

**State of Nebraska
MASTER AGREEMENT REVISION #5
FOR HIGH-SPEED TRANSPORT SERVICES FOR NETWORK
NEBRASKA RFPs 2020 – 2023**

**PLEASE READ CAREFULLY!
SCOPE OF SERVICE**

The State of Nebraska (State), Department of Administrative Services (DAS), Materiel Division, State Purchasing Bureau (SPB), is issuing this Master Agreement Revision #5 for Request for Proposal (RFP) Numbers 6206 Z1/6454 Z1/6616 Z1/6740 Z1 for the purpose of prequalifying bidders for the High-Speed Transport Services for Network Nebraska RFPs, 2020 - 2023. The resulting contract(s) may not be exclusive contract(s) as the State reserves the right to contract for the same or similar services from other sources now or in the future.

ALL INFORMATION PERTINENT TO THIS REQUEST FOR PROPOSAL CAN BE FOUND ON THE INTERNET AT:
<http://das.nebraska.gov/materiel/purchasing.html>.

IMPORTANT NOTICE: Pursuant to Neb. Rev. Stat. § 84-602.04, State contracts in effect as of January 1, 2014, and contracts entered into thereafter, must be posted to a public website. The resulting contract, the solicitation, and the successful contractor's proposal or response will be posted to a public website managed by DAS, which can be found at <http://statecontracts.nebraska.gov>.

In addition and in furtherance of the State's public records Statute (Neb. Rev. Stat. § 84-712 et seq.), all proposals or responses received regarding this solicitation will be posted to the State Purchasing Bureau public website.

These postings will include the entire proposal or response. Bidder must request that proprietary information be excluded from the posting. The bidder must identify the proprietary information, mark the proprietary information according to state law, and submit the proprietary information in a separate container or envelope marked conspicuously using an indelible method with the words "PROPRIETARY INFORMATION". The bidder must submit a detailed written document showing that the release of the proprietary information would give a business advantage to named business competitor(s) and explain how the named business competitor(s) will gain an actual business advantage by disclosure of information. The mere assertion that information is proprietary or that a speculative business advantage might be gained is not sufficient. (See Attorney General Opinion No. 92068, April 27, 1992) **THE SUPPLIER MAY NOT ASSERT THAT THE ENTIRE PROPOSAL IS PROPRIETARY. COST PROPOSALS WILL NOT BE CONSIDERED PROPRIETARY AND ARE A PUBLIC RECORD IN THE STATE OF NEBRASKA.** The State will then determine, in its discretion, if the interests served by nondisclosure outweighs any public purpose served by disclosure. (See Neb. Rev. Stat. § 84-712.05(3)) The Bidder will be notified of the agency's decision. Absent a State determination that information is proprietary, the State will consider all information a public record subject to release regardless of any assertion that the information is proprietary.

If the agency determines it is required to release proprietary information, the bidder will be informed. It will be the bidder's responsibility to defend the bidder's asserted interest in non-disclosure.

To facilitate such public postings, with the exception of proprietary information, the State of Nebraska reserves a royalty-free, nonexclusive, and irrevocable right to copy, reproduce, publish, post to a website, or otherwise use any contract, proposal, or response to the RFP for any purpose, and to authorize others to use the documents. Any individual or entity awarded a contract, or who submits a proposal or response to the RFP, specifically waives any copyright or other protection the contract, proposal, or response to the RFP may have; and acknowledges that they have the ability and authority to enter into such waiver. This reservation and waiver is a prerequisite for submitting a proposal or response to the RFP, and award of a contract. Failure to agree to the reservation and waiver will result in the proposal or response to the RFP being found non-responsive and rejected.

Any entity awarded a contract or submitting a proposal or response to the RFP agrees not to sue, file a claim, or make a demand of any kind, and will indemnify and hold harmless the State and its employees, volunteers, agents, and its elected and appointed officials from and against any and all claims, liens, demands, damages, liability, actions, causes of action, losses, judgments, costs, and expenses of every nature, including investigation costs and expenses, settlement costs, and attorney fees and expenses, sustained or asserted against the State, arising out of, resulting from, or attributable to the posting of the contract or the proposals and responses to the RFP, awards, and other documents.

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GLOSSARY OF TERMS

802.1ad: Is an Ethernet networking standard informally known as IEEE 802.1QinQ and is an amendment to IEEE standard IEEE 802.1Q-1998. The technique is also known as provider bridging, Stacked VLANs or simply QinQ or Q-in-Q. The original 802.1Q specification allows a single VLAN header to be inserted into an Ethernet frame. QinQ allows multiple VLAN headers to be inserted into a single frame, an essential capability for implementing Metro Ethernet network topologies. Just as QinQ extends 802.1Q, QinQ itself is extended by other Metro Ethernet protocols.

802.1p: IEEE P802.1p is the name of a task group active during 1995–98 responsible for adding traffic class expediting and dynamic multicast filtering to the IEEE 802.1D standard. The QoS technique developed by the working group, also known as class of service (CoS), is a 3-bit field called the Priority Code Point (PCP) within an Ethernet frame header when using VLAN tagged frames as defined by IEEE 802.1Q.

802.1Q: Is the networking standard that supports Virtual LANs (VLANs) on an Ethernet network. The standard defines a system of VLAN tagging for Ethernet frames and the accompanying procedures to be used by bridges and switches in handling such frames. The standard also contains provisions for the quality of service prioritization scheme commonly known as IEEE 802.1p.

Acceptance: Acceptance of circuit, system, or service, as solely tested and determined by the State of Nebraska and/or authorized agent of the State of Nebraska, is when the circuit, system, or service is free of defect and reliably transporting data at, or in excess of, the ordered bandwidth or speed capacity.

Acceptance Test Procedure: Benchmarks and other performance criteria, developed by the State of Nebraska or other sources of testing standards, for measuring the effectiveness of products or services and the means used for testing such performance.

Addendum: Something to be added or deleted to an existing document; a supplement.

After Receipt of Order (ARO): After Receipt of Order

Agency: Any state agency, board, or commission other than the University of Nebraska, the Nebraska State colleges, the courts, the Legislature, or any other office or agency established by the Constitution of Nebraska.

Agent/Representative: A person authorized to act on behalf of another.

Amend: To alter or change by adding, subtracting, or substituting.

Amendment: A written correction or alteration to a document.

Appropriation: Legislative authorization to expend public funds for a specific purpose. Money set apart for a specific use.

Automated Clearing House: (ACH) Electronic network for financial transactions in the United States

Award: All purchases, leases, or contracts which are based on competitive proposals will be awarded according to the provisions in the RFP.

BEAR--Billed Entity Applicant Reimbursement FCC Form 472: The form filed by the applicant and approved by the service provider after the telecommunications services have been paid in full.

Best and Final Offer (BAFO): In a competitive proposal, the final offer submitted which contains the contractor's most favorable terms for price.

Bid/Proposal: The offer submitted by a vendor in a response to a written RFP.

Bid Bond: An insurance agreement, accompanied by a monetary commitment, by which a third party (the surety) accepts liability and guarantees that the contractor will not withdraw the bid.

Bidder: A contractor who submits a proposal in response to a written RFP.

Breach: Violation of a contractual obligation by failing to perform or repudiation of one's own promise.

Business: Any corporation, partnership, individual, sole proprietorship, joint-stock company, joint venture, or any other

private legal entity.

Business Day: Any weekday, except State-recognized holidays.

Calendar Day: Every day shown on the calendar including Saturdays, Sundays, and State/Federal holidays.

Cancellation: To call off or revoke a purchase order without expectation of conducting or performing it at a later time.

COI – Certificate of Insurance

Change Order: Document that provides amendments to an executed purchase order or contract.

Collusion: An agreement or cooperation between two or more persons or entities to accomplish a fraudulent, deceitful, or unlawful purpose.

Competition: The effort or action of two or more commercial interests to obtain the same business from third parties.

Confidential Information: Unless otherwise defined below, "Confidential Information" shall also mean proprietary trade secrets, academic and scientific research work which is in progress and unpublished, and other information which if released would give advantage to business competitors and serve no public purpose (see Neb. Rev. Stat. §84-712.05(3)). In accordance with Nebraska Attorney General Opinions 92068 and 97033, proof that information is proprietary requires identification of specific, named competitor(s) who would be advantaged by release of the information and the specific advantage the competitor(s) would receive.

Contract: An agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law; the writing that sets forth such an agreement.

Contract Administration: The administration of the contract which includes and is not limited to; contract signing, contract amendments and any necessary legal actions.

Contract Award: Occurs upon execution of the State document titled "Service Contract Award" by the proper authority.

Contract Management: The management of day-to-day activities at the agency which includes and is not limited to ensuring deliverables are received, specifications are met, handling meetings and making payments to the Contractor.

Contract Period: The duration of the contract.

Contractor: An individual or entity lawfully conducting business in the State, or licensed to do so, who seeks to provide goods or services under the terms of a written contract incorporated from an RFP.

Copyright: A property right in an original work of authorship fixed in any tangible medium of expression, giving the holder the exclusive right to reproduce, adapt and distribute the work.

Core Aggregation Point: One of several key co-location sites indicated by the University of Nebraska as being capable of receiving 10Gbps Ethernet handoffs from contractors into Network Nebraska's core switching, router devices, and statewide backbone.

CoS: The QoS technique developed by the working group, also known as class of service (CoS), is a 3-bit field called the Priority Code Point (PCP) within an Ethernet frame header when using VLAN tagged frames as defined by IEEE 802.1Q.

CPE: Customer-premises equipment or customer-provided equipment (CPE) is any terminal and associated equipment located at a subscriber's premises and connected with a carrier's telecommunication channel(s) at the demarcation point ("demarc").

Customer Premises: Customer physical location where equipment is located.

Customer Service: The process of ensuring customer satisfaction by providing assistance and advice on those products or services provided by the Contractor.

Default: The omission or failure to perform a contractual duty.

DAS – Department of Administrative Services

Deviation: Any proposed change(s) or alteration(s) to either the terms and conditions or deliverables within the scope of the written RFP or contract.

Education Entity: Education entity, for the purposes of this RFP, is defined by N.R.S. 79-1201.01 (3) as a school district, a private, denominational, or parochial school, an educational service unit, a community college, a state college, the University of Nebraska, or a nonprofit private postsecondary educational institution.

