsel required to defend the ICN or the State of Iowa related to or arising from:

9.1 Any violation or breach of this Agreement including without limitation any of the Vendor's representations or warranties; or

9.2 Any acts or omissions, including ,without limitation, negligent acts or omissions or willful misconduct of Vendor, its officers, employees, agents, board members, contractors, subcontractors, or counsel employed by Vendor in the performance of this Agreement, or any other reason in connection with the goods and services provided under this Agreement; or

9.3 Claims for any violation of any intellectual property right including but not limited to infringement of patents, trademarks, trade dress, trade secrets, or copyrights arising from the any of the goods or service performed in accordance with this Agreement; or

9.4 The Vendor's performance or attempted performance of this Agreement; or

9.5 Any failure by the Vendor to comply with all local, State and Federal laws and regulations; or

9.6 Any failure by the Vendor to make all reports, payments and withholdings required by Federal and State law with respect to social security, employee income and other taxes, fees or costs required by the Vendor to conduct business in the State of Iowa.

9.7 Notwithstanding the above, Vendor is in no way obligated to the ICN or any third party to the extent that a claim of infringement, as set forth in 9.3 above is based upon any one of the following: (a) a modification made by a party other than Vendor or (b) Vendor's compliance with designs, instructions or specifications provided by the ICN or its agents; or (c) use of a service or product by the ICN in violation of this Agreement.

9.8 The Vendor's duty to indemnify as set forth in this Section shall survive the expiration or termination of this Agreement and shall apply to all acts taken in the performance of this Agreement regardless of the date any potential claim is made or discovered by the ICN.



SECTION 10. RESERVED.

SECTION 11. RESERVED.

SECTION 12. TERMINATION.

12.1 Termination for Lack of Authority or Funding. Notwithstanding anything in this Agreement to the contrary and subject to the limitations, conditions, and procedures set forth below, the ICN shall have the right to terminate this Agreement without penalty and without any advance notice as a result of any of the following:

12.1.1 If the ICN's, or any responsible State agency's or department's authorization to conduct its business is withdrawn or there is a material alteration in the programs or any other program the ICN administers; or

12.1.2 If the ICN's duties are substantially modified.

12.1.3 Written Notice of Cancellation. The ICN shall provide Vendor with written notice of cancellation pursuant to this Section.

12.2 Termination for Cause. The ICN may terminate this Agreement upon written notice for the substantial breach by Vendor of any material term if such breach is not cured by Vendor within the time period specified in the ICN's notice of breach or any subsequent notice or correspondence delivered by the ICN to Vendor. If a cure is feasible and an opportunity to cure is provided, the notice shall specify the exact date by which the condition must be cured. Following expiration of the opportunity to cure or notice from the ICN, the ICN may seek any legal or equitable remedy authorized by this Agreement or by law. Substantial breach events include but are not limited to the following:

12.2.1 Vendor fails to perform as required by this Agreement.

12.2.2 Vendor fails to make substantial and timely progress toward performance or fails to meet any of the material specifications and requirements stated in this Agreement, including without limitation the warranties provided in this Agreement, in the ITB or in the Vendor's Bid Proposal.

12.2.3 Vendor fails to conform to the specifications as required by the ITB and the Vendor's response to the ITB.

12.2.4 Vendor fails to provide or install any of the equipment necessary for the operation of the [Service awarded will be listed: Dark Fiber Service or Ethernet Service] as required by the ITB and the Vendor's response to the ITB.

12.2.5 There are four (4) or more "significant interruptions" in service in any thirty (30) day period during the initial term of the Lease or any extension thereof.

12.2.6 There are two (2) or more service interruptions of twenty-four (24) or more consecutive hours in any thirty (30) day period during the initial term of this Lease or any extension thereof.

12.3 Termination for Convenience. Following 30 days written notice, the ICN may terminate this Agreement in whole or in part for convenience without the payment of any penalty or incurring any further obligation to the Vendor. Termination for Convenience can be for any reason or no reason at all if it is in the best interests of the ICN.

