

**ATTACHMENT B**

**DRAFT CONTRACT**

**FOR**

**TELECOMMUNICATION INFRASTRUCTURE PROJECT SERVICES 2**

**RFP NO: DMS-18/19-045**

**BETWEEN**

**THE STATE OF FLORIDA**

**DEPARTMENT OF MANAGEMENT SERVICES**

**AND**

**<<PARTY NAME>>**

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## Contract

This Contract is between the STATE OF FLORIDA, DEPARTMENT OF MANAGEMENT SERVICES (Department), an agency of the State of Florida with offices at 4050 Esplanade Way, Tallahassee, Florida 32399-0950, and [INSERT VENDOR NAME] (Contractor) each a "Party" and collectively referred to herein as the "Parties".

The Contractor responded to the Department's Request for Proposals (RFP) No. DMS-18/19-045, "Telecommunication Infrastructure Project Services 2." The Parties enter into this Contract in accordance with the terms and conditions of the solicitation.

The Contractor was awarded to provide Division 1 commodities and services in the following Region(s):

The Contractor was awarded to provide Division 2 commodities and services in the following Region(s):

The Parties therefore agree as follows.

### SECTION 1. TERM

#### 1.1 Initial Term

The initial term of the Contract will be for three (3) years. The initial term shall begin on the last date the Contract is signed by all Parties.

#### 1.2 Renewal Term

Upon written agreement, the Department and the Contractor may renew the Contract in whole or in part, for renewal terms up to three (3) years in accordance with section 287.057(13), Florida Statutes, and Rule 60A-1.048, Florida Administrative Code (F.A.C). Any renewals shall be contingent upon satisfactory performance evaluations by the agency and subject to the availability of funds. The Contractor shall not charge any costs for renewing the contract.

### SECTION 2. PAYMENTS

#### 2.1 Pricing

During the term of the Contract (including renewal years), the prices offered by the Contractor shall not exceed the pricing as stated in its Proposal, Attachment C - Pricing Workbook, incorporated by reference into this Contract.

#### 2.2 Price Adjustments

During the term of the Contract (including optional renewal years), the Department encourages the awarded Respondent to offer price decreases that are in line with increased efficiencies and added infrastructure enhancements. The Department reserves the right to further negotiate reduction in pricing for the renewal years.

#### 2.3 Service Level Agreement

Service Level Agreement (SLA) dictate the levels of service delivery for individual services. One, multiple, or recurring violations of SLAs, as described in Attachment A – Statement of Work, may be considered a breach of the Contract and may result in a

suspension or cancellation of the Contract. The Department reserves the right to determine when violation(s) of SLAs constitute a breach of the Contract or will result in a suspension or cancellation of the Contract. The Department's determination of a breach of the Contract will depend on the number and severity of the SLA violation(s), disruption to service, Contractor's response, and other factors.

The resulting damages to the Department or Customer(s) from such a breach are by their nature impossible to ascertain presently and will be difficult to ascertain in the future. The issues involved in determining such damages will be numerous, complex, and unreasonably burdensome to prove. The Parties acknowledge that these financial consequences are liquidated damages, exclusive of any other right to damages, not intended to be a penalty and solely intended to compensate for unknown and unascertainable damages. The Contractor therefore agrees to credit the Department consistently with Attachment A – Statement of Work.

In addition to the processes set forth in the Contract (e.g., SLAs), if the Department determines that there is a performance deficiency that requires correction by the Contractor, then the Department will notify the Contractor. The correction must be made within a timeframe specified by the Department. The Contractor must provide the Department with a corrective action plan describing how the Contractor will address all performance deficiencies identified by the Department.

If the corrective action plan is unacceptable to the Department, or implementation of the plan fails to remedy the performance deficiencies, the Department will retain ten percent (10%) of the total invoice amount and may suspend or terminate the Contract. The retainage will be withheld until the Contractor resolves the performance deficiencies. If the performance deficiencies are resolved, the Contractor may invoice the Department for the retained amount. If the Contractor fails to resolve the performance deficiencies, the retained amount will be forfeited in order to compensate the Department for the performance deficiencies and the Department may terminate the Contract.

