

STATE OF NORTH DAKOTA

Information Technology Department
Network Services Division
600 E Boulevard Ave, Dept. 112
Bismarck, ND 58505-0100



Request For Proposal (RFP)

RFP Title: STAGEnet Transport Services

RFP Number: 112-1313

Date of Issue: October 30, 2013

Purpose of RFP: To rebid the current Statewide Technology Access for Government and Education Network (STAGEnet) to include Backbone, Endpoint Access, and Internet Access environments.

Offerors are required to return this form.

Procurement Officer: **Brandy Peterson**

TABLE OF CONTENTS

SECTION ONE - INTRODUCTION AND INSTRUCTIONS..... 4

- 1.01 Purpose of the RFP 4
- 1.02 Contact Person, Telephone, Fax, E-mail 4
- 1.03 RFP Schedule..... 4
- 1.04 Return Mailing Address and Deadline for Receipt of Proposals 5
- 1.05 Assistance to Offerors with a Disability 5
- 1.06 Deadline for Receipt of Questions and Objections..... 5
- 1.07 Offerors List Registration Requirements 6
- 1.08 Pre-proposal Conference..... 6
- 1.09 Letter of Interest..... 6
- 1.10 Notice Provided..... 7
- 1.11 News Releases 7

SECTION TWO - BACKGROUND INFORMATION..... 8

- 2.01 Background Information..... 8

SECTION THREE -SCOPE OF WORK11

- 3.01 Scope of Work.....11
- 3.02 Definitions11
- 3.04 Information Technology Solution – Endpoint Access13
- 3.06 Information Technology Solution – Overall Requirements18
- 3.07 Product Support, Customer Service, Experience & Qualifications Requirements.20

SECTION FOUR - GENERAL CONTRACT INFORMATION.....23

- 4.01 Contract Term, Extension and Renewal Options23
- 4.02 Standard Contract Provisions23
- 4.03 Proposal as a Part of the Contract.....24
- 4.04 Additional Terms and Conditions24
- 4.05 Supplemental Terms and Conditions24
- 4.06 Contract Approval24
- 4.07 Contract Changes - Unanticipated Amendments.....24
- 4.08 Indemnification and Insurance Requirements24
- 4.09 Limited Liability.....25
- 4.11 Liquidated Damages25

SECTION FIVE - EVALUATION CRITERIA AND CONTRACTOR SELECTION26

5.01 Proposal Evaluation Criteria/Categories	26
5.03 Oral Presentations	26
5.04 Site Inspection of Offeror’s Facility	26
SECTION SIX - PROPOSAL FORMAT AND CONTENT	28
6.01 Proposal Format.....	28
6.02 Proposal Content	28
6.03 Cost Proposal.....	30
SECTION SEVEN - STANDARD PROPOSAL INFORMATION	31
7.01 Authorized Signature	31
7.02 State Not Responsible for Preparation Costs	31
7.03 Conflict of Interest.....	31
7.04 Offer Held firm	31
7.05 Amendments to Proposals and Withdrawals of Proposals.....	31
7.06 Alternate Proposals	31
7.07 Subcontractors.....	31
7.08 Joint Ventures	32
7.09 Disclosure of Proposal Contents and Compliance with State’s Open Records Laws.....	32
7.10 Evaluation of Proposals.....	32
7.11 Right of Rejection.....	32
7.12 Clarification of Offers.....	33
7.13 Discussions and Best and Final Offers	33
7.14 Contract Negotiation.....	34
7.15 Failure to Negotiate.....	34
7.16 Notice of Intent to Award.....	34
7.17 Protest and Appeal.....	34
SECTION EIGHT - ATTACHMENTS	35
8.01 Attachments	35
1. Proposal Evaluation Form	
2. Contract Form	
3. STAGEnet Carrier Ethernet Model	
4. Endpoint Ethernet Locations	
5. Service Level Metrics	
6. Cost Proposal	

SECTION ONE - INTRODUCTION AND INSTRUCTIONS

1.01 Purpose of the RFP

This Request for Proposal (RFP) is issued by the State of North Dakota acting through its Information Technology Department (ITD) (hereinafter referred to as the STATE) and is for Transport services, including Backbone, Endpoint Access and Internet Access. The STATE is increasingly dependent on its telecommunications infrastructure to conduct the business of the STATE and for educational requirements. The STATE expects both application and capacity requirements to continually increase, making extremely reliable access essential to the government and educational needs of the state.

The STATE reserves the right to award contracts to multiple Offerors in order to ensure delivery of service.

The specifications outlined in this RFP are minimum requirements with no intent to constrain Offeror creativity.

1.02 Contact Person, Telephone, Fax, E-mail

The procurement officer is the point of contact for this RFP. Offerors must direct all communications regarding this RFP to the procurement officer. Unauthorized contact regarding the RFP with other public employees may result in the STATE disqualifying the vendor. The STATE may also suspend or debar vendor from the state bidders list.

PROCUREMENT OFFICER: Brandy Peterson

PHONE: 701-328-1888

FAX: 701-328-3000

TTY Users call: 7-1-1

E-MAIL: blpeterson@nd.gov

1.03 RFP Schedule

This RFP schedule represents the STATE's best estimate of the schedule for this RFP.

The approximate RFP schedule is as follows:

- RFP Issued October 30, 2013
- Questions, clarification requests, or objections due by 3pm Central Time November 12, 2013
- Responses to questions/RFP amendments (if required) November 19, 2013
- Pre-proposal Conference November 22, 2013
- Responses to Pre-proposal Conference questions/RFP amendments (if required) November 26, 2013
- Proposals due by 3pm Central Time January 17, 2014
- Proposal evaluation completed by approximately April 15, 2014
- State issues Notice of Intent to Award a Contract approximately April 26, 2014
- State issues contracts approximately May 3, 2014
- Contracts start approximately July 1, 2015

1.04 Return Mailing Address and Deadline for Receipt of Proposals

Offerors must submit 1/one copy of its proposal in a sealed envelope or package.

Offerors must submit an electronic copy of their proposal on a CD, DVD, or USB Flash Drive. Electronic versions of the cost proposal must be a separate file.

Offerors must submit cost proposals in a separate sealed envelope or package, clearly labeled "cost proposal."

Offerors must clearly address all envelopes or packages containing proposals as described below to ensure proper delivery and to avoid having the STATE open them before the deadline for receipt. Offerors must address all envelopes or packages as follows:

North Dakota Information Technology Department
Network Services Division
Attn: Brandy Peterson
Request for Proposal (RFP): STAGEnet Transport Services
RFP Number: 112-1313
1615 Capitol Way
Bismarck, ND 58501

The STATE must receive proposals at the location specified no later than **3:00 P.M., CENTRAL** Time on **January 17, 2014**. The STATE will not publicly read the proposals at the opening.

Offerors may not deliver proposals orally, by facsimile transmission, by other telecommunication or electronic means. Offerors may fax or electronically transmit signed proposals to a third party who must deliver the proposal to the location indicated above by the date and time designated as the deadline for receipt of proposals.

Offerors assume the risk of the method of dispatch chosen. The STATE assumes no responsibility for delays caused by any delivery service. Postmarking by the due date will not substitute for actual proposal receipt by the STATE. An Offeror's failure to submit its proposal prior to the deadline will cause the STATE to reject the proposal. Late proposals or amendments will not be opened or accepted for evaluation.

1.05 Assistance to Offerors with a Disability

Offerors with a disability that need an accommodation should contact the procurement officer prior to the deadline for receipt of proposals so the STATE can make reasonable accommodations.

1.06 Deadline for Receipt of Questions and Objections

Offerors must carefully review this solicitation, the contract (Attachment 2), and all attachments for defects, questionable, or objectionable material. All questions must be in writing submitted to the email address of the procurement officer, and cite the subject RFP number. The procurement officer must receive these written requests by the deadline specified in the RFP Schedule to allow issuance of any necessary amendments.

This will also help prevent the opening of a defective solicitation and exposure of Offeror's proposals upon which the STATE could not make an award. The STATE will disallow any protests based on the content of the solicitation, if the Offeror does not bring these faults to the

attention of the procurement officer, in writing, before the time indicated in the RFP Schedule.

If the procurement officer may answer the question by directing the questioner to a specific section of the RFP, then the procurement officer may answer the question over the telephone. Other questions may be more complex and may require a written response directed to all Offerors. The procurement officer will make this determination. The STATE considers oral communications unofficial and non-binding on the STATE. The Offeror must confirm telephone conversations in writing.

1.07 Offerors List Registration Requirements

VENDORS MUST BE REGISTERED BEFORE CONTRACT AWARD

The STATE will accept proposals from Offerors that are not currently approved vendors on the State of North Dakota's bidders list; however, the Awardee will be required to become approved prior to award.

To become an approved vendor, Offerors must: 1) be registered with the North Dakota Secretary of State (fees apply), and 2) submit a completed Bidders List Application to the North Dakota Vendor Registry Office. Prospective Offerors may access the Procurement Vendor Database on-line to verify whether their firm is currently on the bidders list. The bidders list for this solicitation is commodity code(s) **915-51 & 915-79**.

The Procurement Vendor Database, registration instructions and forms are available on-line at: <http://www.nd.gov/spo/>. Contact the Vendor Registry Office at 701-328-2683 or SPOVendor@1.state.nd.us for assistance.

The Awardee must register and become approved within **60 CALENDAR DAYS** from the date of the Notice of Intent to Award. If an Offeror fails to become an approved vendor by the time specified by the Procurement Officer, its proposal shall be determined to be non-responsive, and the STATE may reject its proposal.

1.08 Pre-proposal Conference

The STATE will hold a pre-proposal conference at 1:00 p.m. Central Time, on November 22, 2013 in the Ft. Totten room on the ground floor of the State Capitol in Bismarck, North Dakota. The purpose of the conference is to discuss the work to be performed with the prospective Offerors and allow them to ask questions concerning the RFP. The STATE will transcribe the questions and answers and send them to prospective Offerors as soon as possible after the meeting.

Attendance at this pre-proposal conference is not mandatory.

Offerors with a disability needing accommodation should contact the procurement officer by calling 701-328-1888 (TTY Users Call: 7-1-1) before the date set for the pre-proposal conference so that reasonable accommodation can be made.

1.09 Letter of Interest

Offerors interested in receiving any notices related to this RFP are invited to submit a letter of interest to the procurement office at the following email address:

blpeterson@nd.gov

Include the name of the firm, contact person, mailing address, telephone number, fax number, and e-mail address. The sole purpose of the letter of interest is to provide the STATE with a contact person to receive any notices related to the RFP. Submission of a letter of interest is not

a requirement for submitting a proposal.

1.10 Notice Provided

Notice of this solicitation has been provided in accordance with N.D.C.C. 54-44.4-09.

The Request for Proposal and any amendments to the RFP will be posted on the following website: <http://www.nd.gov/spo/vendor/>

1.11 News Releases

An Offeror shall not make any news releases related to this RFP without prior approval of the procurement officer or project manager designated by the STATE.

SECTION TWO - BACKGROUND INFORMATION

2.01 Background Information

STAGEnet 2015 is the next generation network that envisions a cost-effective and reliable infrastructure addressing such goals as a) increased bandwidth, b) low network latency, c) reliable and survivable service, d) security and privacy, and e) low-cost network access, providing the scale and flexibility to support voice, video and data technologies as key components in optimizing statewide services.

North Dakota State Government Technical Environment

STAGEnet's architecture currently consists of a 10G four node backbone, metro dark fiber, Carrier Ethernet, and Broadband access.

STAGEnet customers are:

- a. State Government
- b. Political Sub-Divisions
- c. K-12 and Libraries
- d. North Dakota University System

STAGEnet backbone nodes are located in Bismarck, Fargo, Grand Forks and Minot. Currently all connectivity terminates into one of these nodes.

STAGEnet has approximately 1,000 endpoint locations (Attachment 4) which are divided equally between metro dark fiber, Carrier Ethernet and broadband access.

Metro dark fiber services are used to connect larger offices existing in Bismarck, Devils Lake, Dickinson, Fargo, Grand Forks, Jamestown, Minot, and Williston.

Carrier Ethernet is primarily used to connect rural locations throughout the state and to provide both guaranteed bandwidth and performance metrics required for video and voice applications. Carrier Ethernet locations range in access speeds of 5Mbps to 1G.

Broadband access is used for commodity internet access for smaller offices throughout the state. All traffic from each of these locations utilize an IPSec back to STAGEnet.

Most of the network equipment which is installed and managed by the STATE is provided by Extreme Networks, Juniper Networks and Palo Alto. In addition to routers and switches, the State also installs and maintains firewalls, intrusion detection systems, content filters, wireless access points, and VPN devices.

Internet Access

STAGEnet provides internet access to all of its customers. There are two 10G Internet links, one in Bismarck and one in Fargo. As of June 2013, current combined utilization was 5.1G. Historically, Internet usage has increased approximately 35-40% annually.

STAGEnet has two of its own IPv4 Class B address blocks and one IPv6/32 block. Currently, the STATE is utilizing both Network and Port Address Translation (NAT/PAT) with respect to IPv4 address space.

Current POP and Co-location Arrangements

- a. Bismarck-Mandan
 - a. Dakota Carrier Network – 4202 Coleman St.
 - b. State Capitol – 600 E. Boulevard Ave.

- c. Mandan – 308 1st St. NW
- d. AT&T - 1823 N 16th St.

- b. Minot
 - a. SRT Communications - 24 2nd Ave. SE

- c. Grand Forks
 - a. NDUS Data Center - 3701 Campus Road
 - b. East Grand Forks POP - 232 20th St NW

- d. Fargo
 - a. Dakota Carrier Network - 3901 Great Plains Dr. S.
 - b. NDSU - 1320 Albrecht Boulevard
 - c. AT&T - 409 1st Ave N.
 - d. IdeaOne/Eventis - 3312 42nd St.