E-rate: The Schools and Libraries Program of the Universal Service Fund, commonly known as "E-Rate," is administered by the Universal Service Administrative Company (USAC) under the direction of the Federal Communications Commission (FCC), and provides discounts to assist most schools and libraries in the United States to obtain affordable telecommunications and Internet access.

ESU: Educational Service Unit, one of 17 intermediate service agencies in Nebraska, serving K-12 school districts.

Ethernet: A family of computer networking technologies commonly used to interconnect local area networks (LANs), metropolitan area networks (MANs), and wide area networks (WANs) to each other and to the Internet using a common protocol.

Ethernet Frame: A data packet on an Ethernet link is called an Ethernet frame. See also http://en.wikipedia.org/wiki/Ethernet_frame.

Ethernet Hand-off: A standard Ethernet handoff to the facility means there is no need for CSU/DSU and protocol conversion equipment. The connection to the customer is a copper or fiber connection that connects directly to the customer's Ethernet based equipment and supports Ethernet Frame transmission between the provider and the customer.

Evaluation: The process of examining an offer after opening to determine the bidder's responsibility, responsiveness to requirements, and to ascertain other characteristics of the offer that relate to determination of the successful award.

Evaluation Committee: Committee(s) appointed by the requesting agency that advises and assists the procuring office in the evaluation of proposals (offers made in response to written RFPs).

EVPN: Stands for Ethernet Virtual Private Network, providing Ethernet multipoint services over an IP or IP/MPLS backbone network. It's an overlay solution for connecting dispersed sites like branch offices by a layer 2 virtual bridge, offering logical separation between customers using shared network resources.

Extension: Continuance of a contract for a specified duration upon the agreement of the parties beyond the original Contract Period. Not to be confused with "Renewal Period".

Free on Board (F.O.B.) Destination: The delivery charges are included in the quoted price and prepaid by the vendor. Vendor is responsible for all claims associated with damages during delivery of product.

Free on Board (F.O.B.) Point of Origin: The delivery charges are not included in the quoted price and are the responsibility of the agency. Agency is responsible for all claims associated with damages during delivery of product.

Foreign Corporation: A foreign corporation that was organized and chartered under the laws of another state, government, or country.

Installation Date: The date when the procedures described in "Installation by Contractor", and "Installation by State", as found in the RFP, or contract, are completed.

Interested Party: A person, acting in their personal capacity, or an entity entering into a contract or other agreement creating a legal interest therein.

ITU-T: Telecommunication Standardization Sector of the International Telecommunications Union

ITU-T Y.156sam: Ethernet Service Activation Test Methodology, a draft recommendation under study by the ITU-T. A draft recommendation tailored more toward service activation than the RFC 2544 benchmark testing methodology.

Last mile Carrier: The common colloquialism referring to the provider that connects the portion of the telecommunications network that physically reaches the end-user's / customer's premises.

Invalid Proposal: A proposal that does not meet the requirements of the solicitation or cannot be evaluated against the other proposals.

Late Proposal: An offer received after the Opening Date and Time.

Latency: The round-trip delay time in sending a packet from source to destination and from destination back to its source, often measured in milliseconds.

Layer 2: In the seven-layer OSI model of computer networking, the data link layer is layer 2. The data link layer provides the functional and procedural means to transfer data.

Licensed Software Documentation: The user manuals and any other materials in any form or medium customarily provided by the Contractor to the users of the Licensed Software which will provide the State with sufficient information to operate, diagnose, and maintain the Licensed Software properly, safely, and efficiently.

Mandatory/Must: Required, compulsory, or obligatory.

May: Discretionary, permitted; used to express possibility.

Module (see System): A collection of routines and data structures that perform a specific function of software.

MPLS--Multiprotocol Label Switching (MPLS): A mechanism in high-performance telecommunications networks that directs data from one network node to the next based on short path labels rather than long network addresses, avoiding complex lookups in a routing table.

MRC: Monthly recurring charge.

Must: See Mandatory/Must and Shall/Will/Must.

Network Nebraska: The Nebraska statewide telecommunications network comprised of over 290 educational entities from K-12 and higher education, public and private, and some public libraries and municipalities.

Non-Responsive Proposal: A proposal that does not meet the requirements of the RFP or cannot be evaluated against the other proposals.

NRC: Non-recurring charge.

NUSF: Nebraska Universal Service Fund. A surcharge of approximately 6.95% levied against intrastate telecommunications services as authorized by Neb. Rev. Stat. 86-1401 to 86-1410.

OCIO: Office of the Chief Information Officer, an agency of the State of Nebraska

Open Market Purchase: Authorization may be given to an agency to purchase items above direct purchase authority due to the unique nature, price, quantity, location of the using agency, or time limitations by the AS Materiel Division, State Purchasing Bureau.

Proposal Opening Date and Time: Specified date and time for the public opening of received, formal proposals.

Outsourcing: The contracting out of a business process which an organization may have previously performed internally or has a new need for, to an independent organization from which the process is purchased back.

Packet: A packet is a formatted unit of data carried by a communication network. It consists of two kinds of data: control information and user data (also known as payload). The control information provides data the network needs to deliver the user data, for example: source and destination addresses, error detection codes like checksums, and sequencing information.

Payload: Is the cargo of a data transmission. It is the part of the transmitted data which is the fundamental purpose of the transmission, to the exclusion of information sent with it (such as headers or metadata, sometimes referred to as overhead data) solely to facilitate delivery.

Payroll & Financial Center (PFC) State of Nebraska's: Electronic procurement system of record.

Point of Contact (POC): The person designated to receive communications and to communicate.

Pre-Proposal Conference: A meeting scheduled for the purpose of clarifying a written RFP and related expectations.

Product: Something that is distributed commercially for use or consumption and that is usually (1) tangible personal property, (2) the result of fabrication or processing, and (3) an item that has passed through a chain of commercial distribution before ultimate use or consumption.

Program Error: Code in Licensed Software which produces unintended results or actions, or which produces results or actions other than those described in the specifications. A program error includes, without limitation, any Critical Program Error.

Program Set: The group of programs and products, including the Licensed Software specified in the solicitation, plus any additional programs and products licensed by the State under the contract for use by the State.

Project: The total scheme, program, or method worked out for the accomplishment of an objective, including all documentation, commodities, and services to be provided under the contract.

Proposal: An offer, bid, or quote submitted by a contractor/vendor in a response to a written RFP.

Proprietary Information: Proprietary information is defined as trade secrets, academic and scientific research work which is in progress and unpublished, and other information which if released would give advantage to business competitors and serves no public purpose (see Neb. Rev. Stat. § 84-712.05(3)). In accordance with Attorney General Opinions 92068 and 97033, proof that information is proprietary requires identification of specific named competitor(s) advantaged by release of the information and the demonstrated advantage the named competitor(s) would gain by the release of information.

Protest/Grievance: A complaint about a governmental action or decision related to a solicitation or resultant contract, brought by a bidder who has submitted a proposal response in connection with the award in question, to AS Materiel Division or another designated agency with the intention of achieving a remedial result.

Public Proposal Opening: The process of opening correctly submitted offers at the time and place specified in the written RFP and in the presence of anyone who wished to attend.

Q-in-Q Tunneling: 802.1Q tunneling enables service providers to use a single VLAN to support customers who have multiple VLANs, while preserving customer VLAN IDs and keeping traffic in different customer VLANs segregated.

Quality of Service (QoS): Quality of service is the ability to provide different priority to different applications, users, or data flows, or to guarantee a certain level of performance to a data flow.

Recommended Hardware Configuration: The data processing hardware (including all terminals, auxiliary storage, communication, and other peripheral devices) to the extent utilized by the State as recommended by the Contractor.

Release Date: The date of public release of the written RFP to seek offers.

Renewal Period: Optional contract periods subsequent to the original Contract Period for a specified duration with previously agreed to terms and conditions. Not to be confused with Extension.

Request for Proposal (RFP): A written solicitation utilized for obtaining competitive offers.

Responsible Vendor: A vendor who has the capability in all respects to perform fully and lawfully all requirements with integrity and reliability to assure good faith performance.

Responsive Bidder: A vendor who has submitted a proposal which conforms to all requirements of the RFP document.

RFC-2544: IETF RFC defines Benchmarking Methodology for Network Interconnect Devices. See also <http://www.ietf.org/rfc/rfc2544>

SD-WAN: Is an acronym for software-defined networking in a wide area network. SD-WAN simplifies the management and operation of a WAN by decoupling the networking hardware from its control mechanism.

Shall/Will/Must: An order/command; mandatory.

Should: Expected; suggested, but not necessarily mandatory.

Software License: Legal instrument with or without printed material that governs the use or redistribution of licensed software.

Specifications: The detailed statement, especially of the measurements, quality, materials, and functional characteristics, or other items to be provided under a contract.

SPB: State Purchasing Bureau of the State of Nebraska

SPI - Service Provider Invoice FCC Form 474: The form filed by the service provider after the applicant has been billed for the non-discount portion of the cost of eligible services.

SPIN - Service Provider Identification Number: Assigned by the Universal Service Administrative Company and is unique to each telecommunications provider.

Statutory: These clauses are controlled by state law and are not subject to negotiation.

Subcontractor: Individual or entity with whom the contractor enters a contract to perform a portion of the work awarded to the contractor.

System (see Module): Any collection or aggregation of two (2) or more Modules that is designed to function, or is represented by the Contractor as functioning or being capable of functioning, as an entity.

Termination: Occurs when either Party, pursuant to a power created by agreement or law, puts an end to the contract prior to the stated expiration date. All obligations which are still executory on both sides are discharged but any right based on prior breach or performance survives.

Third Party: Any person or entity, including but not limited to fiduciaries, shareholders, owners, officers, managers, employees, legally disinterested persons, and sub-contractors or agents, and their employees. It shall not include any entity or person who is an Interested Party to the contract or agreement.

Trade Secret: Information, including, but not limited to, a drawing, formula, pattern, compilation, program, device, method, technique, code, or process that (a) derives independent economic value, actual or potential, from not being known to, and not being ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy (see Neb. Rev. Stat. §87-502(4)).