12.4 Termination Caused by Calamity, Merger, Consolidation

12.4.1 The ICN declares and the Vendor acknowledges that Part III End Points may be merged, consolidated or the location of the site altered or permanently abandoned by the ICN. In the event that a Part III End Point merges with or is consolidated into another Part III End Point, or the location of the site is altered or permanently abandoned, the ICN may terminate the Lease Agreement with the Vendor without penalty upon thirty (30) days written notice to the Vendor. The ICN, in its sole discretion, may elect to negotiate with the Vendor for the provision of other facilities if the location of the Part III End Point is altered.

12.4.2 In the event that the [Service awarded will be listed: Dark Fiber Service or Ethernet Service] is destroyed by fire or other calamity or rendered unavailable for uninterrupted use for any reason, for a period of thirty (30) consecutive days or more, the ICN, in its sole discretion, may terminate the Lease Agreement without penalty upon thirty (30) days written notice to the Vendor. If the ICN does not elect to terminate the Lease Agreement pursuant to this Section, the ICN shall not be responsible for lease payments to the Vendor during a period of

repair or replacement. Service interruption occasioned by the provisions of this section shall not extend the initial term of the Lease Agreement or any extension thereof unless the ICN, the Part III End Point and the Vendor agree in writing to such an extension.

12.4.3 In the event that the End Point is destroyed by fire or other calamity or rendered unavailable for a period of thirty (30) consecutive days or more, the ICN, in its sole discretion, may terminate the Lease Agreement without penalty upon thirty (30) days written notice to the Vendor. If the ICN does not elect to terminate the Lease Agreement pursuant to this Section, the ICN shall not be responsible for lease payments to the Vendor during a period of repair or replacement. Service interruption occasioned by the provisions of this section shall not extend the initial term of the Lease Agreement or any extension thereof unless the ICN, the Part III End Point and the Vendor agree in writing to such an extension.

12.5 Immediate Termination. The ICN may terminate this Agreement effective immediately without advance notice and without penalty for any of the following reasons:

12.5.1 Vendor furnished any statement, representation, warranty or certification in connection with this Agreement, which is materially false, deceptive, incorrect or incomplete.

12.5.2 Vendor fails to perform, to the ICN's satisfaction, any material requirement of this Agreement or is in violation of any material provision of this Agreement, including, without limitation, the express warranties made by the Vendor.

12.5.3 The ICN determines that satisfactory performance of this Agreement is substantially endangered or that a default is likely to occur.

12.5.4 Vendor becomes subject to any bankruptcy or insolvency proceeding under Federal or State law to the extent allowed by applicable Federal or State law including bankruptcy laws.

12.5.5 Vendor terminates or suspends its business.

12.5.6 The ICN reasonably believes that Vendor has become insolvent or unable to pay its obligations as they accrue consistent with applicable Federal or State law.

12.5.7 It is alleged that Vendor's processes or materials violate any valid patent, trademark, copyright, other intellectual property right or contract, and the ICN reasonably believes that the allegation may impair Vendor's performance of this Agreement.

12.5.8 Vendor has failed to comply with all applicable Federal, State, and local laws, rules, ordinances, regulations and orders when performing within the scope of this Agreement.

12.5.9 Vendor has engaged in conduct that has or may expose the ICN to liability, as determined in the ICN's sole discretion.

12.5.10 Vendor has a conflict of interest that interferes with fair competition or conflicts with an interest of the ICN as determined in the ICN's sole discretion.