- e. Williston
 - a. Williston State College – Admin Bldg. 1410 University Ave

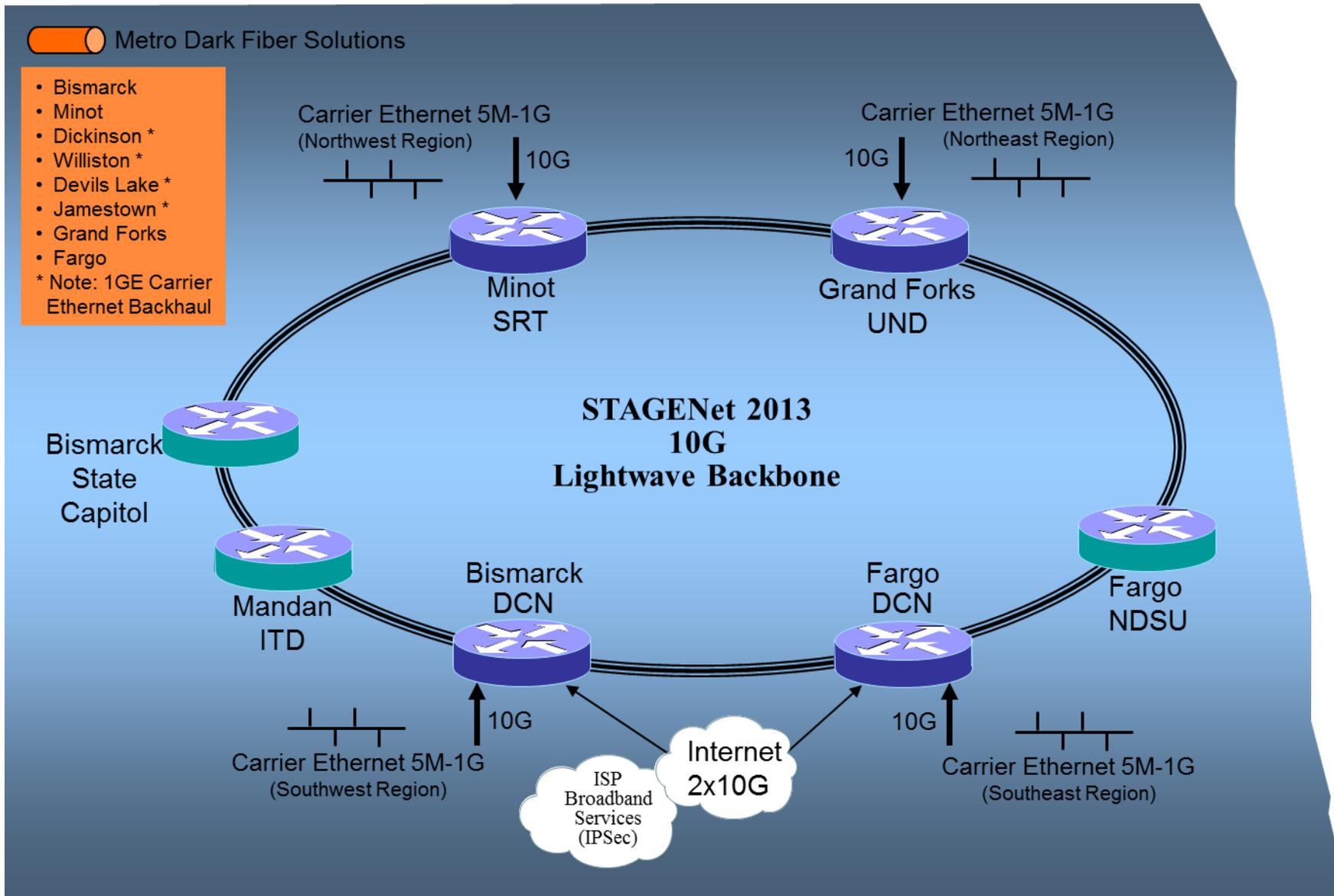
- f. Dickinson
 - a. Dickinson State University – May Hall 291 Campus Dr.

- g. Jamestown
 - a. Daktel - 213 2nd Ave. NW

- h. Devils Lake
 - a. Lake Region State College - Main Bldg. 1801 College Dr. N.

Current contracts are set to expire in June 2015. The extended timeframe between the intent to award and the current expiration dates is due to possible extended transition times.

STAGeNet Backbone & Access Current State



SECTION THREE -SCOPE OF WORK

3.01 Scope of Work

The State operates and manages the shared enterprise infrastructure called Statewide Technology Access for Government and Education Network, otherwise called STAGEnet. The State is soliciting proposals for:

- a) Backbone
- b) Endpoint Access
- c) Internet Access

Offerors will have the option to submit a response to one, two or all of the services requested.

Offerors must provide a full response to each of the sections they are responding to below without cross-referencing other sections of the proposal. Offerors must use the table format and maintain numbering provided by the State to respond to each requirement.

In addition, the Offeror Response must include any specific references and/or supportive materials as described in the Offeror Response.

The STATE reserves the right to determine whether the supportive materials submitted by the Offeror demonstrate the Offeror will be able to comply with the requirements.

All Offerors must provide a full response to sections 3.06 Information Technology Solution – Overall Requirements and 3.07 Product Support, Customer Service, Experience & Qualifications Requirements.

3.02 Definitions

The following terms used herein shall have the following meanings:

- a) **“Backbone”** shall mean the independent facilities being requested in this RFP for the sole purpose of transmitting information for the end-users of the STAGEnet infrastructure.
- b) **“Backbone node”** shall mean the physical site where Offeror wavelengths connect to State-owned equipment. This location can either be co-located at Offeror facilities or at an established meet point.
- c) **“Maintenance”** shall mean the support of the network and or services that have been awarded.
- d) **“Endpoint Access”** shall mean Carrier Ethernet services for end-point connectivity.
- e) **“NAPs”** shall mean network access points. For internet access this currently refers to Bismarck and Fargo where service is terminated from the vendor.
- f) **“STAGEnet”** shall mean the shared enterprise infrastructure called Statewide Technology Access for Government and Education Network.
- g) **“Tier 1”** shall mean a Tier One backbone provider operates a national Internet network that exchanges traffic at various public National Access Points and through private peering arrangements with other Tier One providers. A Tier One backbone provider must also maintain a Network Operations Center 24 hours a day, seven days a week to manage its network. Because Tier One backbones form the core of the Internet, all other ISPs and users will connect through one of these backbones in order to access the Internet.
- h) **“VLAN”** shall mean Virtual Local Area Network.

3.03 Information Technology Solution – Backbone

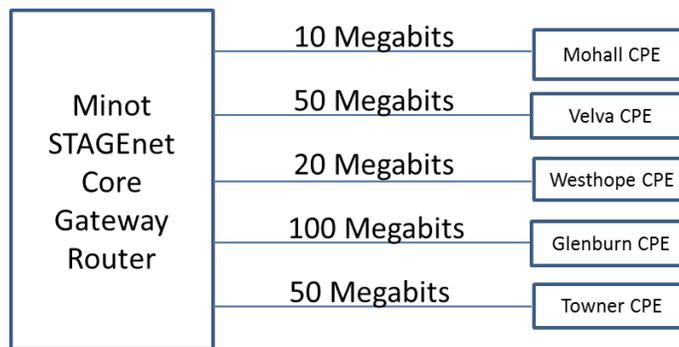
No.	Information Technology Solution – Backbone
1.	<p>The STAGEnet 2015 Backbone must be a technology-enabling platform allowing for growth of both current applications and the addition of sites, while providing for future service connectivity enhancements without network re-design. Please describe your proposed solution for the Backbone.</p> <p><u>Offeror Response:</u></p>
2.	<p>Offerors must describe their ability to deliver protected and/or unprotected 10G backbone wavelengths for any or all of the following:</p> <ul style="list-style-type: none"> a. Bismarck to Fargo, b. Fargo to Grand Forks, c. Grand Forks to Minot, and d. Minot to Bismarck. <p><u>Offeror Response:</u></p>
3.	<p>Offerors must describe their ability to deliver protected and/or unprotected 40G and/or 100G wavelengths between Bismarck and Fargo.</p> <p><u>Offeror Response:</u></p>
4.	<p>Offerors must describe their ability to deliver protected and/or unprotected 1G and 10G wavelength options for any or all of the following:</p> <ul style="list-style-type: none"> a. Williston <ul style="list-style-type: none"> a. Wavelength to Minot backbone node b. Wavelength to Bismarck backbone node c. Wavelength to Dickinson b. Dickinson <ul style="list-style-type: none"> a. Wavelength to Bismarck backbone node b. Wavelength to Minot backbone node c. Devils Lake <ul style="list-style-type: none"> a. Wavelength to Grand Forks backbone node b. Wavelength to Minot backbone node c. Wavelength to Fargo backbone node d. Wavelength to Bismarck backbone node e. Wavelength to Jamestown d. Jamestown <ul style="list-style-type: none"> a. Wavelength to Fargo backbone node b. Wavelength to Bismarck backbone node c. Wavelength to Grand Forks backbone node d. Wavelength to Minot backbone node <p><u>Offeror Response:</u></p>
5.	<p>The Offeror must describe their ability to provide additional capacity throughout the term of the</p>

	contract for additional Backbone wavelengths to the segments proposed in #2 & #3. <u>Offeror Response:</u>
6.	Offerors must describe in detail any restrictions on the STATE'S ability to extend dark fiber into any proposed Backbone node. <u>Offeror Response:</u>
7.	Offerors must provide a detailed network map of North Dakota to include but not limited to, proposed fiber paths, route diversity, meet points, and last mile termination. <u>Offeror Response:</u>
8.	Offers must outline any requirements by the STATE needed to complete last mile termination. <u>Offeror Response:</u>
9.	Offerors are invited to propose any alternate Backbone solutions that would be of technical value or cost savings to the STATE. <u>Offeror Response:</u>

3.04 Information Technology Solution – Endpoint Access

No.	Information Technology Solution – Endpoint Access
1.	<p>Carrier Ethernet Services</p> <p>The STATE currently connects non-metro endpoints on an individual dedicated Ethernet VLAN segment. These endpoints (VLANs) are terminated into one of our four regional core nodes resulting in the state being divided into four regional quadrants. Today, each endpoint (VLAN) is capped to a set amount of bandwidth based on the end-points expected usage. Although an improvement from previous solutions, this model does not permit our end-point customers the ability to burst when there are short demands for more capacity and results in discarded traffic, performance issues, and the requirement to frequently review and add incremental capacity per endpoint. At the same time there is a lot of pinned up bandwidth, collectively, that is not being used.</p>

Example: Current State (Point-to-Point)

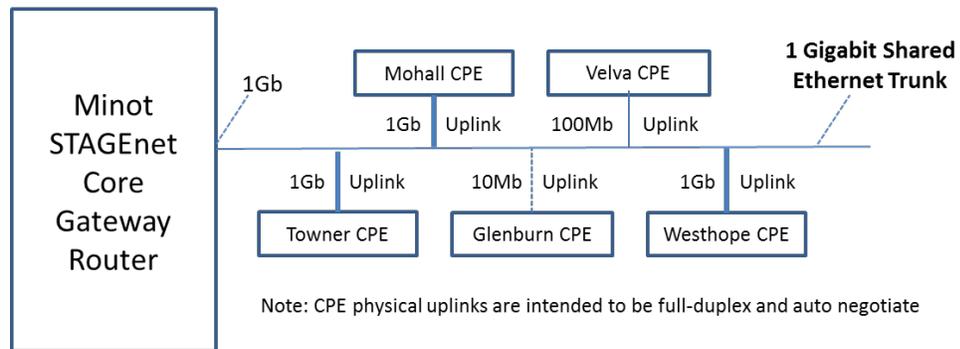


To help manage growth and improve performance, the STATE is seeking in the next generation of Carrier Ethernet Services a “shared” dedicated Ethernet VLAN segment that would be used by the STATE as an Ethernet trunk solution. This may also be considered a multipoint Ethernet solution as opposed to a point-to-point. In this concept, the STATE would be provided a geographically spanned VLAN segment that would be “shared” among many endpoints. Each of these shared segments would terminate into one of the STATE’s regional backbone nodes based on the Offeror’s own network and/or their partners. At this point, the STATE does not have a required minimum or maximum number of end-points that would be shared on a common Ethernet VLAN segment. The STATE is asking the Offeror to demonstrate in Attachment 4 a design that best matches the abilities of their own network and/or partners as well as it aligning with the STATE’s core backbone nodes. This new architecture would offer the STATE the ability to purchase a virtual dedicated switch for a grouping of connected end-points. As an example, the STATE could connect a number of end-points at 1 Gigabit to the same shared 1 Gigabit Ethernet segment. This now offers each endpoint much more room to burst when necessary.

Additionally, the Offerors must take into consideration the STATE’s need to add, divide, or collapse shared Ethernet segments (trunks) as a mechanism to manage traffic load across the shared trunks. In this manner the STATE has the ability to either over or under subscribe the shared trunk by the number of connected endpoints. At the same time the STATE may require a dedicated trunk (10 Megabits, 100 Megabits, 1 Gigabits, or 10 Gigabits) for a single endpoint (i.e. State Radio Tower).

In this new architecture the STATE is seeking two distinct components (Attachment 3). One is the dedicated shared Ethernet trunk(s) connecting to our backbone and the other is endpoint(s) access to the shared Ethernet trunk.

Example: Future State (1Gb Multipoint)



Dedicated Ethernet VLAN Segment (Trunk)

This component must be provided as fully dedicated bandwidth orderable in 10 Megabits, 100 Megabits, 1 Gigabits, or 10 Gigabits trunks.

- 10 Megabits trunks would be considered low bandwidth solutions for a “single” end-point or for special requirements such as State Radio Tower locations being each on their own segment. This may also be an option if that is the only available service.
- 100 Megabit trunks would be considered for locations where the Offeror is not able to provide 1 Gigabit or for other more economical reasons. The STATE may also consider this option for replacement of existing Broadband end-points if economically viable.
- 1 Gigabit trunks would be the most desired for connecting most locations (i.e. Courthouses, K12 Schools, etc.).
- 10 Gigabit Ethernet trunks would provide high bandwidth options for unique end-points or possibly used as backhaul for a larger metro communities. In most cases the STATE would prefer 10 Gigabit light waves over Ethernet services unless there is other value, such as dedicated failover with an economical favor.
- The STATE is willing to consider alternate backbone nodes such as Devils Lake, Williston, Dickinson, Jamestown and Valley City.
- Each dedicated Ethernet trunks must provide true transparent Layer 2 services not limited to but including Multicast, VLAN tagging, and QoS support within the Ethernet trunk.
- The bandwidth capacity of each “Ethernet Segment” must be dedicated for use by the state and not shared among other non-STATE customers.