Trademark: A word, phrase, logo, or other graphic symbol used by a manufacturer or contractor to distinguish its product from those of others, registered with the U.S. Patent and Trademark Office.

Upgrade: Any change that improves or alters the basic function of a product or service.

USF: Federal Universal Service Fund. A variable surcharge ranging between 15% and 20% levied against interstate telecommunications services as authorized by the Federal Communications Commission in 1997.

Vendor: Inclusive term for any Bidder or Contractor.

Vendor Performance Report: A report completed by the using agency and submitted to State Purchasing Bureau documenting products or services delivered or performed which exceed or fail to meet the terms of the purchase order, contract, and/or solicitation specifications.

VLAN: Virtual Local Area Network

WAN (Wide Area Network): Unless otherwise specified, WAN refers to a high bandwidth (e.g., >100Mbps) wide area data network using IP communication and routing protocols for the purposes of interconnecting numerous Local Area Networks (LANs)

Will: See Mandatory/Shall/Will/Must.

Work Day: See Business Day.

I. PROCUREMENT PROCEDURE

A. GENERAL INFORMATION

The Master Agreement Revision #5 for High-Speed Transport Services for Network Nebraska 2020-2023 is designed to prequalify bidders who intend to provide a response to RFPs for High-Speed Transport Services for Network Nebraska RFPs for 2020-2023 at a competitive and reasonable cost. The Master Agreement Revision #5 Terms and Conditions is an umbrella document that applies to the Network Nebraska RFPs during the years of 2020-2023.

Project Description and Scope of Work, Proposal instructions, and Cost Proposal Requirements may be found in the individual posted RFP.

Proposals shall conform to all instructions, conditions, and requirements included in the Master Agreement Revision #5 and each RFP. Prospective bidders should carefully examine all documents, schedules, and requirements in the Master Agreement Revision #5 and each posted RFP and respond to each requirement in the format prescribed. Proposals may be found non-responsive if they do not conform to the RFP.

B. PROCURING OFFICE AND COMMUNICATION WITH STATE STAFF AND EVALUATORS

Procurement responsibilities related to the Master Agreement Revision #5 and each RFP reside with State Purchasing Bureau. The point of contact (POC) for the procurement is as follows:

RFP Number: Master Agreement Revision #5 for High-Speed Transport Service
for Network NE RFP's 2020-2023
Name: Dianna Gilliland/Kelly Thomas
Agency: State Purchasing Bureau
Address: 1526 K Street, Suite 130
Lincoln, NE 68508
Telephone: 402-471-6500
E-Mail: as.materielpurchasing@nebraska.gov

From the date each RFP is issued until the Intent to Award is issued, communication from the Bidder is limited to the POC listed above. After the Intent to Award is issued, the Bidder may communicate with individuals the State has designated as responsible for negotiating the contract on behalf of the State. No member of the State Government, employee of the State, or member of the Evaluation Committee is empowered to make binding statements regarding the RFP. The POC will issue any answers, clarifications or amendments regarding this RFP in writing. Only the SPB or awarding agency can award a contract. Bidders shall not have any communication with or attempt to communicate or influence any evaluator involved in the RFP.

The following exceptions to these restrictions are permitted:

1. Contact made pursuant to pre-existing contracts or obligations,
2. Contact required by the schedule of events, or an event scheduled later by the RFP POC; and,
3. Contact required for negotiation and execution of the final contract.

The State reserves the right to reject a bidder's proposal, withdraw an Intent to Award, or terminate a contract if the State determines there has been a violation of these procurement procedures.

C. PRE-PROPOSAL CONFERENCE

A pre-proposal conference may be held per the individual RFP Schedule of Events. Attendance at the pre-proposal conference is optional but attendance will be taken. Bidders will have an opportunity to ask questions at the conference to assist in the clarification and understanding of the RFP requirements. Questions that have a material impact on the RFP or process, and questions that are relevant to all bidders, will be answered in writing and posted at https://das.nebraska.gov/materiel/purchase_bureau/bidopps.html. An answer must be posted to be binding on the State. The State will attempt to provide verbal answers to questions that do not impact the RFP or process and are only of interest to an individual bidder during the conference. If a bidder feels it necessary to have a binding answer to a question that was answered verbally, the question should be submitted in writing per the Schedule of Events.

D. SECRETARY OF STATE/TAX COMMISSIONER REGISTRATION REQUIREMENTS (Statutory)

All bidders must be authorized to transact business in the State of Nebraska and comply with all Nebraska Secretary of State Registration requirements. The bidder who is the recipient of an Intent to Award may be required to certify that it has complied and produce a true and exact copy of its current (within ninety (90) calendar days of the intent to award) Certificate or Letter of Good Standing, or in the case of a sole proprietorship, provide written documentation of sole proprietorship and complete the United States Citizenship Attestation Form, available on the Department of

Administrative Services website at https://das.nebraska.gov/materiel/purchase_bureau/vendor-info.html. This must be accomplished prior to execution of the contract.

E. ETHICS IN PUBLIC CONTRACTING

The State reserves the right to reject proposals, withdraw an intent to award or award, or terminate a contract if a bidder commits or has committed ethical violations, which include, but are not limited to:

1. Offering or giving, directly or indirectly, a bribe, fee, commission, compensation, gift, gratuity, or anything of value to any person or entity in an attempt to influence the bidding process,
2. Utilize the services of lobbyists, attorneys, political activists, or consultants to influence or subvert the bidding process,
3. Being considered for, presently being, or becoming debarred, suspended, ineligible, or excluded from contracting with any state or federal entity:
4. Submitting a proposal on behalf of another Party or entity; and
5. Collude with any person or entity to influence the bidding process, submit sham proposals, preclude bidding, fix pricing or costs, create an unfair advantage, subvert the proposal, or prejudice the State.

The Bidder shall include this clause in any subcontract entered into for the exclusive purpose of performing this contract.

Bidder shall have an affirmative duty to report any violations of this clause by the Bidder throughout the bidding process, and throughout the term of this contract for the awarded bidder and their subcontractors.

F. NO DEVIATIONS FROM THE REQUEST FOR PROPOSAL

The requirements contained in the Master Agreement Revision #5 becomes a part of the terms and conditions of the contract resulting from the RFP. No deviations are allowed from the Master Agreement Revision #5 or the related RFPs.

G. SUBMISSION OF PROPOSALS

Bidders should submit one completed Master Agreement Revision #5 Acceptance Page for High-Speed Transport Service for Network Nebraska RFP's 2020-2023 and email to as.materielpurchasing@nebraska.gov. The Acceptance Page may be manually signed in an indelible manner or by DocuSign. Please note that the email subject line should appear as specified in Section I.B. The RFP number should be included in all correspondence. It is the bidder's responsibility to ensure the completed Master Agreement Revision #5 Acceptance Page is electronically received by SPB with enough time for SPB to provide the bidder with instructions on how to electronically submit the related RFP proposal. It is also the bidder's responsibility to submit the related RFP proposal by the date and time indicated in the related RFP Schedule of Events. Electronic sealed proposals must be received by the State Purchasing Bureau by the date and time of the proposal opening per the RFP Schedule of Events. No late proposals will be accepted.

By signing the Master Agreement Revision #5 Acceptance Page, the bidder guarantees compliance with the provisions stated in this Master Agreement Revision #5.

It is the responsibility of the bidder to check the website for all information relevant to the related Request for Proposal to include addenda and/or amendments issued prior to the opening date. Website address is as follows: <http://das.nebraska.gov/materiel/purchasing.html>.

Emphasis should be concentrated on conformance to the Master Agreement Revision #5 and the related RFP instructions, responsiveness to requirements, completeness, and clarity of content. If the bidder's proposal is presented in such a fashion that makes evaluation difficult or overly time consuming the State reserves the right to reject the proposal as non-conforming.

The State shall not incur any liability for any costs incurred by contractors in replying to the Master Agreement Revision #5 or related RFP, in the demonstrations and/or oral presentations, or in any other activity related to bidding on this solicitation.

Once the signed Master Agreement Revision #5 Acceptance Page is received, reviewed and approved by SPB, and the related RFP has been posted to the SPB website, a ShareFile link will be emailed to the vendor providing upload instructions on how and where to electronically upload the RFP bidder proposal.

H. PROPOSAL PREPARATION COSTS

The State shall not incur any liability for any costs incurred by Bidders in replying to the Master Agreement Revision #5 or related RFPs, including any activity related to bidding on this RFP.

I. FAILURE TO COMPLY WITH REQUEST FOR PROPOSAL

Violation of the terms and conditions contained in this Master Agreement Revision #5 or any related RFPs under the umbrella of this Master Agreement Revision #5 or any resultant contract, at any time before or after the award, shall be grounds for action by the State which may include, but is not limited to, the following:

1. Rejection of a bidder's proposal,
2. Withdrawal of the Intent to Award,
3. Withdrawal of the Award,
4. Negative Vendor Performance Report(s),
5. Termination of the resulting contract,
6. Legal action; and
7. Suspension of the contractor from further bidding with the State for the period of time relative to the seriousness of the violation, such period to be within the sole discretion of the State.

J. ELECTRONIC PROPOSAL FILE NAMES

The bidder must clearly identify the RFP proposal upload files. To assist in identification please use the following file name template: RFP 6837 Z1 ABC Company. If multiple files are submitted for one RFP proposal, add number of files to file names: RFP 6837 Z1 ABC Company File 1 of 2. If multiple RFP proposals are submitted for the same RFP, add the proposal number to the file names: RFP 6837 Z1 ABC Company Proposal 1 File 1 of 2.

K. PROPOSAL CORRECTIONS AND MULTIPLE PROPOSALS

A bidder may correct a mistake in a proposal prior to the Proposal Opening Date and Time by uploading a revised and completed RFP proposal. If a corrected RFP proposal is submitted, at RFP proposal opening time, the file name(s) date/time stamped with latest date/time stamp will be accepted as final proposal. The corrected RFP file name(s) should be identified as Corrected Proposal #1, Corrected Proposal #2, etc.

A bidder may give email notice to the State to withdraw the proposal completely. Email withdrawal notice to: as.materiel purchasing@nebraska.gov. Changing a proposal after Proposal Opening Date and Time may be permitted if the change is made to correct a minor error that does not affect price, quantity, quality, delivery, or contractual conditions. In case of a mathematical error in extension of price, unit price shall govern.