12.6 In the event of termination of this Agreement for any reason by the ICN, the ICN shall pay only the amounts, if any, due and owing to Vendor for services actually rendered up to and including the date of termination of the Agreement and for which the ICN is obligated to pay pursuant to this Agreement. Payment will be made only upon submission of invoices and proper proof of Vendor's claim. This provision in no way limits the remedies available to the ICN in the event of a termination under this provision. However, the ICN shall not be liable for any of the following costs:

12.6.1 The payment of Unemployment Compensation to Vendor's employees.

12.6.2 The payment of Workers' Compensation claims which occur during the Agreement or extend beyond the date on which the Agreement terminates.

12.6.3 Any costs incurred by Vendor in its performance of the Agreement including but not limited to startup costs, overhead or other costs associated with the performance of the Agreement.



12.6.4 Any taxes that may be owed by Vendor for the performance of this Agreement including but not limited to sales taxes, excise taxes, use taxes, income taxes or property.

12.7 Vendor Obligations upon Termination. Upon expiration or termination of this Agreement, or upon request of the ICN, the Vendor shall:

12.7.1 Immediately cease using and return to the ICN any personal property or material, whether tangible or intangible, provided by the ICN to the Vendor and in its, or any subcontractor's, control or possession.

12.7.2 Upon request from the ICN, destroy any personal property or material, whether tangible or intangible at no additional cost to the ICN, and verify in writing that the designated property or material has been destroyed.

12.7.3 Comply with the ICN's instructions for the timely transfer of active files and work being performed by Vendor under this Agreement to the ICN or the ICN's designee.

12.7.4 Protect and preserve property in the possession of the Vendor in which the ICN has an interest.

12.7.5 Stop work under this Agreement on the date specified in any notice of termination provided by the ICN.

12.7.6 Cooperate in good faith with the ICN, its employees, agents and contractors during the transition period between the notification of termination and the substitution of any replacement Vendor.

12.7.7 At the conclusion of the Lease Agreement or any extension thereof, or upon termination of the Lease Agreement, the Vendor is required remove its equipment used to provide service to the ICN. If the Vendor elects to remove its equipment from the Part III End Point or the ICN access point, the Vendor shall restore the property to its condition on the date on which the Vendor began installation of its equipment to provide service to the ICN, normal wear and tear excepted.

12.8 Care of Property. The Vendor shall be responsible for the proper custody and care of any the ICN owned tangible personal property furnished for the Vendor's use in connection with the performance of the Agreement, and the Vendor will reimburse the ICN for such property's loss or damage caused by the Vendor, normal wear and tear excepted.

12.9 Reduction of Resources. If, during the Term, the ICN experiences a change in the scope, nature or volume of its business, or if the ICN elects to change the manner or method by which it does (including, but not limited to, an election by Iowa Legislature to effect a sale or other disposition of material assets), which have or may have the effect of causing a decrease in the quantity or quality of the Services that will be needed by ICN, then ICN may request Vendor to reduce the level of Services and the annual Service charges to ICN under this Agreement. However any such reduction must not adversely impact upon Vendor's ability to reasonably perform its obligations under the Agreement.

## SECTION 13. CONTRACT ADMINISTRATION.

13.1 Independent Contractor. The status of the Vendor shall be that of an independent contractor. The Vendor, its employees, agents and any subcontractors performing under this Agreement are not employees or agents of the State of Iowa or any agency, division or department of the State. Neither the Vendor nor its employees shall be considered employees of the ICN of Iowa for Federal or State tax purposes. The ICN will not withhold taxes on behalf of the Vendor (unless required by law).

13.2 Compliance with the Law and Regulations.

13.2.1 Compliance with the Law and Regulations. Vendor shall comply with all applicable Federal, State, and local laws, rules, ordinances, regulations and orders when performing within the scope of this Agreement, including without limitation all laws applicable to the prevention of discrimination in employment, the administrative rules of the Iowa Department of Management or the Iowa Civil Rights Commission which pertain to equal employment opportunity and affirmative action, laws relating to prevailing wages, occupational safety and health standards, prevention of discrimination in employment, payment of taxes, gift laws, lobbying laws and laws relating the use of targeted small businesses as subcontractors or suppliers.