#### **2.4 Liquidated Damages**

The Contractor will promptly notify the Department or Customer upon becoming aware of any circumstances that may reasonably be expected to jeopardize the timely and successful completion (or delivery) of any commodity or contractual service. The Contractor will use commercially reasonable efforts to avoid or minimize any delays in performance and will inform the Department or Customer of the steps the Contractor is taking or will take to do so, and the projected actual completion (or delivery) time. If the Contractor believes a delay in performance by the Department or Customer has caused or will cause the Contractor to be unable to perform its obligations on time, the Contractor will promptly so notify the Department or Customer and use commercially reasonable efforts to perform its obligations on time notwithstanding the Department or Customer's delay.

The Contractor acknowledges that untimely performance or other material noncompliance will damage the Department or Customer, but by their nature such damages may be difficult to ascertain. Accordingly, any liquidated damages provisions stated in the solicitation will apply to the Contract. Liquidated damages are not intended to be a penalty and are solely intended to compensate for damages.

## **2.5 Detail of Bills**

The Contractor shall submit bills for fees or other compensation for services or expenses in detail sufficient enough for a proper pre-audit and post-audit. The Department reserves the right to request additional documentation as needed.

## **2.6 Bills for Travel**

Bills for travel are not permitted. Travel expenses are not reimbursable unless specifically authorized by the Customer in writing, and may be reimbursed only in accordance with section 112.061, F.S.

## **2.7 Payments**

The Parties agree that payments under this Contract shall be made monthly in arrears. The Contractor will be paid upon submittal of an invoice to the Department after delivery and acceptance of commodities or contractual services is confirmed, and the invoice is accepted by the Customer.

## **2.8 Appropriations**

The State of Florida's performance and obligation to pay under this Contract is contingent upon an annual appropriation by the Legislature.

## **2.9 Return of Funds**

Contractor will return any overpayments due to unearned funds or funds disallowed pursuant to the terms of the Contract that were disbursed to the Contractor by the Department or Customer. The Contractor must return any overpayment within forty (40) calendar days after either discovery by the Contractor, its independent auditor, or notification by the Department or Customer of the overpayment.

## **2.10 Payment Audit**

Records of costs incurred under terms of the Contract will be maintained in accordance with Section 13 of the Contract. Records of costs incurred will include the Contractor's general accounting records, together with supporting documents and records of the Contractor and all subcontractors performing work, and all other records of the Contractor and subcontractors considered necessary by the Department, State of Florida's Chief Financial Officer or the Office of the Auditor General for audit.

## **SECTION 3. CONTRACT DOCUMENT**

This Contract sets forth the entire understanding of the Parties and consists of the documents listed below. In the event any of these documents conflict, the conflict will be resolved in the following order of priority (highest to lowest):

1. This Contract Document and all attachments.  
Attachment A – Statement of Work  
Attachment C – Pricing Workbook  
Attachment D – Contact Worksheet  
Attachment E – Region Map  
Attachment F – Project Commencement Submittal Section A  
Attachment G – Project Commencement Submittal Section C  
Attachment H – Project Final Submittal Section A  
Attachment I – Project Final Submittal Section B

Attachment J – Definitions and Acronyms

Form 10 - Affidavit of Preferred Pricing

2. RFP No. DMS-18/19-045 and addenda, in reverse order of posting on the Vendor Bid System.
3. Contractor's Proposal to the RFP
4. The General Contract Conditions - PUR 1000 form, which are incorporated by reference in accordance with Rule 60A-1.002(7), F.A.C., and are available at:  
[https://www.dms.myflorida.com/content/download/2933/11777/PUR\\_1000\\_General\\_Contract\\_Conditions.pdf](https://www.dms.myflorida.com/content/download/2933/11777/PUR_1000_General_Contract_Conditions.pdf)

## **SECTION 4. CONTRACT ADMINISTRATION**

### **4.1 Composition and Priority**

The Contractor agrees to provide commodities or contractual services within the manner and at the location specified in the Contract and any exhibits to the Contract. Additionally, the terms of the Contract supersede the terms of any and all prior or contemporaneous agreements between the Parties.