If separate, multiple RFP proposals are submitted for the same RFP, the file names should be identified as Proposal #1, Proposal #2, etc.

L. LATE PROPOSALS

Electronic proposals received after the time and date of the proposal opening will be considered late proposals. Late proposals will not be returned or opened. The State is not responsible for proposals that are late or lost regardless of cause or fault.

M. PROPOSAL OPENING

The opening of proposals will be public and the bidders will be announced via Zoom. Proposals **WILL NOT** be available for viewing by those present at the proposal opening. Proposals will be posted to the State Purchasing Bureau website once an Intent to Award has been posted to the website. Information identified as proprietary by the submitting bidder, in accordance with the RFP and state statute, will not be posted. If the State determines submitted information should not be withheld, in accordance with the [Public Records Act](#), or if ordered to release any withheld information, said information may then be released. The submitting bidder will be notified of the release and it shall be the obligation of the submitting bidder to take further action if it believes the information should not be released. Once proposals are opened, they become the property of the State of Nebraska and will not be returned.

N. REQUEST FOR PROPOSAL/PROPOSAL REQUIREMENTS

The proposals will first be examined to determine if all requirements listed below have been addressed and whether further evaluation is warranted. Proposals not meeting the requirements may be rejected as non-responsive. The requirements are:

1. Original Request for Proposal for Contractual Services form signed using an indelible method,
2. Clarity and responsiveness of the proposal,
3. Completed Master Agreement Revision #5,
4. Completed State Cost Proposal Template.

O. EVALUATION COMMITTEE

Any contact, attempted contact, or attempt to influence an evaluator that is involved with this solicitation may result in the rejection of this proposal and further administrative actions.

P. EVALUATION OF PROPOSALS

All proposals that are responsive to the solicitation will be evaluated. Each evaluation category will have a maximum point potential. The State will conduct a fair, impartial, and comprehensive evaluation of all proposals in accordance with the criteria set forth below. Areas that will be addressed and scored during the evaluation include:

All proposals that are responsive to the solicitation will be evaluated based on the following:

1. Cost Proposal

Neb. Rev. Stat. §81-161 allows the quality of performance of previous contracts to be considered when evaluating responses to competitively bid solicitations in determining the lowest responsible bidder. Information obtained from any Vendor Performance Report (See Terms & Conditions, Section II.) may be used in evaluating responses to solicitations for goods and services to determine the best value for the State.

Neb. Rev. Stat. §73-107 allows for a preference for a resident disabled veteran or business located in a designated enterprise zone. When a state contract is to be awarded to the lowest responsible contractor, a resident disabled veteran or a business located in a designated enterprise zone under the Enterprise Zone Act shall be allowed a preference over any other resident or nonresident bidder, if all other factors are equal.

Resident disabled veterans means any person (a) who resides in the State of Nebraska, who served in the United States Armed Forces, including any reserve component or the National Guard, who was discharged or otherwise separated with a characterization of honorable or general (under honorable conditions), and who possesses a disability rating letter issued by the United States Department of Veterans Affairs establishing a service-connected disability or a disability determination from the United States Department of Defense and (b)(i) who owns and controls a business or, in the case of a publicly owned business, more than fifty percent of the stock is owned by one or more persons described in subdivision (a) of this subsection and (ii) the management and daily business operations of the business are controlled by one or more persons described in subdivision(a) of this subsection. Any contract entered into without compliance with this section shall be null and void.

Therefore, if a resident disabled veteran or business located in a designated enterprise zone submits a proposal in accordance with Neb. Rev. Stat. §73-107 and has so indicated on the RFP cover page under "Bidder must complete the following" requesting priority/preference to be considered in the award of this contract, the following will need to be submitted by the bidder within ten (10) business days of request:

1. Documentation from the United States Armed Forces confirming service,
2. Documentation of discharge or otherwise separated characterization of honorable or general (under honorable conditions),
3. Disability rating letter issued by the United States Department of Veterans Affairs establishing a service-connected disability or a disability determination from the United States Department of Defense; and
4. Documentation which shows ownership and control of a business or, in the case of a publicly owned business, more than fifty percent of the stock is owned by one or more persons described in subdivision (a) of this subsection; and the management and daily business operations of the business are controlled by one or more persons described in subdivision (a) of this subsection.

Failure to submit the requested documentation within ten (10) business days of notice will disqualify the bidder from consideration of the preference.

Q. COST CLARIFICATION

The State reserves the right to review all aspects of cost for reasonableness and to request clarification of any proposal where the cost component shows significant and unsupported deviation from industry standards or in areas where detailed pricing is required.

R. BEST AND FINAL OFFER

If best and final offers (BAFO) are requested by the State and submitted by the bidder, they will be evaluated (using the stated BAFO criteria), scored, and ranked by the Evaluation Committee. The State reserves the right to conduct more than one Best and Final Offer. The award will then be granted to the highest scoring bidder. However, a bidder

should provide its best offer in its original proposal. Bidders should not expect that the State will request a best and final offer.

S. REFERENCE AND CREDIT CHECKS

The State reserves the right to conduct and consider reference and credit checks. The State reserves the right to use third parties to conduct reference and credit checks. By submitting a proposal in response to the RFP, the bidder grants to the State the right to contact or arrange a visit in person with any or all of the bidder's clients. Reference and credit checks may be grounds to reject a proposal, withdraw an intent to award, or rescind the award of a contract.

T. AWARD

The State reserves the right to evaluate proposals and award contracts in a manner utilizing criteria selected at the State's discretion and in the State's best interest. After evaluation of the proposals, or at any point in the RFP process, the State of Nebraska may take one or more of the following actions:

1. Amend the RFP,
2. Extend the time of or establish a new proposal opening time,
3. Waive deviations or errors in the State's solicitation process and in bidder proposals that are not material, do not compromise the RFP process or a bidder's proposal, and do not improve a bidder's competitive position,
4. Accept or reject a portion of or all of a proposal,
5. Accept or reject all proposals,
6. Withdraw the RFP,
7. Elect to rebid the RFP,
8. Award single lines or multiple lines to one or more bidders; or,
9. Award one or more all-inclusive contracts.

The State of Nebraska may consider, but is not limited to considering, one or more of the following award criteria:

1. Price,
2. Location,
3. Quality,
4. Delivery time,
5. Bidder qualifications and capabilities,
6. State contract management requirements and/or costs; and,

The RFP does not commit the State to award a contract. Once intent to award decision has been determined, it will be posted to the Internet at: <http://das.nebraska.gov/materiel/purchasing.html>

Any protests must be filed by a vendor within ten (10) business days after the intent to award decision is posted to the Internet. Grievance and protest procedure is available on the Internet at: <http://das.nebraska.gov/materiel/purchasing.html>

U. REJECTION OF PROPOSALS

The State reserves the right to reject any or all proposals, wholly or in part, in the best interest of the State.

V. RESIDENT BIDDER

Pursuant to Neb. Rev. Stat. §§ 73-101.01 through 73-101.02, a Resident Bidder shall be allowed a preference against a Non-resident Bidder from a state which gives or requires a preference to Bidders from that state. The preference shall be equal to the preference given or required by the state of the Nonresident Bidders. Where the lowest responsible bid from a resident Bidder is equal in all respects to one from a nonresident Bidder from a state which has no preference law, the resident Bidder shall be awarded the contract. The provision of this preference shall not apply to any contract for any project upon which federal funds would be withheld because of the provisions of this preference.

II. TERMS AND CONDITIONS

The Bidder is expected to read the Terms and Conditions. By signing the Master Agreement Revision #5, the bidder is agreeing to be legally bound by all the terms and conditions. If the bidder fails to agree on the Master Agreement Revision #5 Terms and Conditions, the State reserves the right to reject the proposal. The State of Nebraska reserves the right to reject proposals that attempt to substitute the bidder's commercial contracts and/or documents for the Master Agreement Revision #5 and corresponding RFP.

A. GENERAL

The contract resulting from the RFP shall incorporate the following documents:

1. Request for Proposal and Addenda,
2. Amendments to the RFP,
3. Questions and Answers,
4. Bidder's proposal (RFP and properly submitted documents),
5. The executed Contract and Addendum One to Contract, if applicable; and,
6. Amendments/Addendums to the Contract.

These documents constitute the entirety of the contract.

Unless otherwise specifically stated in a future contract amendment, in case of any conflict between the incorporated documents, the documents shall govern in the following order of preference with number one (1) receiving preference over all other documents and with each lower numbered document having preference over any higher numbered document: 1) Amendment to the executed Contract with the most recent dated amendment having the highest priority, 2) executed Contract and any attached Addenda, 3) Amendments to the RFP and any Questions and Answers, 4) the signed Master Agreement Revision #5, 5) the original RFP document and any Addenda, and 5) the Bidder's submitted Proposal.

Any ambiguity or conflict in the contract discovered after its execution, not otherwise addressed herein, shall be resolved in accordance with the rules of contract interpretation as established in the State of Nebraska.

B. NOTIFICATION

Contractor and State shall identify the contract manager who shall serve as the point of contact for the executed contract.

Communications regarding the executed contract shall be in writing and shall be deemed to have been given if delivered personally or mailed, by U.S. Mail, postage prepaid, return receipt requested, to the parties at their respective addresses set forth below, or at such other addresses as may be specified in writing by either of the parties. All notices, requests, or communications shall be deemed effective upon personal delivery or five (5) calendar days following deposit in the mail.

Either party may change its address for notification purposes by giving notice of the change and setting forth the new address and an effective date.

C. NOTICE (POC)

The State reserves the right to appoint a Buyer's Representative to manage [or assist the Buyer in managing] the contract on behalf of the State. The Buyer's Representative will be appointed in writing, and the appointment document will specify the extent of the Buyer's Representative authority and responsibilities. If a Buyer's Representative is appointed, the Contractor will be provided a copy of the appointment document and is required to cooperate accordingly with the Buyer's Representative. The Buyer's Representative has no authority to bind the State to a contract, amendment, addendum, or other change or addition to the contract.