End-Point access to the dedicated Ethernet trunk

- Each Endpoint must have the option to connect minimally at the speed of the Ethernet Trunk at full duplex.
- The STATE should also have the ability to auto negotiate uplink speeds from the CPE. Example, if the Ethernet trunk is a 1 Gigabit trunk then the CPE should be able to connect at either 100 Megabits or 1 Gigabits.
- Each Endpoint would be designed and provided to the STATE as a “plug and play” solution permitting the STATE to change endpoint configurations such as VLANs, QoS,

	<p>and/or the physical uplink (10M, 100M, 1G, or 10G) without order processing, network provisioning, or incurring cost.</p> <p>Offeror must describe in detail how they intend offer a solution that aligns with the above objective.</p> <p><u>Offeror Response:</u></p>
2.	<p>Telecommunications Service Priority (TSP) Endpoints Offerors must describe in detail how TSP endpoints will be supported and managed in the proposed solution. Other TSP endpoints may be added throughout the term of the contract.</p> <p><u>Offeror Response:</u></p>
3.	<p>The STATE has identified locations (Attachment 4) that may require physically diverse access to the STATE's backbone. Offerors must identify their ability to provide a physically diverse path to the STATE'S backbone in Attachment 4. The STATE may add or remove the physically diverse access during the term of the contract without penalty.</p> <p><u>Offeror Response:</u></p>
4.	<p>Offeror must describe their ability to add sites during the term or the contract. The State will not be penalized or incur any costs during the term of the contract for discontinuing the service to a given location. The State reserves the right to disconnect locations as needed and discontinue billing for those locations.</p> <p><u>Offeror Response:</u></p>
5.	<p>The State will supply CPE (i.e. firewall/router) at each endpoint. The Offeror must describe any additional hardware necessary to terminate the proposed solution.</p> <p><u>Offeror Response:</u></p>
6.	<p>Offerors describe their ability to provide 1G and 10G Ethernet backhaul solutions from Dickinson, Williston, Jamestown and/or Devils Lake that provide diverse (protected) access to two of the four core backbone nodes.</p> <p><u>Offeror Response:</u></p>
7.	<p>The Offeror must provide conceptual diagrams outlining the proposed statewide architecture.</p> <p><u>Offeror Response:</u></p>
8.	<p>Offerors are invited to propose any alternate Endpoint Access solution(s). The STATE is interested in items such as, but not limited to, cost effective solutions, other bandwidth, point, or multi-point.</p> <p><u>Offeror Response:</u></p>

3.05 Information Technology Solution – Internet Access

No.	Information Technology Solution – Internet Access
1.	<p>The STATE is requesting internet links to Tier 1 ISPs. The State expects the physical connection to be provided by Gigabit Ethernet uplink ports at 10G, 40G or 100G. Bandwidth on these uplink ports must be scalable at 1G increments. At the beginning of the contract, the STATE is anticipating that 10G of internet will be required. Throughout the duration of the contract the STATE anticipates approximately 35-40% annual growth.</p> <p>Offeror must describe their ability to provide the following Internet solution:</p> <ol style="list-style-type: none"> a. Dedicated 10G, 40G, or 100G physical uplink ports terminating in the backbone nodes (Bismarck, Fargo, or Both) that provide the STATE with direct or indirect access to one or multiple Tier 1 ISPs <ol style="list-style-type: none"> i. If the solution is indirect access to a Tier 1 ISP the Offeror must describe their ability to connect the Tier 1 provider directly to the STATE. The STATE must be able to directly exchange routes (IPv4 & IPv6) with the Tier 1 provider. Preference will be given to Offeror that will provide direct physical connectivity to a Tier 1 ISP. b. Each individual 10G, 40G, or 100G physical uplink ports must have the ability to order bandwidth in 1G increment's. c. All Internet links must be provided from physically independent POPs. d. All Internet paths must be physically diverse both in and out of state. e. Options to provide additional capacity throughout the term of the contract. It is also the State's preference, as with our current solution, that diversity is provided by separate east and west bound paths if the Offeror is quoting both Bismarck and Fargo locations. f. Must be capable of border gateway protocol (IPv4 BGP / IPv6 BGP) and support the existing IP address space owned by the State and its affiliated organizations. <p><u>Offeror Response:</u></p>
2.	<p>In order to provide internet failover between Bismarck and Fargo the STATE is requesting 10G, 40G and/or 100G wavelengths between Bismarck and Fargo. Offerors must describe their ability to deliver the wavelengths.</p> <p><u>Offeror Response:</u></p>
3.	<p>The STATE will provide local loop access to the Offeror's POP within each of the core node cities (Bismarck and Fargo). The Offeror must describe in detail any requirements by the STATE for access into the Offeror's Internet POP.</p> <p><u>Offeror Response:</u></p>
4.	<p>The Offeror must outline their ability to protect each internet link from a denial of service attack or other threats that would impact the performance or availability of the internet link.</p> <p><u>Offeror Response:</u></p>

5.	Offerors must describe their current network, including bandwidth, names of principal suppliers (e.g., interexchange carriers, fiber optic transport providers, etc.) and identify peering/connection points to NAPs, Metropolitan Area Exchanges (MAE-'s) and other major ISP's.
	<u>Offeror Response:</u>
6.	Offerors must provide a network map detailing information such as route diversity, bandwidth, and hop counts.
	<u>Offeror Response:</u>
7.	Offerors must outline network redundancy in their network.
	<u>Offeror Response:</u>
8.	Offerors are invited to propose any alternate Internet Access solution(s) or value added functionality. For example: <ul style="list-style-type: none"> a. Utilization of a long-haul solution (i.e. 10G lightwave) that would provide diverse transport, cost savings, and/or improved performance from any of the core backbone node cities to a larger national ISP hub. b. Partnerships with Google (YouTube Content) and/or content engine services (Netflix) that would be of value to the STATE in performance and/or cost savings.
	<u>Offeror Response:</u>

3.06 Information Technology Solution – Overall Requirements

No.	Information Technology Solution – Overall Requirements
1.	Offerors are encouraged to provide information regarding the current utilization of your network, including average and peak utilization data. Describe your current plans for upgrading the network as well as the criteria used to decide when an upgrade is necessary.
	<u>Offeror Response:</u>
2.	Offerors are encouraged to provide historical Service Level Metrics.
	<u>Offeror Response:</u>
3.	Service Level Agreements Offerors must complete Attachment 5 and describe in detail their metrics such as, but not limited to availability, latency, packet loss, jitter, guaranteed/mean time to repair, provisioning time and change request time.
4.	Service Level Agreement Monitoring & Reporting Offerors must describe in detail the monitoring & reporting capabilities and frequency such as, but not limited to Network Availability per site/access line, network performance, network utilization, trouble tickets, scheduled outages and unscheduled outages. Offerors should include any examples.

	<u>Offeror Response:</u>
5.	<p>Service Level Credits Offerors must describe their process for issuing credits to the STATE if a service level would not be met.</p> <p><u>Offeror Response:</u></p>
6.	<p>e-Rate The STATE participates in the e-Rate Program. Offerors must be an eligible telecommunications/internet access service provider under the Universal Services Support for Schools and Libraries program. The awarded Offeror will be required to carry the e-Rate funded portion of the cost until the STATE receives the Funding Decision Commitment Level letter each funding year. The unfunded costs may be billed as negotiated.</p> <p><u>Offeror Response:</u></p>
7.	<p>Offerors must list all proposed POP locations and whether the premises are owned or leased. Offerors must also identify items such as but not limited to means of power protection in the event of a power failure; i.e., battery and/or generator, and identify length of continued POP operation. Offerors must address the fire protection or suppression systems in place.</p> <p>Offerors must describe the security controls and procedures in place.</p> <p><u>Offeror Response:</u></p>
8.	<p>The State may require co-location services. Offerors must describe detail their co-location services including, but not limited to:</p> <ul style="list-style-type: none"> a. rack space, b. power, c. air-conditioning, d. building cable entrance and cabinet cross-connect policy, e. physical access, and f. any other requirement that is necessary for the STATE to operate and interconnect STATE facilities to and from the provider's POP. <p>Offerors must also describe if the co-location facility is a hardened facility.</p> <p>The STATE currently has approximately 4 full size cabinets in Minot and Grand Forks and 7 full size cabinets in Bismarck and Fargo.</p> <p><u>Offeror Response:</u></p>
9.	<p>Offerors must outline a suggested transition period at no cost to the State for beneficial use. The transition period will be negotiated upon intent to award.</p>

	<u>Offeror Response:</u>
10.	Due to the changing needs of the State, Offerors must acknowledge that products and/or services may be added or cancelled during the term of the contract. <u>Offeror Response:</u>
11.	Value Added Features Offerors are invited to provide detail and describe any functionality, products and services that are not part of the requirements in this RFP and demonstrate added value. Add lines below as needed. <u>Offeror Response:</u>

3.07 Product Support, Customer Service, Experience & Qualifications Requirements

No.	Product Support, Customer Service Requirements, Experience & Qualifications
1.	<p>Offeror Background Information</p> <p>The Offeror shall provide the following general background information:</p> <ol style="list-style-type: none"> Name, address, telephone number, fax number and e-mail address of the Offeror including all d/b/a's or assumed names or other operating names of the Offeror and any local addresses and phone numbers. The location(s) including address and telephone numbers of the offices and other facilities that relate to the Offeror's performance under the terms of this RFP Name, address and telephone number of the Offeror's representative to contact regarding all contractual and technical matters concerning the Proposal Name, contact information and qualifications of any subcontractors who will be involved with this project the Offeror proposes to use and the nature of the goods and/or services the subcontractor would perform. <p><u>Offeror Response:</u></p>
2.	<p>Experience</p> <p>The Offeror must provide the following information regarding its experience:</p> <ol style="list-style-type: none"> Number of years in business. The level of technical experience in providing the types of goods and/or services sought by the RFP. Describe the experience of their firm in completing similar projects. Provide three reference names and a contact person, business address, email address, and telephone number for each reference. The STATE reserves the right to contact any references provided by the Offeror. The STATE may request to meet with the references provided at their location to view the solution that was implemented. <p>Reference checks shall be completed on Offerors who are determined to be reasonably</p>

	<p>susceptible for award. The STATE will factor information received during the reference checks into the evaluation scoring.</p> <p><u>Offeror Response:</u></p>
3.	<p>The Offeror shall have an established Network Operations Center (NOC). The NOC must provide 24x7x365 staffed support for monitoring, trouble reporting, and problem resolution. The NOC will provide direct support for all service related issues including, but not limited to, network monitoring and trouble resolution. The Offerors NOC must be located in the United States. Offerors must describe in detail their NOC (equipment, personnel, features, location, etc.) in the proposal.</p> <p><u>Offeror Response:</u></p>
4.	<p>The Offeror must describe their procedures for providing service to include:</p> <ul style="list-style-type: none"> a. Maintenance procedures <ul style="list-style-type: none"> o Critical o Non-Critical b. How Public Safety endpoints are managed relating to any outages or service impacts c. Trouble reporting procedures d. Procedures for replacement and/or repair of equipment and/or facilities e. Telephone numbers f. E-mail addresses g. Maintenance organizational chart (showing supervision and key personnel) h. Escalation procedures i. All listed personnel contact information shall include telephone numbers and email addresses, as well as a 24 hour reach number in case of emergency. <p>The STATE reserves the right to negotiate the above procedures.</p> <p><u>Offeror Response:</u></p>
5.	<p>Customer Service</p> <p>Offerors must describe in detail:</p> <ul style="list-style-type: none"> a. A single point of contact to send orders to b. The process for placing orders for services c. The process for handling customer inquiries and response time to inquiries d. The process to designate points of contact e. Billing procedures f. Capability to provide itemized bills g. Reporting capabilities <p><u>Offeror Response:</u></p>
6.	<p>STATE may require Offeror's staff and subcontractors assigned by Offeror to perform work to submit to a criminal history record check in accordance with N.D.C.C. 54-59-20 and 12-60-24. STATE shall have the right to reject any individual assigned to perform work if, in its sole discretion, it determines that the results of the criminal history record check make the individual unacceptable.</p> <p>Upon request by the State, the Offeror shall supply written verification that Offeror has</p>

	<p>conducted a background check on its staff and subcontractors assigned to perform work under this contract.</p> <p><u>Offeror Response:</u></p>
<p>7.</p>	<p>Contract Representation Offeror must provide a narrative of the dedicated contract representative and the support staff team. Information for the contract representative and support team must include:</p> <ul style="list-style-type: none"> a. name, b. phone number, c. e-mail address, d. mailing address and e. years of appropriate experience. <p>Offerors must provide information on dedicated support or back-up staff including:</p> <ul style="list-style-type: none"> a. names, b. titles, c. phone numbers, d. e-mail addresses and e. mailing addresses. <p>Offerors must provide the names and titles, phone numbers, and e-mail and mailing addresses for the contract representative's chain of command within your company.</p> <p><u>Offeror Response:</u></p>
<p>8.</p>	<p>Assigned contract representatives may be required to meet with the State on a regular basis, or when deemed necessary. The State may also require other support staff or team members identified on bidder's escalation lists to be available for these meetings. Please verify that your company can and will make these staff members available to meet with the State, given adequate notice.</p> <p><u>Offeror Response:</u></p>

SECTION FOUR - GENERAL CONTRACT INFORMATION

4.01 Contract Term, Extension and Renewal Options

STATE intends to execute contracts substantially similar to the contract found in Attachment 2. As appropriate, the term will be modified as noted below:

Backbone

The STATE intends to enter into a Fixed Price with Adjustment contract with an effective date beginning July 1, 2015 and ending June 30, 2019.

Endpoint Access

The STATE intends to enter into a Fixed Price with Adjustment contract with an effective date beginning July 1, 2015 and ending June 30, 2017.

Internet Access

The STATE intends to enter into a Fixed Price with Adjustment contract with an effective date beginning July 1, 2015 and ending June 30, 2017.

Extension Option

The STATE reserves the right to extend the contract period for an additional period of time, not to exceed 12 months, beyond the normal expiration date of the contract, upon mutual written agreement by both parties.

Renewal Options

Backbone

The STATE may renew this contract upon satisfactory completion of the initial contract term. The STATE reserves the right to execute up to two (2) options to renew this contract annually under the same terms and conditions for a period of 24 months each. This contract will not automatically renew. The STATE will provide written notice to the contractor of its intent to renew this contract at least 60 days before the scheduled contract expiration date.

Endpoint & Internet Access

The STATE may renew this contract upon satisfactory completion of the initial contract term. The STATE reserves the right to execute up to three (3) options to renew this contract annually under the same terms and conditions for a period of 24 months each. This contract will not automatically renew. The STATE will provide written notice to the contractor of its intent to renew this contract at least 60 days before the scheduled contract expiration date.

Renegotiation Option

Since it is unknown how long the STATE will employ the products and services which are the subject of this contract, and the length of time for ongoing maintenance and support during the operational life of the products, STATE and CONTRACTOR may renegotiate the contract upon mutual agreement of the parties after completion of the initial term of the contract including any extensions and renewals.