### **4.2 Department Contract Administrator**

The Contract Administrator whose responsibilities will be to maintain this Contract is as follows:

Caitlen Boles  
Departmental Purchasing  
Department of Management Services  
4050 Esplanade Way, Suite 335.2Y  
Tallahassee, FL 32399  
Telephone: (850) 410-1423  
Email: [dms.purchasing@dms.myflorida.com](mailto:dms.purchasing@dms.myflorida.com)

In the event that the Department changes the Contract Administrator, the Department will notify the Contractor in writing via email. Such changes do not require a formal written amendment to the Contract.

### **4.3 Contract Manager**

The Contract Manager who is primarily responsible for overseeing the Contractor's performance of its duties and obligations pursuant to the terms of this Contract shall be as follows:

TBD  
Division of Telecommunications  
Florida Department of Management Services  
4030 Esplanade Way, Suite XXX  
Tallahassee, FL 32399  
Telephone: XXX  
Email:

In the event that the Department changes the Contract Manager, the Department will notify the Contractor in writing via email. Such changes do not require a formal written amendment to the Contract.

#### **4.4 Contractor's Point of Contact**

The Contractor's Contract Manager, who is primarily responsible for the Contractor's oversight of the Contract performance, will be identified in a separate writing to the Department upon Contract signing in the following format:

Jane Doe  
<Insert Contractor name>  
<Insert Contractor's physical address>  
Telephone: (XXX) 555-XXXX  
Email: jane.doe@xxxxx.com

In the event that the Contractor changes its Contract Manager, the Contractor will notify the Department's Contract Manager in writing via email. Such a change does not require an amendment to the Contract.

#### **4.5 Diversity Reporting**

The State of Florida is committed to supporting its diverse business industry and population through ensuring participation by minority-, woman-, and veteran-owned small business enterprises in procurements and contracts. The Department of Management Services encourages supplier diversity through certification of minority-, woman-, and veteran-owned small business enterprises, advocacy, outreach, and networking through regional business events. For additional information, please contact the Office of Supplier Diversity at (850) 487-0915 or [osdhelp@dms.myflorida.com](mailto:osdhelp@dms.myflorida.com).

Upon request, the Contractor will report to the Department its spend with business enterprises certified by the OSD. These reports must include the time period covered, the name and Federal Employer Identification Number of each business enterprise utilized during the period, commodities and contractual services provided by the business enterprise, and the amount paid to the business enterprise on behalf of each Customer purchasing under the Contract.

#### **4.6 Dispute Resolution, Governing Law and Venue**

Any dispute concerning performance of the Contract shall be decided by the Department's Contract Manager, who will reduce the decision to writing and serve a copy on the Contractor. The decision of the Department's Contract Manager shall be final and conclusive. Exhaustion of this administrative remedy is an absolute condition precedent to the Contractor's ability to pursue legal action related to the Contract or any other form of dispute resolution. The laws of the State of Florida govern the Contract. The Parties submit to the jurisdiction of the courts of the State of Florida exclusively for any legal action related to the Contract. Further, the Contractor hereby waives any and all privileges and rights relating to venue it may have under Chapter 47, F.S., and any and all such venue privileges and rights it may have under any other statute, rule, or case law, including, but not limited to those based on convenience. The Contractor hereby submits to venue in the county chosen by the Department.

### **SECTION 5. COMPLIANCE WITH LAWS**

#### **5.1 Compliance**

The Contractor shall comply with all laws, rules, codes, ordinances, and licensing requirements that are applicable to the conduct of its business, including those of Federal,

State and local agencies having jurisdiction and authority Chapter 287, Florida Statutes, Chapters 60A-1 and 60FF, Florida Administrative Code. The Contractor shall comply with section 274A of the Federal Immigration and Nationality Act, the Health Insurance Portability and Accountability Act (HIPAA) (including executing any Business Associate Agreements as requested by Customers, if applicable), the Americans with Disabilities Act and all prohibitions against discrimination on the basis of race, religion, sex, creed, national origin, handicap, marital status or veteran's status. The Contractor shall comply with Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, and the United States Export Administration regulations and Wassenaar Agreement. The Contractor shall comply with all Federal Communications Commission (FCC) regulations. Violation of any laws, rules, codes, ordinances or licensing requirements shall be grounds for Contract termination or non-renewal of the Contract.