13.2.2 The Vendor declares that it has complied with all Federal, State and local laws regarding business permits and licenses that may be required to carry out the work to be performed under this Agreement, including without limitation, laws governing State of Iowa procurement and contracting.

13.2.3 The Vendor shall give notice to any labor union with which it has a bargaining or other agreement of its commitment under this section of the Agreement. The Vendor shall make the provisions of this Section a part of its contracts with any subcontractors providing goods or services related to the fulfillment of this Agreement.

13.2.4 The Vendor shall comply with all of the reporting and compliance standards of the Department of Management regarding equal employment.

13.2.5 The Vendor may be required to submit its affirmative action plan to the Department of Management to comply with the requirements of 541 IAC Chapter 4.

13.2.6 The ICN may consider the failure of the Vendor to comply with any law or regulation as a material breach of this Agreement. In addition, the Vendor may be declared ineligible for future State contracts or be subjected to other sanctions for failure to comply with this Section.

13.3 Amendments. This Agreement may be amended in writing from time to time by mutual consent of the parties. All amendments to this Agreement must be fully executed by the parties.

13.4 Third Party Beneficiaries. There are no third party beneficiaries to this Agreement. This Agreement is intended only to benefit the ICN, the Site Administrator, and the Vendor.

13.5 Choice of Law and Forum.

13.5.1 The laws of the State of Iowa shall govern and determine all matters arising out of or in connection with this Agreement without regard to the choice of law provisions of Iowa law.

13.5.2 In the event any proceeding of a quasi-judicial or judicial nature is commenced in connection with this Agreement, the exclusive jurisdiction for the proceeding shall be brought in Polk County District Court for the ICN of Iowa, Des Moines, Iowa, or in the United States District Court for the Southern District of Iowa, Central Division, Des Moines, Iowa wherever jurisdiction is appropriate.

13.5.3 This provision shall not be construed as waiving any immunity to suit or liability including without limitation sovereign immunity in State or Federal court, which may be available to the ICN or the State of Iowa.

13.6 Integration. This Agreement, including all the documents incorporated by reference, represents the entire Agreement between the parties and neither party is relying on any representation that may have been made which is not included in this Agreement. The parties agree that if a Schedule, Addendum, Rider or Exhibit or other document is attached hereto by the parties, and referred to herein, then the same shall be deemed incorporated herein by reference.

13.7 Not a Joint Venture. Nothing in this Agreement shall be construed as creating or constituting the relationship of a partnership, joint venture, (or other association of any kind or agent/principal relationship) between the parties hereto. No party, unless otherwise specifically provided for herein, has the authority to enter into any agreement or create an obligation or liability on behalf of, in the name of, or binding upon another party to this Agreement.

13.8 Consent to Service. The Vendor irrevocably consents to service of process by certified or registered mail addressed to the Vendor's designated agent. The Vendor appoints \_\_\_\_\_ at \_\_\_\_\_ as its agent to receive service of process. If for any reason the Vendor's agent for service is unable to act as such or the address of the agent changes, the Vendor shall immediately appoint a new agent and provide the ICN with written notice of the change in agent or address. Any change in the appointment of the agent or address will be effective only upon actual receipt by the ICN. Nothing in this provision will alter the right of the ICN to serve process in another manner permitted by law.

13.9 Supersedes Former Agreements. This Agreement supersedes all prior Agreements between the ICN and the Vendor for the services provided in connection with this Agreement.

13.10 Waiver. Any breach or default by either party shall not be waived or released other than by writing signed by the other party. Failure by either party at any time to require performance by the other party or to claim a breach of any provision of the Agreement shall not be construed as affecting any subsequent breach or the right to require performance with respect thereto or to claim a breach with respect thereto.

