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**INDEFEASIBLE RIGHT OF USE AGREEMENT
Dark Fiber Service**

AGREEMENT #13-067

THIS AGREEMENT is entered into by and between WOODBURY COUNTY, and the State of Iowa, Iowa Telecommunications and Technology Commission operating the Iowa Communications Network, (collectively the "ICN")

In consideration of the mutual covenants contained in this Agreement, the sufficiency of which is acknowledged, the parties agree as follows:

SECTION 1. IDENTITY OF THE PARTIES.

- A. Woodbury County is a political subdivision qualified to provide Indefeasible Right of Use (IRU) Dark Fiber Services from the specified end point locations and is authorized to conduct business in the State of Iowa. Woodbury County's address is 620 Douglas Street, Suite 104, Sioux City, Iowa.
- B. The Iowa Telecommunications and Technology Commission operating the Iowa Communications Network is authorized by Iowa Code Chapter 8D to operate a communications network in the State of Iowa. The Iowa Communications Network's address is 400 East 14th Street, Grimes State Office Building, Des Moines, Iowa 50319

SECTION 2. DEFINITIONS. The following words shall have the meanings set forth below. Words in the singular shall be held to include the plural and vice versa.

- A. "Agreement" or "Indefeasible Right to Use" or "IRU" shall mean this document and any exhibits, amendments or attachments to this document that give ICN the exclusive, unrestricted, and indefeasible right to use the relevant capacity (including equipment, fibers or capacity) for any legal purpose.
- B. "Designated Fiber" shall mean the Designated Dark Fiber, between 6th and Lewis Blvd. and the ICN Room located on the Western Iowa Tech Campus.
- C. "Communications Cable" means a cable of one or more fiber optic strands installed and owned by the County.
- D. "Dark Fiber" means a number of fibers, normally expressed in number of glass strands unless otherwise stated, between two specified locations that have no optronics or electronics attached to it, thus no light/communications signal being transmitted thru the fiber.
- E. "Fiber" means a glass strand or strands which is/are protected by a color-coded buffer tube and which is/are used to transmit a communication signal along the glass strand in the form of pulses of light.
- F. "Communications Equipment" means facilities or equipment provided, owned or installed by the County in, around or on the Designated Fiber.
- G. "ICN" means Iowa Communications Network.
- H. "Patch Panel" means termination point for ingoing and outgoing fiber connections for communications networks.
- I. "TSI" means the WCICC Communications room located in the Security Institute Building.
- J. "ICN Room" means the ICN FOTS room located at the Western Iowa Tech Community College.

SECTION 3. PARTIES' OBLIGATIONS.

A. Woodbury County shall give ICN access to and permission to use fibers number 115, 116 of Woodbury County fiber between the 2nd vault on Fairmont Street approximately 800 feet from Lewis Blvd to the TSI 911 Center Patch Panel L6 (19 -20) and from the TSI 911 Center Patch Panel L6 (29-30) to fibers number 53, 54 of Woodbury County between the TSI and the ICN room. The ICN is allowed one (1), and only one (1), penetration into the above vault on Fairmont and the use of the existing splice case in the County's 144 fiber cable, within this route. Prior notice and approval of access to the leased fibers shall be secured pursuant to Section 3 (H). ICN's use of the fibers will not be restricted except by those restrictions set out by local, state, and federal authorities.

B. Qualifications of Splicing Technicians. ICN shall use certified Fiber Splicing Technicians when splicing into the County's fiber cable. Such splicing is subject to the County's inspection prior to sealing of the splice case

C. Woodbury County shall provide ICN two (2) continuous dark fibers between the Fairmont fiber vault to the TSI- 911 Communications Center Patch Panel.

D. Woodbury County shall provide ICN two (2) continuous dark fibers between the TSI- 911 Communications Center Patch Panel and the ICN room patch panel.

E. Woodbury County, or Woodbury County's authorized contractor, shall perform all maintenance on the Fiber, including any Fiber repairs, Fiber restoration, and Fiber relocation that becomes necessary during the term of this Agreement. In the event of a fiber cut or other need for an emergency repair, Woodbury County will make the repair and bill the party that is responsible for the cut for the entire cost of the repair.