4.02 Standard Contract Provisions

The Awardee shall be required to sign a contract substantially similar to the contract attached to this RFP (Attachment 2). The Awardee must comply with the contract provisions set out in this attachment. Any objections to the contract provisions must be set out in the Offeror's proposal. The State may deem any failure to object to a contract provision as the Offeror's acceptance of

that provision. The STATE shall not permit alteration of these provisions without prior written approval.

The STATE instructs Offerors to contact the procurement officer in writing by the deadline set for questions (as identified in §1.03 RFP Schedule) with any concerns regarding the contract provisions.

4.03 Proposal as a Part of the Contract

The STATE may incorporate part or all of this RFP and the successful proposal into the contract.

4.04 Additional Terms and Conditions

The STATE reserves the right to add, delete, or modify terms and conditions during contract negotiations. These terms and conditions shall be within the scope of the RFP and will not affect the proposal evaluations.

4.05 Supplemental Terms and Conditions

Proposals including supplemental terms and conditions may be accepted, but supplemental conditions that conflict with those contained in this RFP or that diminish the STATE's right's under any contract resulting from the RFP will be considered null and void. The STATE is not responsible for identifying conflicting supplemental terms and conditions before issuing a contract award. After award of contract:

- [a] if conflict arises between a supplemental term or condition included in the proposal and a term or condition of the RFP, the term or condition of the RFP will prevail; and
- [b] if the result of the application of a supplemental term or condition included in the proposal would diminish the STATE's rights, the supplemental term or condition will be considered null and void.

4.06 Contract Approval

This RFP does not, by itself, obligate the STATE. The STATE's obligation will commence when the STATE signs the contract. Upon written notice to the contractor, the STATE may set a different starting date for the contract. The STATE will not be responsible for any work done by the contractor, even work done in good faith, if it occurs prior to the contract start date set by the STATE.

4.07 Contract Changes - Unanticipated Amendments

During the course of this contract, the awardee may be required to perform additional work. That work shall be within the general scope of the initial contract. When additional work is required, the Integrated Change Control Process in section 23d of the contract shall be used.

4.08 Indemnification and Insurance Requirements

The STATE incorporates indemnification and insurance provisions in the final contract. **The Offeror must submit objections to any of the provisions of the Indemnification and Insurance Requirements in writing to the attention of the procurement officer with the proposal submission.** The STATE shall not permit any alteration of these provisions without prior written approval from the STATE in consultation with the North Dakota Risk Management

Division.

Upon receipt of the Notice of Intent to Award, the Awardee must obtain the required insurance coverage and provide the procurement officer with proof of coverage prior to contract approval. The coverage must be satisfactory to the STATE, in consultation with the North Dakota Risk Management Division. An Offeror's failure to provide evidence of insurance coverage is a material breach and grounds for withdrawal of the award or termination of the contract.

4.09 Limited Liability

The State's ability to agree to any limitation of liability is restricted by [N.D.C.C. 32-12.2-15](#).

4.10 Informal Debriefing

When the contract is completed, the STATE may perform an informal debriefing at the discretion of the procurement officer or project manager designated by the STATE. If performed, the scope of the debriefing will be limited to the work performed by the contractor. The STATE will negotiate the debriefing time and location between the STATE and contractor.

4.11 Liquidated Damages

Technology Services Contracts resulting from this RFP may include a clause setting forth an actual dollar amount designated as liquidated damages to ensure STATE remains whole in the case of delays in a project due to the CONTRACTOR's fault. Specific damages will be part of the negotiation process. The amount will be reasonable and not disproportionate to the damages anticipated at the point of the contract and will not serve in any way as a penalty.

SECTION FIVE - EVALUATION CRITERIA AND CONTRACTOR SELECTION
THE TOTAL NUMBER OF POINTS USED
TO SCORE THIS CONTRACT IS 100

5.01 Proposal Evaluation Criteria/Categories

Based on the Offerors response, the proposals will be scored on the sections that were responded to. Each of the sub-categories in Information Technology Solution will be rated individually if the Offeror submitted a proposal for more than one sub-category.

Proposals will be scored in following major categories; each major category contains sub-categories to be scored. The categories and sub-categories, with their relative weights are as follows:

1. Information Technology Solution

Thirty-five Percent (35%) of the total possible evaluation points will be assigned to each of the criterion below.

- a. Backbone & Overall Requirements
- b. Endpoint Access & Overall Requirements
- c. Internet Access & Overall Requirements

2. Product Support, Customer Service, Experience, & Qualifications

Twenty Percent (20%) of the total possible evaluation points will be assigned to this criterion.

3. Financial Strength

Five Percent (5%) of the total possible points will be assigned to this criterion.

4. Contract Cost

Forty Percent (40%) of the total possible evaluation points will be assigned to cost.

The STATE will not consider any prompt payment discounts terms proposed by the Offeror in evaluating cost. The cost amount used for evaluation may be affected by the application of North Dakota preference laws (N.D.C.C. § 44-08-01). The lowest cost proposal will receive the maximum number of points allocated to cost. The STATE will evaluate the point allocations for cost on the other proposals according to the method set forth in the Proposal Evaluation form attached to this RFP.

5.03 Oral Presentations

After any discussions for clarifications and the initial evaluation of proposals received, Offerors whose proposal receive the highest scores and are determined to be reasonably susceptible for award may be required to make an oral presentation of the proposed solution for the evaluation committee. The STATE will factor information presented during demonstrations into the evaluation scoring.

Offerors will be responsible for all costs associated with the providing the presentation.

5.04 Site Inspection of Offeror's Facility

The STATE may conduct on-site visits to the Offeror's firm to evaluate the Offeror's capacity to perform the contract. An Offeror must agree, at risk of being found non-responsive and having

its proposal rejected, to provide the STATE reasonable access to relevant portions of its work sites. Individuals designated by the STATE will conduct the site inspection at the STATE's expense.

SECTION SIX - PROPOSAL FORMAT AND CONTENT

6.01 Proposal Format

General Information

- The STATE discourages overly lengthy and costly proposals; however, in order for the STATE to evaluate proposals fairly and completely, Offerors must follow the format set out in this RFP and provide all information requested.
- Offerors may make a written request to hold confidential any trade secrets and other proprietary data contained in proposals. The Offeror must clearly identify the material considered confidential, and the Offeror must include a brief statement that sets out the reasons for confidentiality. See the North Dakota Office of the Attorney General website for additional information. <http://www.ag.nd.gov/OpenRecords/ORM.htm>
- The STATE will not pay any cost associated with the preparation, submittal, presentation, or evaluation of any proposal Offerors must provide all documents, samples, or other information specifically required in this RFP.

Physical Organization

- Prepare proposals on 8.5 x 11 paper and insert in a three ring binder with sections (as defined below) separated by tabbed dividers. Any exhibits, pictures or drawings that are printed on paper larger than 8.5 x 11 should be folded, punched and bound in folder or enclosed in folder in sheet protectors or some other similar presentation, if possible. If not possible to include in binder, enclose in other container or presentation type folder which is as compactly sized as possible.
- Proposals must be separated into an introductory section and four content sections. Each section must be formatted as follows and include the information detailed below by providing comprehensive narrative statements and descriptions:

6.02 Proposal Content

Section One – Tab One

Introductory/Affirmations Section

An "Introduction" section must include the following:

- A cover letter signed by a company officer with authority to bind the company. The letter must contain the following:
 - the complete name and address of the Offeror and the name, mailing address, and telephone number of the person the STATE should contact regarding the proposal;
 - confirmation that the Offeror will comply with all provisions in this RFP;
 - disclosure of any instances where the Offeror or any individuals working on the contract has a possible conflict of interest and, if so, the nature of that conflict (e.g. employed by the State of North Dakota);
 - a statement certifying that the Offeror complies with:
 - the laws of the state of North Dakota including the North Dakota Century Code and the North Dakota Administrative Code;
 - all applicable local, state, and federal laws, code, and regulations;
 - the applicable portion of the Federal Civil Rights Act of 1964;
 - the Equal Employment Opportunity Act and the regulations issued by the

- federal government;
- the Americans with Disabilities Act of 1990 and the regulations issued by the federal government;
- all terms, conditions, and requirements set forth in this RFP;
- a condition that the proposal submitted was independently arrived at, without collusion; and
- a condition that the offer will remain open and valid for the period indicated in this solicitation.

Section Two – Tab Two

Financials

Provide financial information in such a manner that the State can reasonably formulate a determination about the stability and financial strength of the organization. This must include but not be limited to information about:

- company size
- organization/date of incorporation
- ownership
- number of employees
- revenues for the last fiscal year, and,
- at least one of the following:
 - audited financial statements for the most recent 3 years;
 - a current Dun and Bradstreet Report that includes a financial analysis of the firm;
 - an Annual Report as verification of financial status provided it contains at a minimum a Compiled Income Statement and Balance Sheet verified by a Certified Public Accounting firm; or (The State reserves the right to contact the accounting firm if questions arise
 - tax returns and financial statements including income statements and balance sheets for the most recent 3 years, and any available credit reports.

Disclose any and all judgments, pending or expected litigation, or other real potential financial reversals, which might materially affect the viability or stability of the Offeror's organization; or certify that no such condition is known to exist.

The STATE may request reports on financial stability from independent financial rating services in order to further substantiate stability.

Section Three – Tab Three

Information Technology Solution

- Offerors must provide all information as required and requested in the referenced RFP Sections 3.03, 3.04, 3.05, and 3.06.

Section Four – Tab Four

Customer Service, Experience, and Qualifications Requirements

- Provide all information as required and requested in the referenced RFP Section 3.07.

Section Five – Tab Five

Enclosures

Offerors must provide all other attachments, documents, samples, or other information referenced in the response to the RFP or as specifically required in this RFP.

6.03 Cost Proposal

- Offerors must complete the cost proposal attached to this RFP (see Attachment 6).
- Offerors must submit one copy of the cost proposals in a separate sealed envelope or package, clearly labeled “cost proposal.”
- Offerors must clearly reflect all costs associated with the proposed solution.
- Offerors must propose all bandwidth increments available to the STATE
- Offerors must also include pricing to add additional capacity.
- The Offeror must state all costs associated with the contract in U.S. currency. The Offeror must identify any commodities the Offeror will import, and the price must include any applicable customs, brokerage agency fees, and duties.
- The Offeror must submit cost proposals with consideration to the STATE’S standard terms and conditions included in the attached sample contract.
- Offerors should describe any discounts terms for prompt payment. The STATE will not consider discounts for prompt payment when evaluating cost.

SECTION SEVEN - STANDARD PROPOSAL INFORMATION

7.01 Authorized Signature

An individual authorized to bind the Offeror to the provisions of the RFP must sign all proposals.

7.02 State Not Responsible for Preparation Costs

The STATE will not pay any cost associated with the preparation, submittal, presentation, or evaluation of any proposal.

7.03 Conflict of Interest

Offerors must disclose any instances where the firm or any individuals working on the contract has a possible conflict of interest and, if so, the nature of that conflict (e.g. employed by the State of North Dakota). The STATE reserves the right to cancel the award if any interest disclosed from any source could either give the appearance of a conflict or cause speculation as to the objectivity of the Offeror's proposal. The STATE's determination regarding any questions of conflict of interest is final.

7.04 Offer Held firm

Proposals must remain open and valid for at least **150 DAYS** from the deadline specified for submission of proposals. In the event the STATE does not award within **150 DAYS**, the STATE will send a written request to all Offerors deemed susceptible for award asking Offerors to hold their price firm for a longer specified period of time.

7.05 Amendments to Proposals and Withdrawals of Proposals

Offerors may amend or withdraw proposals prior to the deadline set for receipt of proposals. The STATE will not accept amendments after the deadline unless they are in response to the STATE's request. After the deadline, Offerors may make a written request to withdraw proposals and provide evidence that they made a substantial mistake. The procurement officer may permit withdrawal of the proposal upon verifying that the Offeror made a substantial mistake, and the STATE may retain the Offeror's bid bond or other bid type of bid security, if one was required.

7.06 Alternate Proposals

Offerors may submit only one proposal for evaluation.

Alternate proposals (proposals that offer something different than what the STATE requested) will be considered.

7.07 Subcontractors

Offerors may use subcontractors to perform work under this contract. If an Offeror intends to use subcontractors, the Offeror must identify in the proposal the names of the subcontractors and the portions of the work the subcontractors will perform.

If the STATE selects a proposal with subcontractors, the Offeror must provide the following information concerning each prospective subcontractor within **FIVE WORKING DAYS** from the date of the STATE's request:

- [a] complete name of the subcontractor;
- [b] complete address of the subcontractor;
- [c] type of work the subcontractor will be performing;
- [d] percentage of work the subcontractor will be providing;
- [e] evidence, as set out in the relevant section of this RFP, that the subcontractor is registered and, if applicable, holds a valid North Dakota business license; and
- [f] a written statement, signed by each proposed subcontractor, which clearly verifies that the subcontractor is committed to render the services required by the contract.

An Offeror's failure to provide this information, within the time set, may cause the STATE to consider its proposal non-responsive and reject it. The Offeror may substitute one subcontractor for another only at the discretion and with prior written approval of the STATE's designated procurement officer or project manager.

7.08 Joint Ventures

Joint ventures are acceptable. If submitting a proposal as a joint venture, the Offeror must submit a copy of the joint venture agreement that identifies the principals involved and its rights and responsibilities regarding performance and payment.

7.09 Disclosure of Proposal Contents and Compliance with State's Open Records Laws

All proposals and other material submitted become the property of the STATE and the STATE may return them only at the STATE's option. All proposals and related information, including detailed cost information, are exempt records and shall be held in confidence until an award is made, in accordance with N.D.C.C. § 54-44.4-10(2).

Offerors may make a written request to hold confidential any trade secrets and other proprietary data contained in proposals. The Offeror must clearly identify the material considered confidential, and the Offeror must include a brief statement that sets out the reasons for confidentiality. See the North Dakota Office of the Attorney General website for additional information. <http://www.ag.nd.gov/OpenRecords/ORM.htm>

After award, proposals shall be subject to the North Dakota open records law. Records are closed or confidential only if specifically stated in law. If the STATE receives a request for public information, the procurement officer, in consultation with the Office of the Attorney General, shall determine whether the information is an exception to the North Dakota open records law, and the information shall be processed accordingly.

7.10 Evaluation of Proposals

The STATE will review all proposals to determine if they are responsive to the requirements of this solicitation. The procurement officer or an evaluation committee will evaluate responsive proposals. The STATE will base the evaluation solely on the evaluation factors set forth in this RFP. The evaluation will consider information obtained subsequent to any discussions with Offerors determined to be reasonably susceptible for award and any demonstrations, oral presentations, or site inspections, if required in this RFP.