13.11 Notices.

13.11.1 Any and all notices, designations, consents, offers, acceptances or any other communication provided for herein shall be given in writing by registered or certified mail, return receipt requested, by receipted hand delivery, by Federal Express, courier or other similar and reliable carrier which shall be addressed to each party as set forth as follows:

If to the ICN: Contracting Officer  
Grimes State Office Building  
400 East 14<sup>th</sup> Street  
Des Moines, IA 50319

If to the Vendor: (Vendor may Identify one contact)

13.11.2 Each such notice shall be deemed to have been provided:

- 13.11.2.1 At the time it is actually received; or,
- 13.11.2.2 Within one day in the case of overnight hand delivery, courier or services such as Federal Express with guaranteed next day of delivery; or,
- 13.11.2.3 Within five days after deposited the U.S. Mail in the case of registered U.S. Mail.
- 13.11.2.4 When verified by automated receipt or electronic logs if sent by facsimile or email.

13.11.3 Copies of such notice to each party shall be provided separately.

13.11.4 From time to time, the parties may change the name and address of a party designated to receive notice. Such change of the designated person shall be in writing to the other party and as provided herein.

13.12 Cumulative Rights. The various rights, powers, options, elections and remedies of either party, provided in this Agreement, shall be construed as cumulative and no one of them is exclusive of the others or exclusive of any rights, remedies or priorities allowed either party by law. Nothing in this Agreement shall be construed as affecting, impairing or limiting the equitable or legal remedies to which either party may be entitled as a result of any breach of this Agreement.

13.13 Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the invalid portion shall be severed from this Agreement. Such a determination shall not affect the validity or enforceability of any other part or provision of this Agreement.

13.14 Express Warranties. The Vendor expressly warrants all aspects of the items and services provided by it or used by the Vendor and the ICN in performance of this Agreement.

13.15 Warranty Regarding Solicitation. The Vendor warrants that no person or selling agency has been employed or retained to solicit and secure this Agreement upon an agreement or understanding for commission, percentage, brokerage or contingency except bona fide employees or selling agents maintained for the purpose of securing business.

13.16 Obligations of Joint Entities. If the Vendor is a joint entity consisting of more than one individual, partnership, corporation or other business organization, all such entities shall be jointly and severally liable for carrying out the Agreement activities.

13.17 Obligations Beyond Agreement Term. This Agreement shall remain in full force and effect to the end of the specified term or until terminated or canceled pursuant to this Agreement. All obligations of the Vendor incurred or existing under this Agreement as of the date of expiration, termination or cancellation will survive the expiration, termination or cancellation of this Agreement.

13.18 Time is of the Essence. Time is of the essence with respect to the successful performance of the terms of this Agreement. The Vendor shall ensure that all personnel providing services to the ICN are responsive to the ICN's requirements in all respects.

13.19 Authorization. Each party to this Agreement represents and warrants to the other that it has the right, power and authority to enter into and perform its obligations under this Agreement and that it has taken all requisite action (corporate, statutory, or otherwise) to approve execution, delivery and performance of this Agreement. This Agreement constitutes a legal, valid and binding obligation upon the parties in accordance with its terms.

13.20 Successors in Interest. All the terms, provisions, and conditions of the Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns, and legal representatives.

13.21 Counterparts and Facsimile Signatures. The parties agree that this Agreement has been or may be executed in several counterparts, each of which shall be deemed an original and all such counterparts shall together constitute one and the same instrument. The parties further agree that the signatures on this Agreement or any amendment or schedule may be manual or a facsimile signature of the person authorized to sign the appropriate document. All authorized facsimile signatures shall have the same force and effect as if manually signed.

13.22 Additional Provisions. The parties agree that if a Schedule, Addendum, Rider or Exhibit is attached hereto by the parties, and referred to herein, then the same shall be deemed incorporated herein by reference.