F. Cable damage or fiber cuts are designated as "interruptions of service" and must be acknowledged by Woodbury County within 30 minutes of notification by the ICN Service Desk. Service restoration standards as follows must be met. Timeframes beginning with notification or knowledge of outage are not to exceed:

A. Technicians on site of suspected fiber cut	Two (2) hours
B. Identification of cut location and damaged fibers	Four (4) hours
C. First fiber is restored	Six (6) hours
D. All fibers spliced and all services restored	Eight (8) hours

G. If Woodbury County or its authorized contractor is unable to restore service to the ICN designated fiber within the time frames listed above, Woodbury County will grant the ICN reasonable access for ICN and/or ICN authorized contractors to restore the interrupted service.

H. Installation and access to ICN's Equipment. If ICN or a contractor operating under the direction of ICN performs any splicing, accesses splice cases, or performs any other procedure that could accidentally disrupt the passage of light in the Fibers or otherwise directly impact Woodbury County's Fibers, the activity must be preplanned and approved by the Woodbury County Communications Center five (5) working days in advance and performed during established Communications Maintenance Windows (normally 8 AM - 4 PM) ICN shall call Woodbury County Communications Center at 712-279-6960 to establish all maintenance windows. ICN may modify the Designated Dark Fiber by splicing, terminating, or otherwise extending the connection within its facilities beyond the patch panel.

I. Each Party will notify the other if it detects any trouble that may interrupt service. ICN Service Desk number is 800-572-3940. Woodbury County's Communication Center number is 712-279-6960.

SECTION 4. PAYMENT

A. Woodbury County shall invoice the ICN \$250.00 on a monthly basis.

B. Payment Terms. Woodbury County shall identify services rendered and submit itemized invoices for amounts owed on a monthly basis. ICN shall pay all approved invoices in arrears and in conformance with Iowa Code. ICN may pay in less than 60 days as provided in Iowa Code; however, an election to pay in less than sixty (60) days shall not act as an implied waiver of Iowa Code. Any sums owed to ICN by Woodbury County shall be itemized and deducted from Woodbury County's invoice prior to submission. If the ICN disputes the amount of any invoice, the ICN will notify Woodbury County of the dispute within 30 days of receipt of the invoice. ICN may withhold payment of the disputed amount until the dispute is resolved.

SECTION 5. TERM. This Agreement is effective upon signature by both parties shall continue for five (5) years unless terminated earlier in accordance with the Termination section of this Agreement. The Agreement may be extended for additional 1 year periods if requested by ICN and approved by Woodbury County Board of Supervisors prior to the expiration of the agreement and each successive term.

SECTION 6. EXCLUSION OF WARRANTIES. WOODBURY COUNTY MAKES NO WARRANTY TO ICN OR ANY OTHER ENTITY, WHETHER EXPRESS, IMPLIED OR STATUTORY, AS TO THE INSTALLATION, DESCRIPTION, QUALITY, MERCHANTABILITY, COMPLETENESS, USEFUL LIFE, FUTURE ECONOMIC VIABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE OF THE DESIGNATED FIBER, ANY FIBERS, OR THE SYSTEM, OR AS TO ANY OTHER MATTER, ALL OF WHICH WARRANTIES ARE HEREBY EXPRESSLY EXCLUDED AND DISCLAIMED.

SECTION 7. INDEMNIFICATION. The ICN and Woodbury County shall, only to the extent consistent with Article VII, Section 1 of the Iowa Constitution and Iowa Code Chapters 669 and 670, indemnify and hold each other harmless from and against any and all costs, expenses, losses, claims, damages, liabilities, settlements and judgments arising directly out of the negligence or wrongful acts or omissions of any employee of the ICN and of Woodbury County, respectively, while acting within the scope of the employee's office of employment in connection with the performance of this Agreement. Nothing contained herein shall operate as a limitation on the right of either Party hereto to bring an action for damages against any third party, including indirect, special or consequential damages, based on any acts or omissions of such third party as such acts or omissions may affect the construction, operation or use of the Designated Fiber or the ICN Network; provided, however, that each Party hereto shall assign such rights or claims, execute such documents and do whatever else may be reasonably necessary to enable the other Party to pursue any such action against such third party.