7.11 Right of Rejection

The STATE reserves the right to reject any proposals, in whole or in part. The STATE will reject

proposals received from debarred or suspended vendors. The procurement officer may reject any proposal that is not responsive to all of the material and substantial terms, conditions, and performance requirements of the RFP.

Offerors may not qualify the proposal nor restrict the rights of the STATE. If an Offeror does so, the procurement officer may determine the proposal to be a non-responsive counter-offer and the STATE may reject the proposal.

The procurement officer may waive minor informalities that:

- do not affect responsiveness;
- are merely a matter of form or format;
- do not change the relative standing or otherwise prejudice other offers;
- do not change the meaning or scope of the RFP;
- are insignificant, negligible, or immaterial in nature;
- do not reflect a material change in the work; or
- do not constitute a substantial reservation against a requirement or provision,

The STATE reserves the right to reject any proposal determined to be not responsive, and to reject the proposal of an Offeror determined to be not responsible. The STATE also reserves the right to refrain from making an award if it determines it to be in its best interest.

7.12 Clarification of Offers

In order to determine if a proposal is reasonably susceptible for award, the STATE permits communications by the procurement officer or the proposal evaluation committee with an Offeror to clarify uncertainties or eliminate confusion concerning the contents of a proposal and determine responsiveness to the RFP requirements. Clarifications may not result in a material or substantive change to the proposal. The STATE may adjust the initial evaluation because of a clarification under this section.

After receipt of proposals, if there is a need for any substantial clarification or material change in the RFP, the STATE will issue an amendment. The amendment will incorporate the clarification or change, and a new date and time established for new or amended proposals. The STATE may adjust evaluations as a result of receiving new or amended proposals.

7.13 Discussions and Best and Final Offers

The STATE may conduct discussions or request best and final offers with Offerors that have submitted proposals determined to be reasonably susceptible for award. The STATE is not obligated to do so, therefore, vendors should submit their best terms (cost and technical). The purpose of these discussions is to ensure full understanding of the requirements of the RFP and the Offeror's proposal. Discussions will be limited to specific sections of the RFP or proposal identified by the procurement officer. Discussions, if held, will be after initial evaluation of proposals by the proposal evaluation committee. If the STATE requests modifications to the proposal as a result of these discussions, the Offeror must put the modifications in writing. If the STATE requests best and final offers, the STATE will evaluate the best and final offer submitted by the Offeror against the criteria stated in the RFP and any subsequent amendments to the RFP including the best and final offer request. If an Offeror does not submit a best and final offer, the STATE will consider its original proposal as its best and final offer.

Offerors with a disability needing accommodation should contact the procurement officer prior to

the date set for discussions so that the STATE can make reasonable accommodations.

7.14 Contract Negotiation

After final evaluation, the procurement officer may negotiate with the Offerors reasonably susceptible for award. Negotiations, if held, will be within the scope of the request for proposals and limited to those items that would not have an effect on the ranking of proposals. The STATE may simultaneously negotiate with more than one Offeror reasonably susceptible to award. If an Offeror fails to provide necessary information for negotiations in a timely manner, or fails to negotiate in good faith, the STATE may terminate those negotiations and continue negotiating with other Offerors who are reasonably susceptible for award.

If the STATE holds contract negotiations, Offerors with whom the STATE negotiates will be responsible for all cost including its travel and per diem expenses.

7.15 Failure to Negotiate

If an Offeror reasonably susceptible to award:

- fails to provide the information required to begin negotiations in a timely manner;
- fails to negotiate in good faith;
- indicates it cannot perform the contract within the budgeted funds available for the project; or

The STATE may terminate negotiations with that Offeror and commence or continue negotiations with other Offerors who are reasonably susceptible to award.

7.16 Notice of Intent to Award

After the completion of contract negotiation the procurement officer will issue a written Notice of Intent to Award to all Offerors that responded to this Request for Proposal. The Notice of Intent to Award will set out the names and addresses of all Offerors and identify the proposal selected for award. The scores and placement of other Offerors will not be part of the Notice of Intent to Award.

The STATE advises the Awardee named in the Notice of Intent to Award not to begin work, purchase materials, or enter into subcontracts relating to the project until both the Awardee and the STATE sign the contract.

7.17 Protest and Appeal

North Dakota law provides that an interested party may protest a solicitation.

If an interested party wishes to protest the content of this RFP, the procurement office must receive, in writing, the protest at least seven calendar days before the deadline for receipt of proposals.

An interested party may protest the award or proposed award of a contract.

If an Offeror wishes to protest the award of a contract or proposed award of a contract, the procurement office must receive the protest, in writing, within seven calendar days after the date the STATE issues the Notice of Intent to Award.

SECTION EIGHT - ATTACHMENTS

8.01 Attachments

Attachments

1. Proposal Evaluation Form
2. Contract Form
3. STAGEnet Carrier Ethernet Model
4. Endpoint Ethernet Locations
5. Service Level Metrics
6. Cost Proposal

**ATTACHMENT 1
PROPOSAL EVALUATION FORM**

**THE TOTAL NUMBER OF POINTS USED TO SCORE THIS CONTRACT IS 100
INFORMATION TECHNOLOGY SOLUTION**

- a. Backbone & Overall Requirements
- b. Endpoint Access & Overall Requirements
- c. Internet Access & Overall Requirements

Weight **35 Percent**. Maximum Point Value for this Section:

100 Points x **35 Percent = 35 Points**

Rating Scale (35 POINT Maximum)	
Point Value	Explanation
0	None. Not addressed or response of no value
1-9	Fair. Limited applicability
10-18	Good. Some applicability
19-27	Very Good. Substantial applicability
28-35	Excellent. Total applicability

Proposals will be evaluated against the Offeror's response to the tables in sections 3.03 Information Technology Solution – Backbone & 3.06 Overall Requirements.

Proposals will be evaluated against the Offeror's response to the tables in sections 3.04 Information Technology Solution – Endpoint Access & 3.06 Overall Requirements.

Proposals will be evaluated against the Offeror's response to the tables in sections 3.05 Information Technology Solution – Internet Access & 3.06 Overall Requirements.

PRODUCT SUPPORT, CUSTOMER SERVICE, EXPERIENCE, AND QUALIFICATIONS REQUIREMENTS

Weight **20 Percent**. Maximum Point Value for this Section:

100 Points x **20 Percent = 20 Points**

Rating Scale (20 POINT Maximum)	
Point Value	Explanation
0	None. Not addressed or response of no value
1-5	Fair. Limited applicability
6-10	Good. Some applicability
11-15	Very Good. Substantial applicability
16-20	Excellent. Total applicability

Proposals will be evaluated against the Offeror's response to the table in section 3.07 Product Support, Customer Service, Experience, and Qualifications Requirements.

FINANCIAL STRENGTH

Weight **5 Percent**. Maximum Point Value for this Section:

100 Points x **5 Percent = 5 Points**

Rating Scale (5 POINT Maximum)	
Point Value	Explanation
0	None. Not addressed or response of no value
1	Fair. Limited applicability
2	Good. Some applicability
3-4	Very Good. Substantial applicability
5	Excellent. Total applicability

Proposals will be evaluated against the Offeror's response to Section 6.02 Financial Requirements.

CONTRACT COST

Weight **40 Percent**. Maximum Point Value for this Section

100 Points x **40 Percent = 40 Points**

Applying Preference Laws

The STATE will not consider any prompt payment discounts terms proposed by the Offeror when evaluating cost. The preference given to a resident North Dakota Offeror will be equal to the preference given or required by the state of the nonresident Offeror. A "resident" North Dakota bidder, Offeror, seller, or contractor is one that has maintained a bona fide place of business within this STATE for at least one year prior to the date on which the STATE awarded a contract. For more information regarding state preference laws, review the following document: <http://www.nd.gov/spo/legal/guidelines/> or contact the North Dakota State Procurement Office at 701-328-2683.

When evaluating cost proposals from nonresident (out-of-state) Offerors, the STATE will determine whether the Offeror's state of residence has a preference law for vendors resident in that state. The STATE will increase the cost proposal of the nonresident Offeror by the same percentage of preference given to vendors resident in that state.

For example, if the state law of the nonresident Offeror requires a 5% preference for vendors resident in that state, the procurement officer will increase that Offeror's cost proposal by 5% before evaluation.

Converting Cost to Points

After applying any reciprocal preference, the lowest cost proposal will receive the maximum number of points allocated to cost. The point allocations for cost on the other proposals will be determined as follows:

$$\frac{\text{Lowest Cost}}{\text{Cost being rated}} \times \text{Total Points for Cost} = \text{Awarded Points}$$

**Request for Proposal
Evaluation Summary**

Name of RFP:		
RFP Number:		
Vendor Being Evaluated:		
Evaluator Name:		
Date:		
Technical Evaluation	Maximum Points by Category	Score
Information Technology Solution		
1. • Backbone & Overall Requirements	35	
• Endpoint Access & Overall Requirements		
• Internet Access & Overall Requirements		
2. Product Support, Customer Service, Experience, & Qualifications	20	
3. Financial Strength	5	
4. Cost	40	
Total		

ATTACHMENT 2

TECHNOLOGY CONTRACT

1. PARTIES

The parties to this contract (Contract) are the state of North Dakota, acting through its *Information Technology Department* (STATE), and *Name of Business a type of business (e.g. Delaware corporation or privately held company)* having its principal place of business at *principal business address* (CONTRACTOR);

2. SCOPE OF WORK

Note: If the Scope of Work (SOW) is a lengthy document, you may consider referencing the SOW as a separate section at the end of the contract. A sample SOW section is provided in Attachment A of this sample contract.

CONTRACTOR, in exchange for the compensation paid by STATE under this Contract, shall provide *SOW description*.

3. COMPENSATION

Note: A sample Compensation Details section is provided in Attachment B of this sample contract.

a. Contractual Amount

STATE shall pay for the accepted services provided by CONTRACTOR under this Contract an amount not to exceed *<amount>* (Contractual Amount). The Contractual Amount shall be paid according the Compensation Details document attached as Attachment B.

The Contractual Amount is firm for the duration of the Contract and constitutes the entire compensation due CONTRACTOR for performance of its obligations under this Contract regardless of the difficulty, materials or equipment required, including fees, licenses, overhead, profit and all other direct and indirect costs incurred by CONTRACTOR except as provided by an amendment to this Contract.

b. Retainage

Note: Retainage should be reasonable in relation to the specific project and should be set in consultation with Office of Management and Budget (OMB), Information Technology Department (ITD) and the agency's assigned legal counsel.

All deliverable payments shall be subject to *<number>*% retainage. Retained amounts due to CONTRACTOR shall be paid upon Final Acceptance.

c. Invoicing

The final cost set forth on each invoice shall be equivalent to the cost for each deliverable or service as specified in the Scope of Work. CONTRACTOR shall not submit an invoice for any deliverable or service specified in the Scope of Work that STATE has not fully accepted.

d. Payment

Payment made in accordance with this Compensation section shall constitute payment in full for the services and work performed and the deliverables provided under this Contract and CONTRACTOR shall not receive any additional compensation hereunder.

STATE shall make payment under this Contract within forty-five (45) calendar days after receipt of an approved invoice.

Payment of an invoice by STATE will not prejudice STATE's right to object to or question that or any other invoice or matter in relation thereto. CONTRACTOR's invoice will be subject to reduction for amounts included in any invoice or payment made which are determined by STATE not to constitute allowable costs, on the basis of audits conducted in accordance with the terms of this Contract. At STATE's sole discretion, all payments shall be subject to reduction for amounts equal to prior overpayments to CONTRACTOR.

For any amounts that are or will become due and payable to STATE by CONTRACTOR, STATE reserves the right to deduct the amount owed from payments that are or will become due and payable to CONTRACTOR under this Contract.

e. Travel

STATE shall reimburse CONTRACTOR for expenses related to travel at amounts not to exceed the then-current, published United States General Services Administration ("GSA") per diem rates. Travel expenses in excess of the then-current GSA rates require prior approval by STATE or STATE shall not reimburse CONTRACTOR for such excess costs.

- 1) **Lodging:** Reimbursement shall not exceed the then-current, published GSA rate for the travel location. Copies of receipts are required for lodging reimbursement. STATE shall not reimburse for incidental and miscellaneous expenses charged to the room, including alcohol, telephone charges, or entertainment (e.g., movies).
- 2) **Transportation:** Air travel shall be reimbursed by STATE at the actual cost of airfare for coach class travel only. CONTRACTOR shall make air travel arrangements at least fourteen (14) days in advance whenever possible. Reimbursement for rented, chartered, or contracted vehicle transportation shall be limited to reasonable rates as determined by STATE.
- 3) **Meals:** Meals shall be paid on a per diem basis for each day of travel at then-current, published GSA per diem rate for the travel location. Per diem for the first and last day of travel shall be paid at seventy-five percent (75%) of the GSA per diem rate. Requests for per diem payments must include the start and end dates of travel, the location where the services are performed, and the allowable per diem amount for each trip on the billing/invoice.

Payment for any travel costs that exceed the travel budget as agreed upon by the parties must be approved by STATE's project manager.

f. Prepayment

STATE will not make any advance payments before performance by CONTRACTOR under this Contract.

g. Payment of Taxes by State

STATE is not responsible for and will not pay local, state, or federal taxes. STATE sales

tax exemption number is E-2001. STATE will furnish certificates of exemption upon request by CONTRACTOR.

h. Taxpayer ID

CONTRACTOR's federal employer ID number is: _____.

4. EQUIPMENT, MATERIALS, AND WORKSPACE – RESOURCES PROVIDED BY PARTIES

Note: Modify this section to reflect the expectation for having contract staff on site, which party is providing office space, equipment, etc.

For periods during which the parties mutually agree that CONTRACTOR's assigned staff is on site:

- a. On site means *<list agency physical location address>*.
- b. STATE agrees to provide an adequate working space, when required.
- c. Equipment and software for on-site CONTRACTOR personnel is to be provided by *<CONTRACTOR or Agency name>*.

When STATE and CONTRACTOR agree that remote access to systems is required, STATE shall provide the necessary supervised remote access security to enable CONTRACTOR access to the appropriate STATE systems.