13.23 Use of Third Parties/Prime Vendor Responsibilities. The ICN acknowledges that the Vendor may contract with third parties for the performance of any of the Vendor's obligations under this Agreement. All subcontracts shall be subject to advance written approval by the ICN. The Vendor may enter into these contracts to complete the project provided that the Vendor remains responsible for all services performed under this Agreement. All restrictions, obligations and responsibilities of the Vendor under this Agreement shall also apply to subcontractors. The ICN shall consider the Vendor to be the sole point of contact with regard to all matters related to this Agreement and is not required to initiate or maintain contact with any subcontractor. ICN may choose to deny use of any specific third party contractor at ICN's sole discretion, in which case the Vendor must obtain a different third party contractor.

#### 13.24 DATE PROCESSING WARRANTY.

13.24.1 The Vendor warrants that each item of hardware, software, firmware, or a custom designed and developed software program or a system which is developed or delivered under, or used by Vendor in connection with its performance of this Agreement, shall accurately process data, including, but not limited to, calculating, comparing and sequencing, from, into, between and among the nineteenth, twentieth and twenty-first centuries, including leap year calculations, when used in accordance with the item(s) documentation provided by the Vendor.

13.24.2 If the items to be developed and delivered under this Agreement are to perform as a system with other hardware and/or software, then the warranty shall apply to the items developed and delivered as the items process, transfer, sequence data, or otherwise interact with other components or parts of the system. This warranty shall survive the term of this Agreement. The remedies available to the ICN for a breach of warranty includes, but is not limited to, repair or replacement of non-compliant items or systems.

13.24.3 Nothing in this warranty shall be construed to limit any rights or remedies of the ICN under this Agreement with respect to defects in the items other than the Date Processing Warranty.

13.25 Force Majeure. Neither Vendor nor the ICN shall be liable to the other for any delay or failure of performance of this Agreement; and no delay or failure of performance shall constitute a default or give rise to any liability for damages if, and only to the extent that, such delay or failure is caused by a "force majeure".

13.25.1 As used in this Agreement, "force majeure" includes acts of God, war, civil disturbance and any other similar causes which are beyond the control and anticipation of the party effected and which, by the exercise of reasonable diligence, the party was unable to anticipate or prevent. Failure to perform by a subcontractor or an agent of the Vendor shall not be considered a "force majeure" unless the subcontractor or supplier is prevented from timely performance by a "force majeure" as defined in this Agreement. "Force majeure" does not include: financial difficulties of the Vendor or any parent, subsidiary, affiliated or associated company of Vendor; claims or court orders which restrict Vendor's ability to deliver the goods or services contemplated by this Agreement; or Year 2000 issues or Y2K-related difficulties or problem.

13.25.2 If a "force majeure" delays or prevents Vendor's performance, the Vendor shall immediately commence to use its best efforts to directly provide alternate, and to the extent possible, comparable performance. Comparability of performance and the possibility of comparable performance shall be reasonably determined solely by the ICN.

13.25.3 During any such period, the Vendor shall continue to be responsible for all costs and expenses related to alternative performance.

13.25.4 This Section shall not be construed as relieving the Vendor of its responsibility for any obligation which is being performed by a subcontractor or supplier of services unless the subcontractor or supplier is prevented from timely performance by a "force majeure" as described here.

13.26 Records Retention and Access. The Vendor shall permit the Auditor of the State of Iowa or any authorized representative of the State or any authorized representative of the United States government, to access and examine, audit, excerpt and transcribe any directly pertinent validation records, financial records, accounting records, books, documents, papers, electronic or optically stored and created records or other records of the Vendor relating to or created as a result of the performance of this Agreement. These records shall be made available to the State, its designees, the Auditor, or an authorized representative of the United States government at reasonable times and at no cost to the State during the term of this Agreement and for a period of at least (5) years following the termination, cancellation or expiration of this Agreement.