D. GOVERNING LAW (Statutory)

Notwithstanding any other provision of this contract, or any amendment or addendum(s) entered into contemporaneously or at a later time, the parties understand and agree that, (1) the State of Nebraska is a sovereign state and its authority to contract is therefore subject to limitation by the State's Constitution, statutes, common law, and regulation; (2) this contract will be interpreted and enforced under the laws of the State of Nebraska; (3) any action to enforce the provisions of this agreement must be brought in the State of Nebraska per state law; (4) the person signing this contract on behalf of the State of Nebraska does not have the authority to waive the State's sovereign immunity, statutes, common law, or regulations; (5) the indemnity, limitation of liability, remedy, and other similar provisions of the final contract, if any, are entered into subject to the State's Constitution, statutes, common law, regulations, and sovereign immunity; and, (6) all terms and conditions of the final contract, including but not limited to the clauses concerning third party use, licenses, warranties, limitations of liability, governing law and venue,

usage verification, indemnity, liability, remedy or other similar provisions of the final contract are entered into specifically subject to the State's Constitution, statutes, common law, regulations, and sovereign immunity.

The Parties must comply with all applicable local, state and federal laws, ordinances, rules, orders, and regulations.

E. BEGINNING OF WORK

The bidder shall not commence any billable work until a valid contract has been fully executed by the State and the successful Contractor. The bidder will be notified in writing when work may begin.

F. AMENDMENT

This Contract may be amended in writing, within scope, upon the agreement of both parties.

G. CHANGE ORDERS OR SUBSTITUTIONS

The State and the Contractor, upon the written agreement, may make changes to the contract within the general scope of the RFP. Changes may involve specifications, the quantity of work, or such other items as the State may find necessary or desirable. Corrections of any deliverable, service, or work required pursuant to the contract shall not be deemed a change. The Contractor may not claim forfeiture of the contract by reasons of such changes.

The Contractor shall prepare a written description of the work required due to the change and an itemized cost sheet for the change. Changes in work and the amount of compensation to be paid to the Contractor shall be determined in accordance with applicable unit prices if any, a pro-rated value, or through negotiations. The State shall not incur a price increase for changes that should have been included in the Contractor's proposal, were foreseeable, or result from difficulties with or failure of the Contractor's proposal or performance.

No change shall be implemented by the Contractor until approved by the State, and the Contract is amended to reflect the change and associated costs, if any. If there is a dispute regarding the cost, but both parties agree that immediate implementation is necessary, the change may be implemented, and cost negotiations may continue with both Parties retaining all remedies under the contract and law.

*****Contractor will not substitute any item that has been awarded without prior written approval of SPB*****

H. VENDOR PERFORMANCE REPORT(S)

The State may document any instance(s) of products or services delivered or performed which exceed or fail to meet the terms of the purchase order, contract, and/or solicitation specifications. The State Purchasing Bureau may contact the Vendor regarding any such report. Vendor performance report(s) will become a part of the permanent record of the Vendor.

I. NOTICE OF POTENTIAL CONTRACTOR BREACH

If Contractor breaches the contract or anticipates breaching the contract, the Contractor shall promptly give written notice to the State. The notice shall explain the breach or potential breach, a proposed cure, and may include a request for a waiver of the breach if so desired. The State may, in its discretion, temporarily or permanently waive the breach. By granting a waiver, the State does not forfeit any rights or remedies to which the State is entitled by law or equity, or pursuant to the provisions of the contract. Failure to give immediate notice, however, may be grounds for denial of any request for a waiver of a breach.

J. BREACH

Either Party may terminate the contract, in whole or in part, if the other Party breaches its duty to perform its obligations under the contract in a timely and proper manner. Termination requires written notice of default and a thirty (30) calendar day (or longer at the non-breaching Party's discretion considering the gravity and nature of the default) cure period. Said notice shall be delivered by Certified Mail, Return Receipt Requested, or in person with proof of delivery. Allowing time to cure a failure or breach of contract does not waive the right to immediately terminate the contract for the same or different contract breach which may occur at a different time. In case of default of the Contractor, the State may contract the service from other sources. OR In case of breach by the Contractor, the State may, without unreasonable delay, make a good faith effort to make a reasonable purchase or contract to purchased goods in substitution of those due from the contractor.

The State's failure to make payment shall not be a breach, and the Contractor shall retain all available statutory remedies and protections.

K. NON-WAIVER OF BREACH

The acceptance of late performance with or without objection or reservation by a Party shall not waive any rights of the Party nor constitute a waiver of the requirement of timely performance of any obligations remaining to be performed.

L. SEVERABILITY

If any term or condition of the contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and conditions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the provision held to be invalid or illegal.

M. INDEMNIFICATION

1. GENERAL

The Contractor agrees to defend, indemnify, and hold harmless the State and its employees, volunteers, agents, and its elected and appointed officials (“the indemnified parties”) from and against any and all third party claims, liens, demands, damages, liability, actions, causes of action, losses, judgments, costs, and expenses of every nature, including investigation costs and expenses, settlement costs, and attorney fees and expenses (“the claims”), sustained or asserted against the State for personal injury, death, or property loss or damage, caused by or, resulting from, the willful misconduct, negligence, error, or omission of the Contractor, its employees, subcontractors, consultants, representatives, and agents, resulting from this contract, except to the extent such Contractor liability is attenuated by any action of the State which directly and proximately contributed to the claims.

2. INTELLECTUAL PROPERTY

The Contractor agrees it will, at its sole cost and expense, defend, indemnify, and hold harmless the indemnified parties from and against any and all claims, to the extent such claims arise out of, result from, or are attributable to, the actual or alleged infringement or misappropriation of any patent, copyright, trade secret, trademark, or confidential information of any third party by the Contractor or its employees, subcontractors, consultants, representatives, and agents (“IP Claim”); provided, however, the State gives the Contractor prompt notice in writing of the claim.

If a judgment or settlement is obtained or reasonably anticipated against the State’s use of any intellectual property for which the Contractor has indemnified the State, the Contractor shall, at the Contractor’s sole cost and expense, (i) promptly modify the item or items which were determined to be infringing so that it is no longer infringing, (ii) acquire a license or licenses on the State’s behalf to provide the necessary rights to the State to continue using the infringing service and eliminate the infringement, or (iii) provide the State with a non-infringing substitute that provides the State the same functionality. If none of the foregoing alternatives are possible after Contractor has used its commercially reasonable efforts, the State may terminate the affected service. This section states the sole and exclusive remedy of the State in connection with an IP Claim.

Notwithstanding anything to the contrary herein, Contractor shall have no indemnification obligation with respect to any IP Claim arising out of: (i) content, materials or data transmitted by the State via the Contractor’s services; (ii) use of the Contractor’s system or services in combination with products, materials, applications, methods, or other items not furnished by Contractor; (iii) a modification of the Contractor’s system or services not required or directed by Contractor; or (iv) use of the Contractor’s system or services in an unauthorized manner or in breach of the contract.

3. PERSONNEL

The Contractor shall, at its expense, indemnify and hold harmless the indemnified parties from and against any claim with respect to withholding taxes, worker’s compensation, employee benefits, or any other claim, demand, liability, damage, or loss of any nature relating to any of the personnel, including subcontractor’s and their employees, provided by the Contractor.

4. LIMITATION OF LIABILITY

Notwithstanding anything in the contract to the contrary, neither the State nor Contractor shall be liable to the other, any end user, or any third party for any indirect, consequential, exemplary, special, incidental, reliance, cover, or punitive damages (including lost business, revenue, profits, or goodwill) arising in connection with the contract or the provision of services by Contractor, under any theory of liability, even if the party has been advised, knew or should have known of the possibility of such damages. The foregoing limitation of liability shall not apply to any of the State’s payment obligations under the contract. The Contractor’s aggregate liability in any contract year (i.e., each 12-month period commencing with the

Effective Date of the contract) shall not exceed twelve (12) times the total monthly recurring charges paid or payable under the contract in the calendar month immediately preceding the date the claim arises. However the foregoing dollar cap on liability shall not apply with respect to the Contractor's gross negligence or willful misconduct, or to bodily injury (including death) or property damage caused by the Contractor's negligence. Contractor shall not be responsible for any losses or damages arising as a result of the unavailability of the service, including the inability to reach 911 or any other emergency services, the inability to contact a security system or remote medical or other monitoring service provider or any failure or fault relating to State/end user-provided equipment, facilities, or services.

5. SELF-INSURANCE

The State of Nebraska is self-insured for any loss and purchases excess insurance coverage pursuant to Neb. Rev. Stat. § 81-8,239.01 (Reissue 2008). If there is a presumed loss under the provisions of this agreement, Contractor may file a claim with the Office of Risk Management pursuant to Neb. Rev. Stat. §§ 81-8,829 – 81-8,306 for review by the State Claims Board. The State retains all rights and immunities under the State Miscellaneous (Section 81-8,294), Tort (Section 81-8,209), and Contract Claim Acts (Section 81-8,302), as outlined in Neb. Rev. Stat. § 81-8,209 et seq. and under any other provisions of law and accepts liability under this agreement to the extent provided by law.

6. The Parties acknowledge that Attorney General for the State of Nebraska is required by statute to represent the legal interests of the State, and that any provision of this indemnity clause is subject to the statutory authority of the Attorney General.

N. ATTORNEY'S FEES

In the event of any litigation, appeal, or other legal action to enforce any provision of the contract, the Parties agree to pay all expenses of such action, as permitted by law and if ordered by the court, including attorney's fees and costs, if the other Party prevails.

O. ASSIGNMENT, SALE, OR MERGER

Either Party may assign the contract upon mutual written agreement of the other Party. Such agreement shall not be unreasonably withheld.

The Contractor retains the right to enter into a sale, merger, acquisition, internal reorganization, or similar transaction involving Contractor's business. Contractor agrees to cooperate with the State in executing amendments to the contract to allow for the transaction. If a third party or entity is involved in the transaction, the Contractor will remain responsible for performance of the contract until such time as the person or entity involved in the transaction agrees in writing to be contractually bound by this contract and perform all obligations of the contract.

P. CONTRACTING WITH OTHER NEBRASKA POLITICAL SUB-DIVISIONS OF THE STATE OR ANOTHER STATE

The Contractor may, but shall not be required to, allow agencies, as defined in Neb. Rev. Stat. §81-145, to use this contract. The terms and conditions, including price, of the contract may not be amended. The State shall not be contractually obligated or liable for any contract entered into pursuant to this clause. A listing of Nebraska political subdivisions may be found at the website of the Nebraska Auditor of Public Accounts.