## **5.2 Notice of Legal Actions**

The Contractor shall notify the Department of any regulatory or legal actions filed against it for a violation of any laws, rules, codes, ordinances, or licensing requirements within 30 days of the action being filed. The Contractor shall notify the Department of any legal actions filed against it for a breach of a contract of similar size and scope to this Contract within 30 days of the action being filed. Failure to notify the Department of a legal action within 30 days of the action shall be grounds for termination or nonrenewal of the Contract. The Contractor shall immediately notify the Department in writing if its ability to perform is compromised in any manner during the term of the Contract.

## **5.3 Convicted and Discriminatory Vendors**

In accordance with sections 287.042, 287.133, and 287.134, F.S., an entity or affiliate who is on the Suspended Vendor List, Convicted Vendor List, or the Discriminatory Vendor List may not perform work as a contractor, supplier, Subcontractor, or consultant under the Contract. The Contractor must notify the Department if it or any of its suppliers, Subcontractors or consultants have been placed on the Suspended Vendor List, Convicted Vendor List or the Discriminatory Vendor List during the term of the Contract.

## **5.4 Cooperation with the Inspector General**

Pursuant to subsection 20.055(5), Florida Statutes, the Contractor and any Subcontractors understand and will comply with their duty to cooperate with the Inspector General in any investigation, audit, inspection, review, or hearing. Upon request of the Inspector General or any other authorized State official, the Contractor must provide any type of information the Inspector General deems relevant to the Contractor's integrity or responsibility. Such information may include, but will not be limited to, the Contractor's business or financial records, documents, or files of any type or form that refer to or relate to the Contract. The Contractor will retain such records for five (5) years after the expiration of the Contract, or the period required by the General Records Schedules maintained by the Florida Department of State (available at: <http://dos.myflorida.com/library-archives/records-management/general-records-schedules/>), whichever is longer. The Contractor agrees to reimburse the State of Florida for the reasonable costs of investigation incurred by the Inspector General or other authorized State of Florida official for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the State of Florida which results in the suspension or debarment of the Contractor. Such costs will include, but will not be limited to: salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees.

## **SECTION 6. DEPARTMENT OF STATE, CORPORATE STATUS CERTIFICATE**

Contractor and Subcontractors that assert corporate status must provide the Department conclusive evidence, per section 607.0127, Florida Statutes, of a certificate of status if a Florida corporation or of a certificate of authorization if a foreign corporation to be obtained from the Florida Department of State per section 607.0128, Florida Statutes. Such certificate of status or certification for authorization must not be subject to any qualification stated in the certificate and must be maintained through the life of the Contract.

## **SECTION 7. WORKER'S COMPENSATION INSURANCE**

### **7.1 Workers' Compensation Insurance**

The Contractor shall maintain Workers' Compensation insurance as required under the Florida Workers' Compensation Law or the workers' compensation law of another jurisdiction where applicable. The Contractor must require all subcontractors to similarly provide Workers' Compensation Insurance for all of the latter's employees. In the event work is being performed by the Contractor under the resulting contract and any class of employees performing the work is not protected under Worker's Compensation statutes, the Contractor must provide, and cause each subcontractor to provide adequate insurance, satisfactory to the Department, for the protection of employees not otherwise protected.

### **7.2 General Liability Insurance**

The Contractor shall maintain insurance sufficient to adequately protect the Department and Customers from all claims or liability for personal injury or property damage arising out of, resulting from the performance of, or in connection with the operation of, the Contract. All insurance shall be with insurers authorized to transact the applicable line of insurance business in the State of Florida. The Contractor shall provide Certification(s) of Insurance evidencing that all appropriate coverage is in place and showing the Department to be an additional insured.

The Contractor must submit via email, to the Department's Contract Manager, notice of any cancellation or nonrenewal at least ten (10) calendar days prior to cancellation or nonrenewal. In the event of cancellation or nonrenewal, the Contractor will be responsible for securing a replacement insurance policy in accordance with this section.