13.27 Taxes. ICN declares and Vendor acknowledges that the Vendor and its subcontractors may be subject to certain taxes including but not limited to sales tax, motor vehicle fuel tax, personal or corporate income tax or other taxes or assessments, and to licensing fees or other miscellaneous fees or charges which may be imposed by Federal, State or local law or ordinance. The Vendor and its subcontractors shall be solely responsible for the payment of such taxes. The Vendor shall promptly pay all such taxes, fees or charges when due. ICN is a tax-exempt entity and no payment will be made for any taxes levied on Vendor for any purpose.

13.28 Further Assurances and Corrective Instruments. The Vendor agrees that it will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the expressed intention of this Agreement.

13.29 Assignment and Delegation. This Agreement may not be assigned, transferred or conveyed in whole or in part without the prior written consent of the other party. For purposes of construing this clause, a transfer of a controlling interest in Vendor shall be considered an assignment. If either party, in its sole discretion, determines that the other party's assignment of this Agreement to another person or entity is not in the determining party's best interests, the determining party may elect to terminate this Agreement with the other party without penalty upon thirty (30) days written notice to the Vendor.

13.30 Collocation. To the extent that it becomes necessary for the ICN to collocate at the Vendor's Service, the Parties shall enter into a separate collocation agreement for each site requiring collocation.

13.31 Headings or Captions. The paragraph headings or captions are for identification purposes only and do not limit or construe the contents of the paragraphs.

#### SECTION 14. UNIVERSAL SERVICE FUND CHARGES.

14.1 The parties agree that the ICN has been recognized by the FCC as a telecommunications carrier and a re-seller of the Services to be provided by Vendor under this Agreement. The ICN incorporates the Services into services offered to its own customers. The ICN contributes directly to the federal Universal Service Fund, as required, based upon revenue from its end-user customers.

14.2 Based on the foregoing representations, the ICN will not be required to pay the Federal Universal Service Fee ("FUSF") of the Vendor or its successor(s).

#### SECTION 15. BUSINESS DOWNTURN.

15.1 In the event of a business downturn or budget difficulties beyond the control of the ICN, including budget difficulties of other authorized users of the ICN or significant restructuring or reorganization, any of which significantly reduces the volume of Services required by the ICN, with the result that ICN will be unable to meet its revenue or volume commitments under this Agreement, Vendor and the ICN will cooperate in efforts to develop a mutually agreeable alternative.

## SECTION 16. REDUCTION OF RESOURCES.

16.1 If, during the Term, the ICN experiences a change in the scope, nature or volume of its business, or if the ICN elects to change the manner or method by which it does (including, but not limited to, an election by Iowa Legislature to effect a sale or other disposition of material assets), which have or may have the effect of causing a decrease in the quantity or quality of the Services that will be needed by ICN, then ICN may request Vendor to reduce the level of Services and the annual Service charges to ICN under this Agreement. However any such reduction must not adversely impact upon Vendor's ability to reasonably perform its obligations under the Agreement.

16.2 In such event, Vendor shall estimate, in writing and in good faith, the aggregate decreased charges to Vendor from ICN's ceasing to perform such Services and shall provide such written estimate to ICN, no later than 30 days from Vendor's receipt of ICN's notice. ICN, upon receipt of such estimate, may then elect by written notice given to Vendor within 15 days following receipt of Vendor's written estimate to:

16.2.1 Withdraw its request for a cessation of part of the Services;

16.2.2 Implement such partial cessation of Services based upon the estimate of Vendor; or

16.2.3 Request that Vendor negotiate with ICN regarding the aggregate reduction in the Annual Service Charges due to Vendor from ICN hereunder as a result of the partial cessation of Services. If ICN shall elect to request Vendor to negotiate, the parties shall promptly negotiate in good faith regarding the amount

## SECTION 17. EXECUTION.

IN WITNESS WHEREOF, in consideration of the mutual covenants set forth above and for other good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, the parties have entered into the above Agreement and have caused their duly authorized representatives to execute this Agreement.