5. TERM OF CONTRACT

This Contract begins on [Month, Day], 20[Year], and ends on [Month, Day], 20[Year].

a. No Automatic Renewal

This Contract will not automatically renew.

b. Extension Option

STATE reserves the right to extend the Contract for an additional period of time, not to exceed _____ months, beyond the current termination date of the Contract.

c. Renewal Option

STATE may renew this Contract upon satisfactory completion of the initial Contract term. STATE reserves the right to execute up to _____ options to renew this Contract under the same terms and conditions for a period of _____ months each.

d. Renegotiation Option

In view of the fact that it is unknown how long the products and services will be employed by STATE and that STATE will require ongoing maintenance and support of the products for as long as the system is operational, therefore after completion of the initial term of the Contract including any extensions and renewals, STATE and CONTRACTOR **agree to negotiate in good faith an equitable revision to the pricing if market circumstances change. Pricing shall be reviewed on a bi-annual basis.**

Any price adjustments must be agreed to by the STATE and Offeror. Prices Adjustments will be made by execution of a written amendment to the contract, and the adjustment will be effective when both parties have signed the amendment, unless otherwise specified in the amendment.

The STATE reserves the right to negotiate lower pricing or to add additional services.

6. TERMINATION

a. Termination by Mutual Agreement

This Contract may be terminated by mutual consent of both parties executed in writing.

b. Termination without Cause

STATE may terminate this Contract in whole or in part when it has determined that continuing the Contract is no longer necessary or would not produce beneficial results commensurate with the further expenditure of public funds.

c. Termination for Lack of Funding or Authority

STATE, by written notice of default to CONTRACTOR, may terminate the whole or any part of this Contract under any of the following conditions:

- 1) If funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for purchase of the services or supplies in the indicated quantities or term.
- 2) If federal or state laws or rules are modified or interpreted in a way that the services are no longer allowable or appropriate for purchase under this Contract or are no longer eligible for the funding proposed for payments authorized by this Contract.
- 3) If any license, permit, or certificate required by law or rule, or by the terms of this Contract, is for any reason denied, revoked, suspended, or not renewed.

Termination of this Contract under this subsection is without prejudice to any obligations or liabilities of either party already accrued prior to termination.

d. Termination for Cause.

STATE may terminate this Contract effective upon delivery of written notice to CONTRACTOR, or any later date stated in the notice:

- 1) If CONTRACTOR fails to provide services required by this Contract within the time specified or any extension agreed to by STATE; or
- 2) If CONTRACTOR fails to perform any of the other provisions of this Contract, or so fails to pursue the work as to endanger performance of this Contract in accordance with its terms.

The rights and remedies of STATE provided in this subsection are not exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

7. SUSPENSION FOR CONVENIENCE

STATE shall have the right at any time to order the services of CONTRACTOR fully or partially stopped for STATE's own convenience. STATE shall provide CONTRACTOR written notice of the reason for and duration of the suspension. The schedule shall be delayed on a day-for-day basis to the extent STATE has issued a stop work order to CONTRACTOR and such stop work order is causing delays in completing services in accordance with the schedule. CONTRACTOR shall have the right to submit claims in accordance with the terms of this Contract as a result of stop work orders issued under this section.

8. FORCE MAJEURE

Neither party shall be held responsible for delay or default caused by fire, riot, terrorism, acts of God or war if the event is beyond the party's reasonable control and the affected party gives notice to the other party immediately upon occurrence of the event causing the delay or default or that is reasonably expected to cause a delay or default.

9. LIQUIDATED DAMAGES

The parties agree that STATE may suffer damages due to a failure by CONTRACTOR to provide deliverables or services according to the schedule specified in the project plan. Because it is difficult to fix the actual damages sustained in the event of such delays, STATE and CONTRACTOR agree that the amount of damages will be determined as per this Section. In the event of any non-performance CONTRACTOR shall pay that amount as liquidated damages and not as a penalty. Amounts due to STATE as liquidated damages may be deducted by STATE from any amounts payable to CONTRACTOR, and any amount outstanding over and above the amounts deducted from the invoice will be promptly tendered by check from CONTRACTOR to STATE.

Delays due to causes of Force Majeure or due to the responsibility of STATE shall extend the time for performance on a day-for-day basis. STATE will not assess liquidated damages against CONTRACTOR when the delay in delivery or performance is beyond the control and without the fault or negligence of CONTRACTOR.

a. Failure to Complete Deliverable on Schedule:

If CONTRACTOR fails to complete a Deliverable identified in *<SOW or project schedule reference>* by the specified deadline (or revised deadline as agreed upon between the parties through the Integrated Change Control Process), CONTRACTOR shall pay liquidated damages to STATE in the amount of \$ *<amount>* per calendar day for each day the Deliverable is delayed.

b. Failure to Complete Project on Schedule:

If CONTRACTOR fails to complete the project per the approved project schedule by the specified deadline (or revised deadline as agreed upon between the parties through the Integrated Change Control Process), STATE will deduct liquidated damages from amounts payable to CONTRACTOR in the amount of \$ *<amount>* per calendar day for each day the project is delayed.

10. INJUNCTIVE RELIEF

CONTRACTOR shall immediately report to STATE any and all unauthorized disclosures or uses of STATE's Confidential Information or Proprietary Information of which

CONTRACTOR or its staff is aware or has knowledge. CONTRACTOR acknowledges that any unauthorized publication or disclosure of STATE's Confidential Information or Proprietary Information to others may cause immediate and irreparable harm to STATE. If CONTRACTOR should publish or disclose such Confidential Information or Proprietary Information without authorization, STATE shall immediately be entitled to injunctive relief or any other remedies to which it is entitled under law or equity without requiring a cure period. CONTRACTOR shall indemnify, defend, and hold harmless STATE from all damages, costs, liabilities, and expenses (including without limitation reasonable attorneys' fees) caused by or arising from CONTRACTOR's unauthorized notification or disclosure of STATE's Confidential Information or Proprietary Information. As a condition to these indemnity obligations, STATE will provide CONTRACTOR with prompt notice of any claim of which STATE is aware and for which indemnification shall be sought under this Contract and shall cooperate in all reasonable respects with CONTRACTOR in connection with any such claim.

11. RIGHT OF SETOFF DAMAGES

Amounts due STATE by CONTRACTOR, including liquidated or other damages, or claims for damages, may be deducted or set-off by STATE from any money payable to CONTRACTOR pursuant to this Contract.

12. RIGHT TO WITHHOLD AMOUNTS OTHERWISE DUE IF THE CONTRACTOR IS IN BREACH

If CONTRACTOR fails to deliver Deliverables or to provide Services which satisfy CONTRACTOR's obligations under this Contract, STATE shall have the right to withhold any and all payments due under this Contract. STATE may withhold any and all such payments due under this Contract to CONTRACTOR without penalty or work stoppage by CONTRACTOR, until such failure to perform is cured.

13. RIGHT TO REMEDIES AND CUMULATION OF RIGHTS

No remedy conferred by any of the specific provisions of the Contract is intended to be exclusive of any other remedy, and each and every remedy shall be cumulative and shall be in addition to every other remedy given under this Contract, now or in the future existing at law or in equity or by statute or otherwise.

14. NON-WAIVER

Either party's failure to exercise any of its rights under the Contract, its delay in enforcing any right, or its waiver of its rights on any occasion, shall not constitute a waiver of such rights on any other occasion. No course of dealing by either party in exercising any of its rights shall constitute a waiver thereof. No waiver of any provision of the Contract shall be effective unless it is in writing and signed by the party against whom the waiver is sought to be enforced.

15. INDEMNITY

CONTRACTOR agrees to defend, indemnify, and hold harmless the state of North Dakota, its agencies, officers and employees (State), from and against claims based on the vicarious liability of the State or its agents, but not against claims based on the State's contributory negligence, comparative and/or contributory negligence or fault, sole negligence, or intentional misconduct. This obligation to defend, indemnify, and hold harmless does not extend to professional liability claims arising from professional errors and omissions. The legal defense provided by CONTRACTOR to the State under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the State is

necessary. CONTRACTOR also agrees to defend, indemnify, and hold the State harmless for all costs, expenses and attorneys' fees incurred if the State prevails in an action against CONTRACTOR in establishing and litigating the indemnification coverage provided herein. CONTRACTOR will comply with all applicable federal, state, and local laws, rules, and ordinances at all times in the performance of the Contract and conduct its activities so as not to endanger any person or property.

This obligation shall continue after the termination of this Contract.

16. INTELLECTUAL PROPERTY INFRINGEMENT INDEMNIFICATION

- a. CONTRACTOR, at its own expense, shall defend and indemnify STATE against claims that products furnished under this Contract infringe a United States patent or copyright or misappropriate trade secrets protected under United States law.
- b. As to any product which is subject to a claim of infringement or misappropriation, CONTRACTOR may (a) obtain the right of continued use of the product for STATE or (b) replace or modify the product to avoid the claim. If neither alternative is available on commercially reasonable terms then, at the request of CONTRACTOR, any applicable Software license and its charges will end, STATE will stop using the product, and will return the product to CONTRACTOR. Upon return of the product, CONTRACTOR will give STATE a credit for the price paid to CONTRACTOR, less a reasonable offset for use and obsolescence.

17. REPRESENTATIVES AND WARRANTIES

CONTRACTOR represents and warrants to STATE that neither CONTRACTOR, in connection with performing the services in performance of this Contract, nor the completed product delivered by CONTRACTOR, will infringe any patent, copyright, trademark, trade secret or other proprietary right of any person. CONTRACTOR further represents and warrants to STATE that it will not use any trade secrets or confidential or proprietary information owned by any third party in performing the services related to this Contract or in delivery of the completed product unless CONTRACTOR has the authority to license, use or provide those trade secrets or confidential or proprietary information to STATE. CONTRACTOR further represents and warrants to STATE that neither CONTRACTOR nor any other company or individual performing services pursuant to this Contract is under any obligation to assign or give any work done under this Contract to any third party.

18. INSURANCE

CONTRACTOR shall secure and keep in force during the term of this Contract and CONTRACTOR shall require all subcontractors, prior to commencement of an agreement between CONTRACTOR and the subcontractor, to secure and keep in force during the term of this CONTRACT, from insurance companies, government self-insurance pools or government self-retention funds, authorized to do business in North Dakota, the following insurance coverages:

- a. Commercial general liability, including premises or operations, contractual, and products or completed operations coverages (if applicable), with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence
- b. Automobile liability, including Owned (if any), Hired, and Non-Owned automobiles, with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence

- c. Workers compensation coverage meeting all statutory requirements. The policy must provide coverage for all states of operation that apply to the performance of this Contract

Note: Optional clause (d) employer's liability. This coverage is for CONTRACTOR's domiciled outside the state of North Dakota. Delete (d) if contracting with a resident (North Dakota) CONTRACTOR.

OPTION: DELETE IF NOT REQUIRED

- d. Employer's liability or "stop gap" insurance of not less than \$1,000,000 as an endorsement on the workers compensation or commercial general liability insurance
- e. Professional errors and omissions, including a three (3) year "tail coverage endorsement," with minimum liability limits of \$1,000,000 per occurrence and in the aggregate

The insurance coverages listed above must meet the following additional requirements:

- a. Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the CONTRACTOR. The amount of any deductible or self-retention is subject to approval by the State.
- b. This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated "A-" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. Less than an "A-" rating must be approved by the State. The policies shall be in form and terms approved by the State.
- c. The duty to defend, indemnify, and hold harmless the State under this agreement shall not be limited by the insurance required in this agreement.
- d. The state of North Dakota and its agencies, officers, and employees shall be endorsed on the commercial general liability policy, including any excess policies (to the extent applicable), as additional insured. The State shall have all the benefits, rights and coverages of an additional insured under these policies.
- e. The insurance required in this agreement, through a policy or endorsement, shall include:
 - 1) Waiver of Subrogation" waiving any right to recovery the insurance company may have against the State
 - 2) A provision that the policy and endorsements may not be canceled or modified without thirty (30) calendar days' prior written notice to the undersigned State representative
 - 3) A provision that any attorney who represents the State under this policy must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under [N.D.C.C. § 54-12-08](#)

- 4) A provision that CONTRACTOR's insurance coverage shall be primary (i.e., pay first) as respects any insurance, self-insurance or self-retention maintained by the State and that any insurance, self-insurance or self-retention maintained by the State shall be in excess of CONTRACTOR's insurance and shall not contribute with it
 - 5) Cross liability/severability of interest for all policies and endorsements
 - 6) The legal defense provided to the State under the policy and any endorsements must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary
 - 7) The insolvency or bankruptcy of the insured CONTRACTOR shall not release the insurer from payment under the policy, even when such insolvency or bankruptcy prevents the insured CONTRACTOR from meeting the retention limit under the policy
- f. CONTRACTOR shall furnish a certificate of insurance to the undersigned STATE representative prior to commencement of this agreement. All endorsements shall be provided as soon as practicable.
- g. Failure to provide insurance as required in this agreement is a material breach of contract entitling STATE to terminate this agreement immediately.

19. WORKS FOR HIRE

CONTRACTOR acknowledges that all work(s) under this Contract is "work(s) for hire" within the meaning of the United States Copyright Act (Title 17 United States Code) and hereby assigns to STATE all rights and interests CONTRACTOR may have in the work(s) it prepares under this Contract, including any right to derivative use of the work(s). All software and related materials developed by CONTRACTOR in performance of this Contract for STATE shall be the sole property of STATE, and CONTRACTOR hereby assigns and transfers all its right, title, and interest therein to STATE. CONTRACTOR shall execute all necessary documents to enable STATE to protect STATE's intellectual property rights under this section.

20. WORK PRODUCT

All work product, equipment or materials created for STATE or purchased by STATE under this Contract belong to STATE and must be immediately delivered to STATE at STATE'S request upon termination of this Contract.

21. TECHNOLOGY STANDARDS

CONTRACTOR shall comply with applicable STATE enterprise architecture technology standards. These standards can be found on STATE's website at <http://www.nd.gov/itd/standards/ea>.

22. PERSONNEL

- a. STATE will designate a Project Manager to serve as the primary project manager for this Contract. If, during the course of the Contract, it becomes necessary for STATE to change the person assigned as STATE's Project Manager, STATE will notify CONTRACTOR in writing, pursuant to Notice section of this Contract.