SECTION 8. LIMITATION OF LIABILITY. Notwithstanding any provision of this Agreement to the contrary, in no event shall either party be liable to the other party for any special, incidental, indirect, punitive or consequential damages, whether foreseeable or not, arising out of, or in connection with, transmission interruptions or problems, or any interruption or degradation of service, including, but not limited to, damage or loss of property or equipment, loss of profits or revenue, cost of capital, cost of replacement services, or claims of customers, whether occasioned by any construction, reconstruction, relocation, repair or maintenance performed by, or failed to be performed by, the other party or any other cause whatsoever, including, without limitation, breach of contract, breach of warranty, negligence, or strict liability all claims for which damages are hereby specifically waived.

SECTION 9. COUNTY'S PROPERTY. Except as provided for in Section 3(H), ICN shall not, and shall not permit others, to rearrange, disconnect, remove, attempt to repair, or otherwise tamper with any of Woodbury County's property without the written consent of Woodbury County. The Parties agree that no party other than Woodbury County or a contractor under the direct supervision of Woodbury County shall be permitted to perform maintenance or splicing on the Fiber.

SECTION 10. ICN EQUIPMENT. ICN shall have sole responsibility for installation and operation of ICN Equipment. Woodbury County shall not be responsible for the operation or maintenance of any ICN Equipment. Woodbury County shall not be responsible for the transmission or reception of communications or signals by ICN's Equipment or for the quality of, or defects in, such transmission or reception.

SECTION 11. TERMINATION.

A. Termination for Cause. Either party may terminate this Agreement if the other party breaches a material obligation under the Agreement and fails to correct the breach within 30 days of receiving written notice of the breach from the non-breaching party.

B. Termination for Change in Law. Woodbury County shall have the right to terminate this Agreement without penalty by giving 60 days' written notice to ICN if one of the following events occurs: (a) Adequate funds are not appropriated or granted to allow Woodbury County to operate as required to fulfill its obligations under this Agreement; (b) Funds are de-appropriated or not allocated or if funds needed by Woodbury County at Woodbury County's Chairman's sole discretion, are insufficient for any reason; (c) Woodbury County's authorization to operate is withdrawn or there is a material change in the programs administered by Woodbury; or (d) Woodbury County's duties are substantially modified, at any time during the course of the Agreement or extensions of the Agreement.

C. Termination Without Cause. Either party may terminate this Agreement without penalty by giving 180 days written notice to the other party.

SECTION 12. CONTRACT ADMINISTRATION.

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

B. Third Party Beneficiaries. There are no third party beneficiaries to this Agreement. This Agreement is intended only to benefit ICN and Woodbury County. This Agreement may not be assigned by ICN without the written consent of Woodbury County.

C. Choice of Law and Forum. The laws of the State of Iowa shall govern and determine all matters arising out of or in connection with this Agreement without regard to the choice of law provisions of Iowa law. In the event any judicial proceeding is commenced in connection with this Agreement, the exclusive jurisdiction for the proceeding shall be brought in Woodbury County District Court for the State of Iowa, Sioux City, Iowa. This provision shall not be construed as waiving any immunity to suit or liability including without limitation sovereign immunity in State or Federal court, which may be available to ICN or Woodbury County.

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

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

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

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

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

WOODBURY COUNTY: Board of Supervisors
620 Douglas Street, Suite 104
Sioux City, Iowa 51101

ICN: Iowa Communications Network
ATTN: Contracting Officer
Grimes Office Building
400 E. 14th St.
Des Moines, IA 50319

Each such notice shall be deemed to have been provided at the earliest of the following: (a) at the time it is actually received; or (b) in the case of overnight hand delivery courier or services such as Federal Express with guaranteed next day delivery, within one day; or (c) in the case of registered U.S. Mail, within five (5) days, or (d) when verified by automated receipt or electronic logs if sent by facsimile or email. From time to time, the parties may change the name and address of a party designated to receive notice. Such change of the designated person shall be in writing to the other party and as provided herein.

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

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

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

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

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

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

O. Taxes: Federal, State and Local. The ICN is a tax exempt entity and will be responsible to provide documentation for Federal, State or Local Taxes exemption information.

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

Q. Assignment and Delegation. This Agreement may not be assigned, transferred or conveyed in whole or in part without the prior written consent of the other party, which shall not be unduly withheld.

SECTION 13. EXECUTION.

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

WOODBURY COUNTY

IOWA COMMUNICATIONS NETWORK

By: 

By: 

Printed name: Larry D. Clausen

Printed name: Mark W. Johnson

Title: Chairman

Title: Administration Director

Date: 11-5-13

Date: 10-22-13