IOWA TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION  
OPERATING THE IOWA COMMUNICATIONS NETWORK

By: \_\_\_\_\_ Date: \_\_\_\_\_

Name:

Title:

[VENDOR will be listed]

By: \_\_\_\_\_ Date: \_\_\_\_\_

Name:

Title:

## Schedule A Scope of Services

Schedule A will be developed in Contract.

## ATTACHMENT 2

### BID PROPOSAL COMPLIANCE FORM ITB 24-047

Vendor affirms that the information contained in the Bid Proposal is true and accurately portrays all aspects of the goods or services or both contemplated by this ITB. The Vendor is aware that any substantive misinformation or misrepresentation may disqualify the Bid Proposal from further consideration. If a Vendor takes exception to a provision, it must state the reason for the exception and set forth in Attachment 2 of its Bid Proposal the specific Contract language it proposes to include in place of the provision. Exceptions that materially change these terms or the requirements of the ITB may be deemed non-responsive by the ICN, in its sole discretion, resulting in possible disqualification of the Bid Proposal. The ICN reserves the right to either award a Contract without further negotiation with the successful Vendor or to negotiate Contract terms with the selected Vendor if the best interests of the ICN would be served.

Vendor hereby certifies total compliance with all other terms, conditions and specifications of this ITB except as expressly stated below:

#### Chapter 1, Administrative Issues

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#### Chapter 2, Contractual Terms & Conditions (includes Attachment 1)

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#### Chapter 3, Technical Specifications

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#### Chapter 4, Evaluation Criteria

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I certify that I have the authority to bind the Vendor indicated below to the specific terms and conditions imposed in this ITB and offered in this Bid Proposal, and that by my signature on this document I specifically agree to all of the waivers, restrictions and requirements of this ITB as conditions precedent to submitting this proposal. I further state that in making this Bid Proposal that the Vendor has not consulted with others for the purpose of restricting competition or violating State or Federal anti-trust laws and has not knowingly made any false statements in this Bid Proposal.

Authorized Signature:

---

Printed Name:

---

Title:

---

Telephone:

---

Fax Number:

---

E-Mail:

---

Business Name:

---

Address:

---

---

Federal ID Number:

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### ATTACHMENT 3

#### AUTHORIZATION TO RELEASE INFORMATION ITB **24-047**

\_\_\_\_\_ (Name of Vendor) hereby authorizes any person or entity, public or private, having any information concerning the Vendor's background, including but not limited to its performance history regarding its prior rendering of services similar to those detailed in this ITB, to release such information to the ICN.

The Vendor acknowledges that it may not agree with the information and opinions given by such person or entity in response to a reference request. The Vendor acknowledges that the information and opinions given by such person or entity may hurt its chances to receive contract awards from the State or may otherwise hurt its reputation or operations. The Vendor is willing to take that risk. The Vendor agrees to release all persons, entities, and the State of Iowa from any liability whatsoever that may be incurred in releasing this information or using this information.

\_\_\_\_\_  
Printed Name of Vendor Organization

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Date

**ATTACHMENT 4**  
**BID PROPOSAL SUBMITTAL FORM**

**24-047**

**Vendor providing bid proposal must complete each section of this Attachment and submit as part of its bid proposal.**

Vendor Name (including all d/b/a or assumed names or other operating names of the Vendor): \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Number of employees: \_\_\_\_\_

Local office address that relates to the Vendor's performance under the terms of this ITB (if different from above): \_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Vendor accounting firm: \_\_\_\_\_

State of incorporation (if a corporation). State of formation (if a limited liability company or a limited partnership): \_\_\_\_\_

The successful Vendor will be required to register to do business in Iowa. If already registered, provide the date of the Vendor's registration to do business in Iowa.

Person to Contact Regarding This Bid Proposal: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

E-Mail: \_\_\_\_\_

Single Point Of Contact if Awarded Contract: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

E-Mail: \_\_\_\_\_