## **SECTION 8. PUBLIC RECORDS**

### **8.1 Access to Public Records**

The Department may unilaterally cancel this Contract for refusal by the Contractor to comply with this section by not allowing public access to all public records, as defined in Chapter 119, Florida Statutes, made or received by the Contractor in conjunction with the Contract.

### **8.2 Redacted Copies of Confidential Information**

If the Contractor considers any portion of any documents, data, or records submitted to the Department to be confidential, proprietary, trade secret or otherwise not subject to disclosure pursuant to Chapter 119, Florida Statutes, the Florida Constitution or other authority, the Contractor must simultaneously provide the Department with a separate redacted copy of the information it claims as Confidential and briefly describe in writing the grounds for claiming exemption from the public records law, including the specific

statutory citation for such exemption. This redacted copy shall contain the Contract name and number, and shall be clearly titled "Confidential." The redacted copy should only redact those portions of material that the Contractor claims is confidential, proprietary, trade secret or otherwise not subject to disclosure.

### **8.3 Request for Redacted Information**

In the event of a public records or other disclosure request pursuant to Chapter 119, Florida Statutes, the Florida Constitution or other authority, to which documents that are marked as "Confidential" are responsive, the Department will provide the Contractor-redacted copies to the requestor. If a requestor asserts a right to the Confidential Information, the Department will notify the Contractor such an assertion has been made. It is the Contractor's responsibility to assert that the information in question is exempt from disclosure under Chapter 119 or other applicable law. If the Department becomes subject to a demand for discovery or disclosure of the Confidential Information of the Contractor under legal process, the Department shall give the Contractor prompt notice of the demand prior to releasing the information labeled "Confidential" (unless otherwise prohibited by applicable law). The Contractor shall be responsible for filing the appropriate motion or objection in response to the request for discovery and for defending its determination that the redacted portions of its response are confidential, proprietary, trade secret, or otherwise not subject to disclosure. The Department will provide materials designated trade secret or otherwise confidential if the Contractor fails to take appropriate and timely action to protect the materials designated as trade secret or otherwise confidential.

### **8.4 Indemnification**

The Contractor shall protect, defend, indemnify, and hold harmless the Department for any and all claims, arising from or relating to the Contractor's determination that the redacted portions of its response are confidential, proprietary, trade secret, or otherwise not subject to disclosure. If the Contractor fails to submit a redacted copy of information it claims is Confidential, the Department is authorized to produce the entire documents, data, or records submitted to the Department in answer to a public records request or other lawful request for these records. The Department may use counsel of its choosing to defend any such claims, and the Contractor shall promptly pay the Department's invoices for legal services on a monthly basis for all costs and expenses, including legal fees, incurred in defending such claims.

### **8.5 Contractor as Agent**

Solely for the purposes of this section, the Contract Manager is the agency custodian of public records. If, under this Contract, the Contractor is providing services and is acting on behalf of a public agency, as provided by section 119.0701, Florida Statutes, the Contractor shall:

**8.5.1** Keep and maintain public records required by the public agency to perform the service.

**8.5.2** Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within reasonable time and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.

- 8.5.3** Ensure that public records that are exempt or confidential and exempt from public records disclosure are not disclosed except as authorized by law for the duration of the Contract term and following the completion of the Contract if the Contractor does not transfer the records to the public agency.
- 8.5.4** Upon completion of the Contract, transfer, at no cost, to the public agency all public records in possession of the Contractor or keep and maintain public records required by the public agency to perform the service. If the Contractor transfers all public records to the public agency upon completion of the Contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.
- 8.5.5 IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT THE TELEPHONE NUMBER, EMAIL ADDRESS AND MAILING ADDRESS PROVIDED FOR THE CONTRACT MANAGER**

## **SECTION 9. INTELLECTUAL PROPERTY**

### **9.1 Intellectual Property**

The Parties do not anticipate that any intellectual property will be developed as a result of this contract. However, unless specifically addressed in the Contract, intellectual property rights to all property created or otherwise developed by the Contractor for the Department or the Customer will be owned by the State of Florida at the completion of the Contract.