- b. Unless STATE otherwise notifies CONTRACTOR, STATE's Project Manager shall carry out STATE's administrative and management functions under this Contract, shall be responsible for acceptance of the Contract deliverables, and shall provide support and overall direction to CONTRACTOR.
- c. CONTRACTOR will designate a Project Manager and provide individuals to meet the requirements and accomplish the work as stated in this Contract including any mutually agreed upon Scope of Work.
- d. CONTRACTOR agrees and understands that STATE's execution of the Contract is predicated, in part and among other considerations, on the utilization of the specific individuals and personnel qualifications as identified; primary being **<name of appropriate personnel, if applicable,>**. Therefore, CONTRACTOR agrees that:
 - 1) Prior to assignment of personnel, CONTRACTOR shall obtain written approval from STATE for all personnel to be assigned to this project
 - 2) The personnel assigned must have the knowledge necessary to complete requirements as defined in the Contract.
 - 3) CONTRACTOR shall warrant that all personnel assigned to perform tasks in response to this Contract will remain assigned for the agreed-upon length of time.
 - 4) No replacement, reassignment or substitution of any assigned individuals and personnel qualifications shall be made without the prior written approval of STATE and that such replacement, reassignment or substitution shall be made at no additional cost to STATE.
 - 5) Any substitution made pursuant to this paragraph must be of equal or higher skills, knowledge, and abilities than those personnel originally proposed and that STATE's approval of a substitution is not construed as an acceptance of the substitution's performance potential. STATE agrees that an approval of a substitution will not be unreasonably withheld.
 - 6) CONTRACTOR shall assign personnel on a full-time basis. In the event that a work assignment does not justify full-time participation, CONTRACTOR shall assign personnel on a part-time basis with prior written approval of STATE's Project Manager. However, if the part-time assignments are specified in the Contract, no written approval from STATE's Project Manager is necessary except for substitution of CONTRACTOR personnel.
- e. Upon request by STATE, CONTRACTOR shall replace any CONTRACTOR personnel that STATE determines, in its sole discretion, to be unable to perform the responsibilities of the Contract acceptably, e.g., inappropriate or unprofessional personal conduct, professional inabilities, etc.
- f. STATE's working hours are Monday through Friday from 8:00 AM until 5:00 PM (CST or CDT) with one hour for lunch. STATE Project Manager may approve alternate work schedules.

- g. According to STATE policy, STATE personnel are only obligated to work a forty-hour workweek, Monday through Friday, and are allowed reasonable vacation, sick and educational absences.
- h. CONTRACTOR's personnel are not expected to work on State holidays or other mandatory leave days.
- i. CONTRACTOR shall conduct background investigations on all contracted staff and subcontractors assigned by CONTRACTOR to perform work under this Contract, and shall furnish the results of such background investigations to STATE. STATE shall have the right to reject any individual assigned to perform work under this Contract if, in its sole discretion, it determines that the results of the background investigation make the individual unacceptable. The background investigations to be performed are:
 - 1) Criminal History, <applicable/not applicable>
 - 2) References, <applicable/not applicable>
 - 3) Employment, <applicable/not applicable>
 - 4) Motor vehicle, <applicable/not applicable>
 - 5) Credit, <applicable/not applicable>
 - 6) Education, <applicable/not applicable>

OR

- j. CONTRACTOR agrees that STATE may require contracted staff and subcontractors assigned by CONTRACTOR to perform work under this Contract to submit to a criminal history record check in accordance with [N.D.C.C. § 54-59-20](#) and [§12-60-24](#). STATE shall have the right to reject any individual assigned to perform work under this Contract if, in its sole discretion, it determines that the results of the criminal history record check make the individual unacceptable.

23. PROJECT MANAGEMENT

a. Reporting

- 7) CONTRACTOR's Project Manager shall deliver to STATE's Project Manager, *bi-weekly* reports of CONTRACTOR's progress on the project and meeting the objective/deliverables as stated in the Scope of Work. Each report must contain a description of the current status of the project, the tasks on which time was spent, the estimated progress to be made in the next reporting period, and the problems encountered the proposed solutions to them and their effect, if any, on the project budget/schedule.
- 8) Project Variance Reporting – CONTRACTOR must provide data to allow STATE's project manager to calculate cost and schedule variance in accordance with [N.D.C.C. § 54-59-23](#) as determined by STATE. If STATE's analysis shows a negative cost or schedule variance exceeding 20%, a subsequent report must also provide proposed corrective measures to address the issues.

b. Deliverable Acceptance

- 1) Unless otherwise noted in this Contract or agreed upon in writing by both parties, acceptance testing will be performed on-site, on STATE's platform.
- 2) Prior to acceptance testing, CONTRACTOR will furnish STATE with documentation of the deliverable item, the expected performance, and agreed upon acceptance criteria.
- 3) Upon completion of a deliverable or sub-deliverable, STATE will have five (5) working days in which to accept or reject it in writing. STATE and CONTRACTOR will accept by signature. If STATE rejects it, STATE will specify in writing its grounds for rejection and CONTRACTOR shall use its best efforts to revise any issues for the notes to be acceptable to STATE within the following five (5) working days. If STATE rejects it a second time, STATE will have the option of repeating the procedure as described in this acceptance statement above, escalating the issue to the Executive Steering Committee, or terminating this Contract upon written notice to CONTRACTOR.

c. Final Acceptance

- 1) The successful completion of all deliverables as stated in the Scope of Work in accordance with the deliverable acceptance process AND
- 2) The final delivered product fully implemented in STATE's live production environment AND
- 3) STATE has sixty (60) calendar days thereafter in which to accept or reject it in writing. If STATE rejects it, STATE shall specify in writing its grounds for rejection and CONTRACTOR shall use its best efforts to make the product conform to the requirements of this Contract as soon as possible and at no additional cost to STATE. CONTRACTOR shall continue to use its best efforts to make the product conform to the requirements of this Contract until STATE accepts the product or terminates this Contract upon written notice to CONTRACTOR.

d. Integrated Change Control Process

CONTRACTOR and STATE will utilize an integrated change control process to manage changes during the life of a project.

- 1) A change request must be in writing to document the potential change. The write-up for the proposed change must be submitted to CONTRACTOR and STATE's project managers who will in turn provide it to relevant parties for assessment.
- 2) All change requests will be logged and tracked. STATE's project manager will record the request in the project repository and will update the repository throughout the process.

- 3) The change will be reviewed and, if acceptable to STATE, CONTRACTOR will submit to STATE an estimate of the impact to cost, schedule, scope, and quality.
- 4) CONTRACTOR will continue performing the services in accordance with the original Contract unless otherwise agreed upon by STATE's project manager. Work shall not commence on any new activities related to the change request until all parties agree in writing.
- 5) CONTRACTOR's project manager and STATE's project manager will adapt project plans to incorporate approved changes.
- 6) Each change request duly authorized in writing by the parties shall be incorporated into and considered part of the Contract.
- 7) During the course of the Contract, if CONTRACTOR determines or could reasonably determine any STATE actions or directions constitute a requirement to perform additional work, CONTRACTOR shall notify STATE within thirty (30) calendar days that STATE has requested CONTRACTOR to perform additional work in the form of a change request utilizing the process above. CONTRACTOR understands that it waives the right to request additional time and reimbursable costs if CONTRACTOR fails to notify STATE within thirty (30) calendar days of determining or reasonably being able to determine that any STATE actions or directions constitute a requirement to perform additional work under the Contract.

24. PRODUCT CONFORMITY

STATE has twelve (12) months following final acceptance of the product(s) delivered by CONTRACTOR pursuant to this Contract to verify that the product(s) conform to the requirements of this Contract and perform according to CONTRACTOR system design specifications. Upon recognition of an error, deficiency, or defect, by STATE, CONTRACTOR shall be notified by STATE citing any specific deficiency (deficiency being defined as CONTRACTOR having performed incorrectly with the information provided by STATE, not CONTRACTOR having to modify a previous action due to additional and/or corrected information from STATE). CONTRACTOR, at no additional charge to STATE, shall provide a correction or provide a mutually acceptable plan for correction within thirty (30) calendar days following the receipt of STATE's notice to CONTRACTOR. If CONTRACTOR's correction is inadequate to correct the deficiency, or defect, or the error recurs, STATE may, at its option, act to correct the problem. CONTRACTOR shall be required to reimburse STATE for any such costs incurred or STATE may consider this to be cause for breach of contract.

25. MAINTENANCE

CONTRACTOR shall provide, and STATE may subscribe to, Maintenance Services, including software/hardware updates and technical support services as defined in Attachment <X>, for the product(s) delivered pursuant to this Contract commencing at the end of the warranty period. CONTRACTOR and STATE shall negotiate the terms and price of such Maintenance Services. CONTRACTOR warrants that it will continue to offer Maintenance Services for the product(s) for a minimum of three (3) years from the date of final acceptance or installation date of any software/product update.

a. Maintenance Fee Cap

CONTRACTOR agrees that any change to the annual Maintenance Services fee may increase by not more than the Consumer Price Index (CPI). The rates shall be adjusted in accordance with the CPI for All Urban Consumers for the U.S. All Items (1982-84=100).

b. Right to Change Support Plan Level

STATE may choose to change its subscription to CONTRACTOR’s Maintenance Services plan to a higher or lower level plan that is offered by CONTRACTOR at the Contract’s next renewal date upon thirty (30) calendar days’ notice to CONTRACTOR.

c. Right to Modify or Cancel Support

- 1) STATE may choose to cancel Maintenance Services at the Contract’s next renewal date upon thirty (30) calendar days’ notice to CONTRACTOR.
- 2) STATE may delete a subset of licenses that are no longer in use from Maintenance Services at the Contract’s next renewal date upon thirty (30) calendar days’ notice to CONTRACTOR.
- 3) STATE may resume Maintenance Services for lapsed periods by paying CONTRACTOR an amount no greater than the amount that would have been due if maintenance services had been continued over the lapsed period. Upon payment of such amounts for lapsed periods, CONTRACTOR agrees to provide STATE with the right to any upgrades released during that period.

26. SERVICE LEVELS

a. Service Level

CONTRACTOR’s failure to make the hosting services available at least 99% of the time in any given month during the term and any renewal term, excluding scheduled maintenance, shall be deemed a service level default (“Service Level Default”) and STATE may obtain the non-exclusive remedies set forth below. For purposes of this Contract, “Available” means that STATE users are able to access all features and functions of the licensed product and services including, but not limited to the licensed software and licensed content.

Service Level (Monthly)	Service Level Credit (Prorated Fees – Monthly)
Above 99%	0
98.99 – 97%	10%
96.99 – 95%	25%
94.99 – 93%	50%
Below 93%	100%

In the event STATE is eligible for a 100% Service Level Credit under this section during any given month of the term, or is eligible for a Service Level Credit greater than 10% in any two (2) months, during any rolling twelve (12) month period, STATE may terminate this Contract without penalty upon written notice to CONTRACTOR.

Credits shall be applied against the next invoice. In the event a Service Level Default occurs after a party has given notice of termination, or STATE has made final payment to CONTRACTOR for the software support services and no further invoices shall issue as a result, CONTRACTOR shall refund to STATE the amount of the appropriate

Service Level Credit due for the period of default.

Once each calendar month during the term of this Contract, CONTRACTOR shall provide STATE with a written report comparing the actual performance of licensed product and services with the Service Level Requirement. Such report shall also contain such other information with respect to the performance of the licensed product and services as mutually agreed upon by the parties from time to time, and in conformity with reporting CONTRACTOR provides to its other customers utilizing the licensed product and services.

b. Scheduled Maintenance and Notifications

- 1) Standard Maintenance Windows

<Define maintenance window schedule>

- 2) Notification of Scheduled Maintenance Downtime

CONTRACTOR shall notify STATE of any schedule maintenance downtime which will cause the total scheduled maintenance downtime for the month to exceed <#> hours, or will occur outside of the Standard Maintenance Windows outlined above. Except in cases of emergency, notification will be provided at least <#> hours prior to such downtime. In cases of emergency, CONTRACTOR shall use its best efforts to notify STATE of a planned downtime as soon as practicable.

c. Co-Location Exit Plan

CONTRACTOR and STATE shall develop an Exit Plan (“Exit Plan”) detailing each party’s respective tasks in connection with the orderly transfer of STATE’s data back to STATE upon termination of this Contract. CONTRACTOR agrees that there shall be no additional fees to execute the Exit Plan. STATE agrees to take delivery of transferred STATE data no later than sixty (60) calendar days following termination of this Contract.

The Exit Plan must include:

- 1) The format and delivery method mutually agreed upon by CONTRACTOR and STATE to transfer STATE data securely
- 2) The deletion criteria of STATE data from CONTRACTOR’s location as determined by STATE

27. NOTICE

All notices or other communications required under this Contract must be given by registered or certified mail and are complete on the date postmarked when addressed to the parties at the following addresses:

STATE	CONTRACTOR
Name	Name
Title	Title
Address	Address
City, State, Zip	City, State, Zip

Notice provided under this provision does not meet the notice requirements for monetary claims against STATE found at [N.D.C.C § 32-12.2-04](#).

28. CONFIDENTIALITY

CONTRACTOR shall not to use or disclose any information it receives from STATE under this Contract that STATE has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this Contract or as authorized in advance by STATE. STATE shall not to disclose any information it receives from CONTRACTOR that CONTRACTOR has previously identified as confidential and that STATE determines in its sole discretion is protected from mandatory public disclosure under a specific exception to the North Dakota public records law, [N.D.C.C. ch. 44-04](#). The duty of STATE and CONTRACTOR to maintain confidentiality of information under this section continues beyond the term of this Contract.

29. COMPLIANCE WITH PUBLIC RECORDS LAWS

CONTRACTOR understands that, except for disclosures prohibited in this Contract, STATE must disclose to the public upon request any records it receives from CONTRACTOR. CONTRACTOR further understands that any records obtained or generated by CONTRACTOR under this Contract, except for records that are confidential under this Contract, may, under certain circumstances, be open to the public upon request under the North Dakota public records law. CONTRACTOR agrees to contact STATE immediately upon receiving a request for information under the public records law and to comply with STATE's instructions on how to respond to the request.

30. INDEPENDENT ENTITY

CONTRACTOR is an independent entity under this Contract and is not a STATE employee for any purpose, including the application of the Social Security Act, the Fair Labor Standards Act, the Federal Insurance Contribution Act, the North Dakota Unemployment Compensation Law and the North Dakota Workforce Safety and Insurance Act. CONTRACTOR retains sole and absolute discretion in the manner and means of carrying out CONTRACTOR's activities and responsibilities under this Contract, except to the extent specified in this Contract.

31. ASSIGNMENT AND SUBCONTRACTS

CONTRACTOR may not assign or otherwise transfer or delegate any right or duty without STATE's express written consent. However, CONTRACTOR may enter into subcontracts provided that any subcontract acknowledges the binding nature of this Contract and incorporates this Contract, including any attachments. CONTRACTOR is solely responsible for the performance of any subcontractor. CONTRACTOR does not have the authority to Contract for or incur obligations on behalf of STATE.