The Contractor may, but shall not be required to, allow other states, agencies or divisions of other states, or political subdivisions of other states to use this contract. The terms and conditions, including price, of this contract shall apply to any such contract, but may be amended upon mutual consent of the Parties. The State of Nebraska shall not be contractually or otherwise obligated or liable under any contract entered into pursuant to this clause. The State shall be notified if a contract is executed based upon this contract.

Q. FORCE MAJEURE

Neither Party shall be liable for any costs or damages, or for default resulting from its inability to perform any of its obligations under the contract due to a natural or manmade event outside the control and not the fault of the affected Party ("Force Majeure Event"). The Party so affected shall immediately make a written request for relief to the other Party and shall have the burden of proof to justify the request. The other Party may grant the relief requested; relief may not be unreasonably withheld. Labor disputes with the impacted Party's own employees will not be considered a Force Majeure Event.

R. CONFIDENTIALITY

All materials and information provided by the Parties or acquired by a Party on behalf of the other Party shall be regarded as confidential information. All materials and information provided or acquired shall be handled in

accordance with federal and state law, and ethical standards. Should said confidentiality be breached by a Party, the Party shall notify the other Party immediately of said breach and take immediate corrective action.

It is incumbent upon the Parties to inform their officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a (i)(1), which is made applicable by 5 U.S.C. 552a (m)(1), provides that any officer or employee, who by virtue of his/her employment or official position has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

S. EARLY TERMINATION

The contract may be terminated as follows:

1. The State and the Contractor, by mutual written agreement, may terminate the contract at any time.
2. The State, in its sole discretion, may terminate the contract for any reason upon thirty (30) calendar day's written notice to the Contractor. Such termination shall not relieve the Contractor of warranty or other service obligations incurred under the terms of the contract. In the event of termination, the Contractor shall be entitled to payment, determined on a pro rata basis, for products or services satisfactorily performed or provided.
3. The State may terminate the contract immediately for the following reasons:
 - a. if directed to do so by statute,
 - b. Contractor has made an assignment for the benefit of creditors, has admitted in writing its inability to pay debts as they mature, or has ceased operating in the normal course of business,
 - c. a trustee or receiver of the Contractor or of any substantial part of the Contractor's assets has been appointed by a court,
 - d. fraud, misappropriation, embezzlement, malfeasance, misfeasance, or illegal conduct pertaining to performance under the contract by its Contractor, its employees, officers, directors, or shareholders,
 - e. an involuntary proceeding has been commenced by any Party against the Contractor under any one of the chapters of Title 11 of the United States Code and (i) the proceeding has been pending for at least sixty (60) calendar days; or (ii) the Contractor has consented, either expressly or by operation of law, to the entry of an order for relief; or (iii) the Contractor has been decreed or adjudged a debtor,
 - f. a voluntary petition has been filed by the Contractor under any of the chapters of Title 11 of the United States Code,
 - g. Contractor intentionally discloses confidential information,
 - h. Contractor has or announces it will discontinue support of the deliverable; and,
 - i. In the event funding is no longer available.

T. CONTRACT CLOSEOUT

Upon contract closeout for any reason the Contractor shall within 30 days, unless stated otherwise herein:

1. Transfer all completed or partially completed deliverables to the State,
2. Transfer ownership and title to all completed or partially completed deliverables to the State,
3. Return to the State all information and data, unless the Contractor is permitted to keep the information or data by contract or rule of law. Contractor may retain one copy of any information or data as required to comply with applicable work product documentation standards or as are automatically retained in the course of Contractor's routine back up procedures,
4. Cooperate with any successor Contractor, person or entity in the assumption of any or all of the obligations of this contract,
5. Cooperate with any successor Contractor, person or entity with the transfer of information or data related to this contract,
6. Return or vacate any state owned real or personal property; and,
7. Return all data in a mutually acceptable format and manner.

Nothing in this Section should be construed to require the Contractor to surrender intellectual property, real or personal property, or information or data owned by the Contractor for which the State has no legal claim.

III. CONTRACTOR DUTIES

I. INDEPENDENT CONTRACTOR / OBLIGATIONS

It is agreed that the Contractor is an independent contractor and that nothing contained herein is intended or should be construed as creating or establishing a relationship of employment, agency, or a partnership.

The Contractor is solely responsible for fulfilling the contract. The Contractor or the Contractor's representative shall be the sole point of contact regarding all contractual matters.

The Contractor shall secure, at its own expense, all personnel required to perform the services under the contract. The personnel the Contractor uses to fulfill the contract shall have no contractual or other legal relationship with the State; they shall not be considered employees of the State and shall not be entitled to any compensation, rights or benefits from the State, including but not limited to, tenure rights, medical and hospital care, sick and vacation leave, severance pay, or retirement benefits.

By-name personnel commitments made in the Contractor's proposal shall not be changed without the prior written approval of the State. Replacement of these personnel, if approved by the State, shall be with personnel of equal or greater ability and qualifications.

All personnel assigned by the Contractor to the contract shall be employees of the Contractor or a subcontractor and shall be fully qualified to perform the work required herein. Personnel employed by the Contractor or a subcontractor to fulfill the terms of the contract shall remain under the sole direction and control of the Contractor or the subcontractor respectively.

With respect to its employees, the Contractor agrees to be solely responsible for the following:

1. Any and all pay, benefits, and employment taxes and/or other payroll withholding,
2. Any and all vehicles used by the Contractor's employees, including all insurance required by state law,
3. Damages incurred by Contractor's employees within the scope of their duties under the contract,
4. Maintaining Workers' Compensation and health insurance that complies with state and federal law and submitting any reports on such insurance to the extent required by governing law,
5. Determining the hours to be worked and the duties to be performed by the Contractor's employees; and,
6. All claims on behalf of any person arising out of employment or alleged employment (including without limit claims of discrimination alleged against the Contractor, its officers, agents, or subcontractors or subcontractor's employees).

If the Contractor intends to utilize any subcontractor, the subcontractor's level of effort, tasks, and time allocation should be clearly defined in the bidder's proposal. The Contractor shall agree that it will not utilize any subcontractors not specifically included in its proposal in the performance of the contract without the prior written authorization of the State.

The State reserves the right to require the Contractor to reassign or remove from the project any Contractor or subcontractor employee.

Contractor shall insure that the terms and conditions contained in any contract with a subcontractor does not conflict with the terms and conditions of this contract.

The Contractor shall include a similar provision, for the protection of the State, in the contract with any subcontractor engaged to perform work on this contract.

II. EMPLOYEE WORK ELIGIBILITY STATUS

The Contractor is required and hereby agrees to use a federal immigration verification system to determine the work eligibility status of employees physically performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of an employee.

If the Contractor is an individual or sole proprietorship, the following applies:

1. The Contractor must complete the United States Citizenship Attestation Form, available on the Department of Administrative Services website at

<https://das.nebraska.gov/materiel/docs/pdf/Individual%20or%20Sole%20Proprietor%20United%20States%20Attestation%20Form%20English%20and%20Spanish.pdf>

2. The completed United States Attestation Form should be submitted with this Master Agreement Revision #5 response.
3. If the Contractor indicates on such attestation form that he or she is a qualified alien, the Contractor agrees to provide the US Citizenship and Immigration Services documentation required to verify the Contractor's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program.
4. The Contractor understands and agrees that lawful presence in the United States is required, and the Contractor may be disqualified, or the contract terminated if such lawful presence cannot be verified as required by Neb. Rev. Stat. §4-108.

J. COMPLIANCE WITH CIVIL RIGHTS LAWS AND EQUAL OPPORTUNITY EMPLOYMENT / NONDISCRIMINATION (Statutory)

The Contractor shall comply with all applicable local, state, and federal statutes and regulations regarding civil rights laws and equal opportunity employment. The Nebraska Fair Employment Practice Act prohibits Contractors of the State of Nebraska, and their subcontractors, from discriminating against any employee or applicant for employment, with respect to hire, tenure, terms, conditions, compensation, or privileges of employment because of race, color, religion, sex, disability, marital status, or national origin (Neb. Rev. Stat. §48-1101 to 48-1125). The Contractor guarantees compliance with the Nebraska Fair Employment Practice Act, and breach of this provision shall be regarded as a material breach of contract. The Contractor shall insert a similar provision in all subcontracts for goods and services to be covered by any contract resulting from the RFP.

K. COOPERATION WITH OTHER CONTRACTORS

Contractor may be required to work with or in close proximity to other contractors or individuals that may be working on same or different projects. The Contractor shall agree to cooperate with such other contractors or individuals and shall not commit or permit any act which may interfere with the performance of work by any other contractor or individual. Contractor is not required to compromise Contractor's intellectual property or proprietary information unless expressly required to do so by this contract.

L. DISCOUNTS

Prices quoted shall be inclusive of ALL trade discounts. Cash discount terms of less than thirty (30) days will not be considered as part of the proposal. Cash discount periods will be computed from the date of receipt of a properly executed claim voucher or the date of completion of delivery of all items in a satisfactory condition, whichever is later.

M. PRICES

Contractor's monthly recurring price for the services provided, as shown in the Cost Proposal Appendices, shall remain fixed and valid commencing on the opening date of the proposal through the duration of the contract and shall be invoiced along with the applicable fees, surcharges and taxes each month. ANY PROPOSAL LANGUAGE OR EXCEPTION SUBMITTED THAT SUGGESTS VARIABILITY IN PRICING OF THE MONTHLY RECURRING CHARGES (MRC) FOR SERVICES OVER THE LIFE OF THE TERM OF THE CONTRACT MAY BE CONSIDERED A NON-RESPONSIVE PROPOSAL AND WILL BE REJECTED. THE STATE UNDERSTANDS THAT MRCs ARE NOT INCLUSIVE OF TAXES, FEES AND SURCHARGES, AND THAT TAXES, FEES AND SURCHARGES ARE SUBJECT TO CHANGE. THE STATE FURTHER UNDERSTANDS THAT CONSTRUCTION, INSTALLATION AND OTHER NON-SERVICE CHARGES THAT ARE AMORTIZED AS MONTHLY RECURRING CHARGES ARE NOT CONSIDERED MONTHLY RECURRING CHARGES FOR SERVICES.