Any inventions or discoveries developed in the course of or as a result of services performed under the Contract which are patentable pursuant to 35 U.S.C. § 101 are the sole property of the State of Florida. Contractor must inform the Customer of any inventions or discoveries developed or made in connection with the Contract and will be referred to the Florida Department of State for a determination on whether patent protection will be sought for the invention or discovery. The State of Florida will be the sole owner of any and all patents resulting from any invention or discovery made in connection with the Contract.

Contractor must notify the Department or State of Florida of any publications, artwork, or other copyrightable works developed in connection with the Contract. All copyrights created or developed in connection with the Contract are the sole property of the State of Florida.

## **9.2 Indemnification**

The Contractor agrees to indemnify, defend, and hold the Department, Customer, the State of Florida, its officers, employees and agents harmless from all fines, claims, assessments, suits, judgments, or damages, including consequential, special, indirect, and punitive damages, including court costs and attorney's fees, arising from or relating to violation or infringement of a trademark, copyright, patent, trade secret or intellectual property right or out of any acts, actions, breaches, neglect or omissions of the Contractor, its employees, agents, subcontractors, assignees or delegates related to the Contract, as well as for any determination arising out of or related to the Contract that the Contractor or Contractor's employees, agents, subcontractors, assignees or delegates are not independent contractors in relation to the Department. The Contract does not constitute a waiver of sovereign immunity or consent by the Department or the State of Florida or its subdivisions to suit by third parties.

Without limiting this indemnification, the Department or Customer may provide the Contractor (1) written notice of any action or threatened action, (2) the opportunity to take over and settle or defend any such action at Contractor's sole expense, and (3) assistance in defending the action at Contractor's sole expense.

## **SECTION 10. E-VERIFY**

Pursuant to State of Florida Executive Order Number 11-116, the Contractor is required to utilize the U.S. Department of Homeland Security's (DHS) E-Verify system to verify the employment of all new employees hired by the Contractor during the Contract term. Also, the Contractor shall include in related subcontracts a requirement that Subcontractors performing work or providing services pursuant to the Contract utilize the E-Verify system to verify employment of all new employees hired by the Subcontractor during the Contract term.

In order to implement this provision, the Contractor shall provide a copy of its DHS Memorandum of Understanding (MOU) to the Contract Manager within five (5) days of Contract execution.

If the Contractor is not enrolled in DHS E-Verify System, it will do so within five (5) days of notice of Contract award, and provide the Contract Manager a copy of its MOU within five (5) days of Contract execution. The link to E-Verify is provided below.

<http://www.uscis.gov/e-verify>

Upon each Contractor or Subcontractor new hire, the Contractor shall provide a statement within five (5) days to the Contract Manager identifying the new hire with its E-Verify case number.

## **SECTION 11. SCRUTINIZED COMPANIES – TERMINATION BY THE DEPARTMENT**

The Department may, at its option, terminate the Contract if the Contractor is found to have submitted a false certification as provided under Section 287.135(5), Florida Statutes, or been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or been engaged in business operations in Cuba or Syria, or to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel.

## **SECTION 12. GEOGRAPHIC LOCATION OF DATA AND SERVICES**

The State of Florida requires that all data generated, used or stored by the Contractor pursuant to the Contract will reside and remain in the United States and will not be transferred outside of the United States. The State of Florida also requires that all services provided under the Contract, including call center or other help services, will be performed by persons located in the United States.

### **SECTION 13. RECORDS RETENTION**

The Contractor shall retain sufficient documentation to substantiate claims for payment under the Contract and all other records, electronic files, papers and documents that were made in relation to this Contract. Contractor must retain all documents related to the Contract for five years after expiration of the Contract, or, if longer, the period required by the General Records Schedules maintained by the Florida Department of State available at: <http://dos.myflorida.com/library-archives/records-management/general-records-schedules/>.

### **SECTION 14. GRATUITIES AND LOBBYING**

#### **14.1 Gratuities**

The Contractor will not, in connection with the Contract, directly or indirectly (1) offer, give, or agree to give anything of value to anyone as consideration for any State of Florida officer or employee's decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty, or (2) offer, give, or agree to give to anyone anything of value for the benefit of, or at the direction or request of, any State of Florida officer or employee.