32. SPOILIATION – NOTICE OF POTENTIAL CLAIMS

CONTRACTOR shall promptly notify STATE of all potential claims that arise or result from this Contract. CONTRACTOR shall also take all reasonable steps to preserve all physical evidence and information that may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and grants to STATE the opportunity to review and inspect the evidence, including the scene of an accident.

33. MERGER AND MODIFICATION, CONFLICT IN DOCUMENTS

This Contract, including the following documents, constitutes the entire agreement between the parties. There are no understandings, agreements, or representations, oral or written, not specified within this Contract. This Contract may not be modified, supplemented or amended, in any manner, except by written agreement signed by both parties.

Notwithstanding anything herein to the contrary, in the event of any inconsistency or conflict among the documents making up this Contract, the documents must control in this order of precedence:

- a. The terms of this Contract as may be amended;
- b. STATE's Solicitation Amendment #1 to Request for Proposal ("RFP") number _____ dated _____;
- c. STATE's Request for Proposal ("RFP") number _____, dated _____;
- d. CONTRACTOR's proposal dated _____ in response to RFP number _____.
- e. All automated end user agreements (e.g., click-throughs) are specifically excluded and null and void. Clicking shall not represent acknowledgement or agreement to any terms and conditions contained in that agreement.

34. SEVERABILITY

If any term of this Contract is declared to be illegal or unenforceable by a court having competent jurisdiction, the validity of the remaining terms is unaffected and, if possible, the rights and obligations of the parties are to be construed and enforced as if the Contract did not contain that term.

35. APPLICABLE LAW AND VENUE

This Contract is governed by and construed in accordance with the laws of the State of North Dakota. Any action to enforce this Contract must be brought and solely litigated in the District Court of Burleigh County, North Dakota. Each party consents to the exclusive jurisdiction of such court and waives any claim of lack of jurisdiction or *forum non conveniens*.

36. ALTERNATIVE DISPUTE RESOLUTION – JURY TRIAL

STATE does not agree to any form of binding arbitration, mediation, or other forms of mandatory alternative dispute resolution. The parties have the right to enforce their rights and remedies in judicial proceedings. STATE does not waive any right to a jury trial.

37. ATTORNEY FEES AND COSTS

In the event a lawsuit is instituted by STATE to obtain performance under this Contract, and STATE is the prevailing party, CONTRACTOR shall, except when prohibited by [N.D.C.C. §28-26-04](#), pay STATE's reasonable attorney fees and costs in connection with the lawsuit.

38. NONDISCRIMINATION AND COMPLIANCE WITH LAWS

CONTRACTOR agrees to comply with all applicable laws, rules, regulations and policies, including those relating to nondiscrimination, accessibility and civil rights. CONTRACTOR agrees to timely file all required reports, make required payroll deductions, and timely pay all taxes and premiums owed, including sales and use taxes and unemployment compensation and workers' compensation premiums. CONTRACTOR shall have and keep current at all times during the term of this Contract all licenses and permits required by law.

39. STATE AUDIT

All records, regardless of physical form, and the accounting practices and procedures of CONTRACTOR relevant to this Contract are subject to examination by the North Dakota

State Auditor, the Auditor’s designee, or Federal auditors. CONTRACTOR shall maintain all of these records for at least three (3) years following completion of this Contract and be able to provide them at any reasonable time. STATE, State Auditor, or Auditor’s designee shall provide reasonable notice.

40. RIGHT TO INSPECT PLACE OF BUSINESS

At reasonable times, STATE may inspect those areas of CONTRACTOR’S place of business that relate to the performance of this Contract. If STATE makes an inspection, CONTRACTOR must provide reasonable assistance.

41. EFFECTIVENESS OF CONTRACT

This Contract is not effective until fully executed by all parties.

CONTRACTOR	STATE OF NORTH DAKOTA
<i><insert business></i>	<i>Acting through its <insert agency></i>
BY: <i><Signature></i>	BY: <i><Signature></i>
<i><Printed Name></i>	<i><Printed Name></i>
<i><Title></i>	<i><Title></i>
Date:	Date:

ATTACHMENT A – Scope OF WORK

If Attachment A is not used delete all text below and replace with “Reserved”.

This attachment can be included as an example of a detailed SOW outlining deliverables to be produced as outcomes of the integrated schedule, including description, completion date, and acceptance criteria (e.g., Business Analysis, Project Plan, Architecture Analysis/Design, Database Analysis/Design, Application Development/Modifications, Quality Assurance and Testing, Reports, Manuals, Implementation, Post Implementation Services, User Training, System Administrator Training).

Detail all of the project deliverables and include a deliverable-based payment schedule. Sample project deliverables and payment schedule are provided below. Modify deliverables and payment schedule to align with your project.

1. ACCEPTANCE PROCESS:

Upon completion of a deliverable or sub-deliverable, the parties shall follow the acceptance process in accordance with the Contract.

2. DELIVERABLE 1: PROJECT KICKOFF MEETING

a. Description:

CONTRACTOR shall coordinate with STATE to schedule an Initial Kickoff Meeting in **<City Name>**, ND, with the core planning team. CONTRACTOR Project Manager shall lead the meeting. The Initial Kickoff Meeting must facilitate the introduction of CONTRACTOR and STATE Core Project Team members and level-set understanding and awareness of project objectives, scope, governance, schedule and project risks and issues.

- 1) CONTRACTOR shall provide content to STATE for a detailed agenda in advance of the meeting, STATE shall finalize and send the agenda to invitees.
- 2) CONTRACTOR and STATE Project Managers shall introduce Project Sponsors, Project Steering Committee, Agency Management Committee, core STATE and CONTRACTOR team members.
- 3) CONTRACTOR and STATE shall facilitate the meeting, discuss and further define the following:
 - i. Effective project communication
 - ii. Project vision, background, purpose and objectives
 - iii. Project governance structure, project roles and responsibilities
 - iv. Preliminary project plan including scope and schedule
 - v. Initial risk assessment

b. Expectations of STATE:

- 1) STATE shall coordinate the logistics and co-facilitate the Kickoff Meeting.
- 2) STATE Project Sponsor and Project Team members shall participate in Kickoff Meeting.

c. Completion Date:

CONTRACTOR will begin working with STATE to schedule the Kickoff Meeting within five (5) working days after the signing of the Contract. The Kickoff Meeting deliverable will be due on <MM/DD/20YY>.

d. Acceptance Criteria:

For the acceptance of this deliverable to occur, the Project Kickoff Meeting results in:

- 1) Facilitation of Kickoff Meeting utilizing a clearly defined agenda
- 2) An introduction of critical CONTRACTOR and STATE resources assigned to the project
- 3) Review of Project Charter to include project governance and structure, roles and responsibilities, project purpose, objectives and scope
- 4) Review of communications approach and structure
- 5) Review and discussion of project risks and issues
- 6) Delivery of electronic feedback of meeting from CONTRACTOR

3. DELIVERABLE 2: PROJECT PLAN

a. Description:

CONTRACTOR will participate, contribute, and collaborate with STATE, led by STATE's project manager, to develop a baseline Project Plan that provides, at a minimum, the following;

- 1) Management plans to control scope, schedule, cost and quality
- 2) An integrated change control process
- 3) A human resource management plan
- 4) A communication management plan
- 5) A risk management plan
- 6) An issue management plan
- 7) A procurement management plan
- 8) A detailed project schedule

b. Expectations of STATE:

- 1) STATE'S Project Manager will be responsible for the final product.
- 2) The Project plan will follow STATE template.

c. Completion Date:

CONTRACTOR will begin working with STATE to create the project plan within five (5) working days after the signing of the Contract. The Final Project Plan deliverable will be due on <MM/DD/20YY>.

d. Acceptance Criteria:

For the acceptance of this deliverable to occur, CONTRACTOR will provide content to

the STATE for the following sections of the Project Plan regarding all services, tasks, and products delivered by CONTRACTOR:

- 1) A mutually agreed upon detailed baseline scope and schedule for the project
- 2) Management plans to control scope, schedule, cost and quality, including the variance
- 3) The governance structure for the project
- 4) Quality assurance and quality control plans
- 5) An integrated change control process
- 6) A human resource management plan
- 7) A communication management plan
- 8) A risk management plan
- 9) An issue management plan
- 10) A procurement management plan
- 11) An implementation and transition plan
- 12) A system performance plan
- 13) A security performance plan

Note: For additional deliverables use the following deliverable as a guideline.

4. DELIVERABLE 3: TEMPLATE

a. Description:

b. Expectations of STATE:

- 1)

c. Completion Date:

- 1)

d. Acceptance Criteria:

For the acceptance of this deliverable to occur, the following criteria must be met:

- 1)

Attachment B – Compensation Details

1. PROJECT DELIVERABLE PAYMENT SCHEDULE:

Note: The project kickoff meeting and the project plan dates should be defined by the contract signing and entered into the table. All deliverables with payments associated to them must be in the following table.

The following table defines all payment points. After completion of the project plan, this table will be amended with all dates filled in.

#	Deliverable	Start	Finish	Deliverable Value	To be Retained (15%)	Invoice
1	Project Kickoff Meeting	<date>	<date>	\$1000	\$150	\$850
2	Project Plan	<date>	<date>	\$<amount>	\$<amount>	\$<amount>
3				\$<amount>	\$<amount>	\$<amount>
4				\$<amount>	\$<amount>	\$<amount>
<X>	Final Production Acceptance			\$<Total Retained>	\$0	\$<Total Retained>
Project Deliverable Total						\$<amount>

2. TRAVEL BUDGET

#	Key Task/Deliverable	Date	# of Trips	# of People Traveling	Budgeted Amount per Person	Total Budgeted Amount
1	Project Kickoff Meeting	<date>	1	5	\$1500	\$7500
2	Project Plan	<date>	<#>	<#>	\$<amount>	\$<amount>
3				<#>	\$<amount>	\$<amount>
4				<#>	\$<amount>	\$<amount>
<X>	Final Production Acceptance			<#>	\$<amount>	\$<amount>
Travel Budget Total						\$<amount>

3. PROFESSIONAL SERVICES

Category	Value
Project Management	\$<amount>
	\$<amount>
Professional Services Total	\$<amount>

4. PROJECT TOTAL

Note: This is a summary total of all the totals in the above tables.

The total budget for the project portion of this contract is \$<amount>

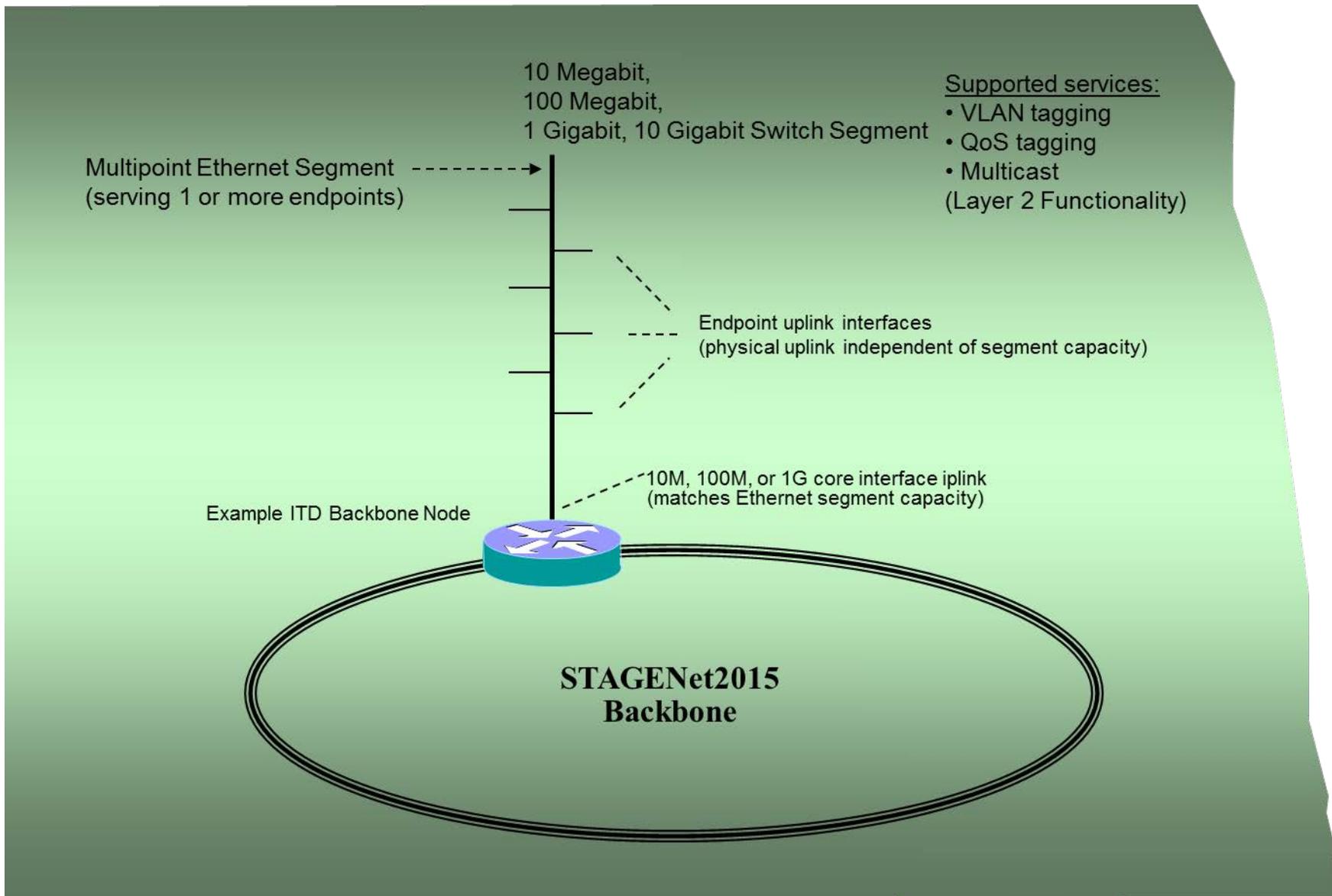
5. ONGOING SERVICES

Time Period	Dollar Amount
Year Two, October 1, 2013, through September 30, 2014	\$<amount>

| Year Three, October 1, 2014, through September 30, 2015 | \$<amount> |

Note: For additional payment information related to the Contractual Amount add details to this attachment.

ATTACHMENT 3
STAGENet CARRIER ETHERNET MODEL



ATTACHMENT 4 ENDPOINT LOCATIONS, 5 SERVICE LEVEL METRICS & 6 COST PROPOSAL ARE PROVIDED AS SEPARATE ATTACHMENTS.