MRC for services shall be invoiced in accordance with the original cost sheet. No invoice for MRCs for services shall exceed the price contained on the Contractor's original Cost Proposal. The State understands that pricing/rates reflected on Appendix B for Special Construction, if any, are estimates only and are subject to change once Contractor has completed a site-specific assessment.

Contractor represents and warrants that all prices for services, now or subsequently specified as part of the Contract, are lower than or equal to the prices that the Contractor currently charges or in good faith intends to charge other customers within the State of Nebraska (excluding Federal Agencies, Federal Institutions, and sales under the Federal Communications Commission's E-Rate Program and Rural Health Care Programs), that purchase the same service provided under the Contract and at the same or less volumes (but only comparing against similar service order term periods) as provided under the Contract, for delivery or performance during the same periods of time (such other customer of Contractor is referred to herein as a "Qualifying Comparison Customer Each year, on or about the

anniversary date of the commencement of the Contract, Contractor shall conduct an analysis to review sales of services to Qualifying Comparison Customers over the prior year (if any), to determine if Contractor has charged a Qualifying Comparison Customer a monthly recurring charge for a particular service that is less than that which Contractor charges for the same service under the Contract; and if it has, Contractor shall notify the State and reduce the corresponding monthly recurring charge for the service chargeable under the Contract to equal that charged to the Qualifying Comparison Customer, with such modified rate taking effect in the full billing cycle following completion of Contractor's analysis. For the avoidance of doubt, customers who (i) purchase services from Contractor in both other states and within the State of Nebraska, (ii) receive a bundled rate, and/or (iii) receive promotional rates/discounts under promotional programs, shall not be Qualifying Comparison Customers. With respect to the Contractor's sale of services under the Federal Communications Commission's E-Rate Program, Contractor shall at all times comply with the Lowest Corresponding Rate rules under that program.

Contractor also represents and warrants that all prices set forth in the contract and all prices in addition, that the Contractor may charge under the terms of the contract, do not and will not violate any existing federal, state, or municipal law or regulations concerning price discrimination and/or price fixing. Contractor agrees to hold the State harmless from any such violation. Prices quoted shall not be subject to increase throughout the contract period unless specifically allowed by these specifications.

The State reserves the right to deny any requested price increase. No price increases are to be billed to any State Agencies prior to written amendment of the contract by the parties.

The State will be given full proportionate benefit of any decreases for the term of the contract.

N. PERMITS, REGULATIONS, LAWS

The contract price shall include the cost of all royalties, licenses, permits, and approvals, whether arising from patents, trademarks, copyrights or otherwise, that are in any way involved in the contract. The Contractor shall obtain and pay for all royalties, licenses, and permits, and approvals necessary for the execution of the contract. The Contractor must guarantee that it has the full legal right to the materials, supplies, equipment, software, and other items used to execute this contract.

O. OWNERSHIP OF INFORMATION AND DATA / DELIVERABLES

The State shall have the unlimited right to publish, duplicate, use, and disclose all information and data developed or obtained by the Contractor on behalf of the State pursuant to this contract.

The State shall own and hold exclusive title to any deliverable developed as a result of this contract. Contractor shall have no ownership interest or title, and shall not patent, license, or copyright, duplicate, transfer, sell, or exchange, the design, specifications, concept, or deliverable.

P. INSURANCE REQUIREMENTS

The Contractor shall throughout the term of the contract maintain insurance as specified herein and provide the State a current Certificate of Insurance/Acord Form (COI) verifying the coverage. The Contractor shall not commence work on the contract until the insurance is in place. If Contractor subcontracts any portion of the Contract the Contractor must, throughout the term of the contract, either:

1. Provide equivalent insurance for each subcontractor and provide a COI verifying the coverage for the subcontractor,
2. Require each subcontractor to have equivalent insurance and provide written notice to the State that the Contractor has verified that each subcontractor has the required coverage; or,
3. Provide the State with copies of each subcontractor's Certificate of Insurance evidencing the required coverage.

The Contractor shall not allow any subcontractor to commence work until the subcontractor has equivalent insurance. The failure of the State to require a COI, or the failure of the Contractor to provide a COI or require subcontractor insurance shall not limit, relieve, or decrease the liability of the Contractor hereunder.

In the event that any policy written on a claims-made basis terminates or is canceled during the term of the contract or within one (1) year of termination or expiration of the contract, the contractor shall obtain an extended discovery or reporting period, or a new insurance policy, providing coverage required by this contract for the term of the contract and one (1) year following termination or expiration of the contract.

If by the terms of any insurance a mandatory deductible is required, or if the Contractor elects to increase the mandatory deductible amount, the Contractor shall be responsible for payment of the amount of the deductible in the event of a paid claim.

Notwithstanding any other clause in this Contract, the State may recover up to the liability limits of the insurance policies required herein.

1. WORKERS' COMPENSATION INSURANCE

The Contractor shall take out and maintain during the life of this contract the statutory Workers' Compensation and Employer's Liability Insurance for all of the contractors' employees to be engaged in work on the project under this contract and, in case any such work is sublet, the Contractor shall require the subcontractor similarly to provide Worker's Compensation and Employer's Liability Insurance for all of the subcontractor's employees to be engaged in such work. This policy shall be written to meet the statutory requirements for the state in which the work is to be performed, including Occupational Disease. **The policy shall include a waiver of subrogation in favor of the State. The COI shall contain the mandatory COI subrogation waiver language found hereinafter.** The amounts of such insurance shall not be less than the limits stated hereinafter. For employees working in the State of Nebraska, the policy must be written by an entity authorized by the State of Nebraska Department of Insurance to write Workers' Compensation and Employer's Liability Insurance for Nebraska employees.

2. COMMERCIAL GENERAL LIABILITY INSURANCE AND COMMERCIAL AUTOMOBILE LIABILITY INSURANCE

The Contractor shall take out and maintain during the life of this contract such Commercial General Liability Insurance and Commercial Automobile Liability Insurance as shall protect Contractor and any subcontractor performing work covered by this contract from claims for damages for bodily injury, including death, as well as from claims for property damage, which may arise from operations under this contract, whether such operation be by the Contractor or by any subcontractor or by anyone directly or indirectly employed by either of them, and the amounts of such insurance shall not be less than limits stated hereinafter.

The Commercial General Liability Insurance shall be written on an **occurrence basis**, and provide Premises/Operations, Products/Completed Operations, Independent Contractors, Personal Injury, and Contractual Liability coverage. **The policy shall include the State, and others as required by the contract documents, as Additional Insured(s). This policy shall be primary, and any insurance or self-insurance carried by the State shall be considered secondary and non-contributory. The COI shall contain the mandatory COI liability waiver language found hereinafter.** The Commercial Automobile Liability Insurance shall be written to cover all Owned, Non-owned, and Hired vehicles.

REQUIRED INSURANCE COVERAGE	
COMMERCIAL GENERAL LIABILITY	
General Aggregate	\$2,000,000
Products/Completed Operations Aggregate	\$2,000,000
Personal/Advertising Injury	\$1,000,000 per occurrence
Bodily Injury/Property Damage	\$1,000,000 per occurrence
Medical Payments	\$10,000 any one person
Damage to Rented Premises (Fire)	\$300,000 each occurrence
Contractual	Included
XCU Liability (Explosion, Collapse, and Underground Damage)	Included
Independent Contractors	Included
Abuse & Molestation	Included
<i>If higher limits are required, the Umbrella/Excess Liability limits are allowed to satisfy the higher limit.</i>	
WORKER'S COMPENSATION	
Employers Liability Limits	\$500K/\$500K/\$500K
Statutory Limits- All States	Statutory - State of Nebraska
USL&H Endorsement	Statutory
Voluntary Compensation	Statutory
COMMERCIAL AUTOMOBILE LIABILITY	
Bodily Injury/Property Damage	\$1,000,000 combined single limit
Include All Owned, Hired & Non-Owned Automobile liability	Included
Motor Carrier Act Endorsement	Where Applicable

UMBRELLA/EXCESS LIABILITY	
Over Primary Insurance	\$5,000,000 per occurrence
PROFESSIONAL LIABILITY	
All Other Professional Liability (Errors & Omissions)	\$1,000,000 Per Claim / Aggregate
COMMERCIAL CRIME	
Crime/Employee Dishonesty Including 3rd Party Fidelity	\$1,000,000
CONTRACTOR'S POLLUTION LIABILITY	
Each Occurrence/Aggregate Limit	\$1,000,000
Includes Non-Owned Disposal Sites	
MANDATORY COI SUBROGATION WAIVER LANGUAGE	
"Workers' Compensation policy shall include a waiver of subrogation in favor of the State of Nebraska."	
MANDATORY COI LIABILITY WAIVER LANGUAGE	
"Commercial General Liability & Commercial Automobile Liability policies shall name the State of Nebraska as an Additional Insured and the policies shall be primary and any insurance or self-insurance carried by the State shall be considered secondary and non-contributory as additionally insured."	

3. EVIDENCE OF COVERAGE

Via e-mail, the Contractor shall furnish, the State Purchasing Bureau Buyer, with a certificate of insurance coverage complying with the above requirements prior to beginning work at:

State of Nebraska
 Nebraska State Purchasing Bureau
 Dianna Gilliland/Kelly Thomas
 RFP #6837 Z1/XXXXX O4
Dianna.gilliland@nebraska.gov & Kelly.thomas@nebraska.gov

These certificates or the cover sheet shall reference the RFP number/Service Contract number, and the certificates shall include the name of the company, policy numbers, effective dates, dates of expiration, and amounts and types of coverage afforded. If the State is damaged by the failure of the Contractor to maintain such insurance, then the Contractor shall be responsible for all reasonable costs properly attributable thereto.

Reasonable notice of cancellation of any required insurance policy must be submitted to the contract buyer as listed above when issued and a new coverage binder shall be submitted immediately to ensure no break in coverage.

Q. ANTITRUST

The Contractor hereby assigns to the State any and all claims for overcharges as to goods and/or services provided in connection with this contract resulting from antitrust violations which arise under antitrust laws of the United States and the antitrust laws of the State.

R. CONFLICT OF INTEREST

By submitting a proposal, bidder certifies that no relationship exists between the bidder and any person or entity which either is, or gives the appearance of, a conflict of interest related to this Request for Proposal or project.

Bidder further certifies that bidder will not employ any individual known by bidder to have a conflict of interest nor shall bidder take any action or acquire any interest, either directly or indirectly, which will conflict in any manner or degree with the performance of its contractual obligations hereunder or which creates an actual or appearance of conflict of interest.

If there is an actual or perceived conflict of interest, bidder shall provide with its proposal a full disclosure of the facts describing such actual or perceived conflict of interest and a proposed mitigation plan for consideration. The State will then consider such disclosure and proposed mitigation plan and either approve or reject as part of the overall bid evaluation.

S. STATE PROPERTY

The Contractor shall be responsible for the proper care and custody of any State-owned property which is furnished for the Contractor's use during the performance of the contract. The Contractor shall reimburse the State for any loss or damage of such property; normal wear and tear is expected.

T. SITE RULES AND REGULATIONS

The Contractor shall use its best efforts to ensure that its employees, agents, and subcontractors comply with site rules and regulations while on State premises. If the Contractor must perform on-site work outside of the daily

operational hours set forth by the State, it must make arrangements with the State to ensure access to the facility and the equipment has been arranged. No additional payment will be made by the State on the basis of lack of access, unless the State fails to provide access as agreed to in writing between the State and the Contractor.

U. ADVERTISING

The Contractor agrees not to refer to the contract award in advertising in such a manner as to state or imply that the company or its goods or services are endorsed or preferred by the State. Any publicity releases pertaining to the project shall not be issued without prior written approval from the State.

V. NEBRASKA TECHNOLOGY ACCESS STANDARDS (Statutory)

Contractor shall review the Nebraska Technology Access Standards, found at <https://das.nebraska.gov/materiel/docs/pdf/Technology%20Access%20Clause%2020210608%20FINAL.pdf> and ensure that products and/or services provided under the contract are in compliance or will comply with the applicable standards to the greatest degree possible. In the event such standards change during the Contractor's performance, the State may create an amendment to the contract to request the contract comply with the changed standard at a cost mutually acceptable to the parties.

W. DISASTER RECOVERY/BACK UP PLAN

The Contractor shall have a disaster recovery and back-up plan, of which a copy should be provided upon request to the State, which includes, but is not limited to equipment, personnel, facilities, and transportation, in order to continue delivery of goods and services as specified under the specifications in the contract in the event of a disaster.

X. DRUG POLICY

Contractor certifies it maintains a drug free workplace environment to ensure worker safety and workplace integrity. Contractor agrees to provide a copy of its drug free workplace policy at any time upon request by the State.

Y. WARRANTY

Despite any clause to the contrary, the Contractor represents and warrants that its services hereunder shall be performed by competent personnel and shall be of professional quality consistent with generally accepted industry standards for the performance of such services and shall comply in all respects with the requirements of this Agreement. For any breach of this warranty, the Contractor shall, for a period of ninety (90) days from performance of the service, perform the services again, at no cost to the State, or if Contractor is unable to perform the services as warranted, Contractor shall reimburse the State the fees paid to Contractor for the unsatisfactory services. The rights and remedies of the parties under this warranty are in addition to any other rights and remedies of the parties provided by law or equity, including, without limitation actual damages, and, as applicable and awarded under the law, to a prevailing party, reasonable attorneys' fees and costs.

III. PAYMENT

A. PROHIBITION AGAINST ADVANCE PAYMENT (Statutory)

Neb. Rev. Stat. §§81-2403 states, “[n]o goods or services shall be deemed to be received by an agency until all such goods or services are completely delivered and finally accepted by the agency.”

B. TAXES (Statutory)

The State is not required to pay taxes and assumes no such liability as a result of this solicitation. The Contractor may request a copy of the Nebraska Department of Revenue, Nebraska Resale or Exempt Sale Certificate for Sales Tax Exemption, Form 13 for their records. Any property tax payable on the Contractor's equipment which may be installed in a state-owned facility is the responsibility of the Contractor.

C. INVOICES

Invoices for payments must be submitted by the Contractor to the agency requesting the services with sufficient detail to support payment. The terms and conditions included in the Contractor's invoice shall be deemed to be solely for the convenience of the parties. No terms or conditions of any such invoice shall be binding upon the State, and no action by the State, including without limitation the payment of any such invoice in whole or in part, shall be construed as binding or estopping the State with respect to any such term or condition, unless the invoice term or condition has been previously agreed to by the State as an amendment to the contract.

If the Contractor traditionally includes itemization of applicable taxes and fees (e.g. Nebraska Universal Service Fund) on the monthly invoices, the Contractor must be reminded that the total monthly costs on auto-generated invoices must exactly match the costs as itemized in the bidder's Cost Sheet.

The State will provide detailed billing instructions for each order as placed. In some cases the billed entity will be a consolidated billing to the State in an electronic or print format. For E-rate eligible entities, the Contractor may be instructed to bill each entity directly to ensure that appropriate E-rate processing can be accomplished. The Contractor must comply with all applicable E-rate requirements. The State may request a copy or summary of billings to other entities. Billings for the Individual Sites High Speed WAN must comply with the following specific requirements:

1. Eligible participants must file contract orders for equipment or services under this section that specifies the number and location of sites.
2. The billing to all eligible participants in a region for services under this section must reflect a cost per Individual location.

D. INSPECTION AND APPROVAL

Final inspection and approval of all work required under the contract shall be performed by the designated State officials.

The Contractor must provide notice and the following required documents to noc@nebraska.edu upon completion (see Acceptance). Required documents shall be in PDF format unless otherwise noted. Required documents include:

1. If dark fiber, OTDR test results and geographic depiction of fiber path as a .KMZ,
2. If lit circuit, RFC-2544/ITU-T Y.1564 test results,
3. And if commodity/SD-WAN, RFC-2544/ITU-T Y.1564 test results and speed test results.

A designated State official will evaluate and provide notice of acceptance or if further work needed, to the Contractor within 15 business days.

The State and/or its authorized representatives shall have the right to enter any customer premises where the Contractor or subcontractor duties under the contract are being performed, and to inspect, monitor or otherwise evaluate the work being performed. All inspections and evaluations shall be at reasonable times and in a manner that will not unreasonably delay work.

E. PAYMENT (Statutory)

The State will render payment to Contractor when the terms and conditions of the Contract and specifications have been satisfactorily completed on the part of the Contractor as solely determined by the State. (Neb. Rev. Stat. Section 73-506(1)) Payment will be made by the responsible agency in compliance with the State of Nebraska Prompt Payment Act (See Neb. Rev. Stat. §81-2403). The State may require the Contractor to accept payment by electronic means such as ACH deposit. In no event shall the State be responsible or liable to pay for any goods and services provided by the Contractor prior to the Effective Date of the contract, and the Contractor hereby waives any claim or cause of action for any such services.

F. LATE PAYMENT (Statutory)

The Contractor may charge the responsible agency interest for late payment in compliance with the State of Nebraska Prompt Payment Act (See Neb. Rev. Stat. §81-2401 through 81-2408).

G. SUBJECT TO FUNDING / FUNDING OUT CLAUSE FOR LOSS OF APPROPRIATIONS (Statutory)

The State's obligation to pay amounts due on the Contract for a fiscal year following the current fiscal year is contingent upon legislative appropriation of funds. Should said funds not be appropriated, the State may terminate the contract with respect to those payments for the fiscal year(s) for which such funds are not appropriated. The State will give the Contractor written notice thirty (30) calendar days prior to the effective date of termination. All obligations of the State to make payments after the termination date will cease. The Contractor shall be entitled to receive just and equitable compensation for any authorized work which has been satisfactorily completed as of the termination date. In no event shall the Contractor be paid for a loss of anticipated profit.

H. RIGHT TO AUDIT (First Paragraph is Statutory)

The State shall have the right to audit the Contractor's performance of this contract upon a thirty (30) days' written notice. Contractor shall utilize generally accepted accounting principles, and shall maintain the accounting records, and other records and information relevant to the contract (Information) to enable the State to audit the contract. (Neb. Rev. Stat. §84-304 et seq.) The State may audit, and the Contractor shall maintain, the Information during the term of the contract and for a period of five (5) years after the completion of this contract or until all issues or litigation are resolved, whichever is later. The Contractor shall make the Information available to the State at Contractor's place of business or a location acceptable to both Parties during normal business hours. If this is not practical or the Contractor so elects, the Contractor may provide electronic or paper copies of the Information. The State reserves the right to examine, make copies of, and take notes on any Information relevant to this contract, regardless of the form or the Information, how it is stored, or who possesses the Information. Under no circumstance will the Contractor be required to create or maintain documents not kept in the ordinary course of contractor's business operations, nor will contractor be required to disclose any information, including but not limited to product cost data, which is confidential or proprietary to contractor.

The Parties shall pay their own costs of the audit unless the audit finds a previously undisclosed overpayment by the State. If a previously undisclosed overpayment exceeds one-half of one percent (.5%) of the total contract billings, or if fraud, material misrepresentations, or non-performance is discovered on the part of the Contractor, the Contractor shall reimburse the State for the total costs of the audit. Overpayments and audit costs owed to the State shall be paid within ninety (90) days of written notice of the claim. The Contractor agrees to correct any material weaknesses or condition found as a result of the audit.

**MASTER AGREEMENT REVISION #5 ACCEPTANCE PAGE
FOR HIGH-SPEED TRANSPORT SERVICES FOR NETWORK NEBRASKA RFPs**

BIDDER MUST COMPLETE THE FOLLOWING

By signing this Master Agreement Revision #5 form, the bidder guarantees compliance with the procedures stated in this Master Agreement Revision #5 and agrees to the terms and conditions and certifies that bidder maintains a drug free workplace.

_____ I hereby certify that I am a blind person licensed by the Commission for the Blind & Visually Impaired in accordance with Neb. Rev. Stat. §71-8611 and wish to have preference considered in the award of this contract.

FORM MUST BE SIGNED USING AN INDELIBLE METHOD OR BY DOCUSIGN

FIRM:	
COMPLETE ADDRESS:	
TELEPHONE NUMBER:	
FAX NUMBER:	
DATE:	
SIGNATURE:	
TYPED NAME & TITLE OF SIGNER:	