#### **14.2 Lobbying**

In accordance with sections 11.062 and 216.347, F.S., Contract funds are not for the purpose of lobbying the Legislature, the judicial branch, or the Department. Pursuant to subsection 287.058(6), F.S., the Contract does not prohibit the Contractor from lobbying the executive or legislative branch concerning the scope of services, performance, term, or compensation regarding the Contract, after the Contract execution and during the Contract's term.

### **SECTION 15. VENDOR OMBUDSMAN**

A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this office are found in section 215.422, Florida Statutes, which include disseminating information relative to prompt payment and assisting vendors in receiving their payments in a timely manner from a Customer. The Vendor Ombudsman may be contacted at (850) 413-5516.

### **SECTION 16. MONITORING BY THE DEPARTMENT**

The Contractor shall permit all persons who are duly authorized by the Department to inspect and copy any records, papers, documents, facilities, goods and services of the Contractor that are relevant to this Contract and to interview clients, employees and Subcontractor employees of the Contractor to assure the Department of satisfactory performance of the terms and conditions of this Contract. Following such review, the Department may deliver to the Contractor a written report of its finding(s) and direct the development, by the Contractor, of a corrective action plan. This provision will not limit the Department's termination rights.

## **SECTION 17. AUDITS**

The Department may conduct or have conducted performance and/or compliance audits of any and all areas of the Contractor and/or subcontractors as determined by the Department. The Department may conduct an audit and review all the Contractor's and Subcontractors' data and records that directly relate to the Contract Services. To the extent necessary to verify the Contractor's fees and claims for payment under the Contract, the Contractor's agreements or contracts with Subcontractors, partners or agents of the Contractor, pertaining to this Contract, may be inspected by the Department upon 15 days' notice, during normal working hours and in accordance with the Contractor's facility access procedures where facility access is required. Release statements from its Subcontractors, partners or agents are not required for the Department or its designee to conduct compliance and performance audits on any of the Contractor's contracts relating to this Contract. The State's Chief Financial Officer and the Office of the Auditor General also have authority to perform audits and inspections.

## **SECTION 18. BACKGROUND SCREENING AND WARRANTY OF SECURITY**

All Contractor employees, subcontractors and agents performing work under the Contract must comply with all security and administrative requirements of the Department or the Customer.

### **18.1 Background Screening**

In addition to any background screening required by the Contractor as a condition of employment, the Contractor warrants that it will conduct a criminal background screening of, or ensure that such a screening is conducted for, each of its employees, Subcontractor personnel, independent contractors, leased employees, volunteers, licensees or other person, hereinafter referred to as "Person" or "Persons," operating under their direction with Access to State of Florida Data or who enter either the premises or facilities where State of Florida Data is stored or accessible., as well as those who directly perform services under the Contract, whether or not the Person has access to State of Florida Data.

The Contractor warrants that all Persons will have passed the Background Screening described herein before they have Access to Data or begin performing services under the Contract. The look-back period for such background screenings shall be for a minimum of six years where six years of historical information is available.

As used in this section, "Access" means to review, inspect, approach, instruct, communicate with, store data in, retrieve data from, or otherwise make use of any data, regardless of type, form, or nature of storage. Access to a computer system or network includes local and remote access.

As used in this section, "Data" means a representation of information, knowledge, facts, concepts, computer software, computer programs or instructions, whether it is exempt, confidential, or personal health information. Data may be in any form, including but not limited to, storage media, computer memory, in transit, presented on a display device, or in physical media such as paper, film, microfilm, or microfiche. Data includes the original form of the Data and all metadata associated with the Data.

The minimum background check process will include a check of the following databases through a law enforcement agency or a Professional Background Screener accredited by the National Association of Professional Background Screeners or a comparable standard:

- Social Security Number Trace; and
- Criminal Records (Federal, State and County criminal felony and misdemeanor, national criminal database for all states which make such data available).

The Contractor agrees that each Person will be screened as a prior condition for performing services or having access to State of Florida Data. The Contractor is responsible for any and all costs and expenses in obtaining and maintaining the criminal background screening information for each Person described above. The Contractor will maintain documentation of the screening in the Person's employment file. The Contractor will abide by all applicable laws, rules and regulations including, but not limited to the Fair Credit Reporting Act and/or any equal opportunity laws, rules, regulations or ordinances.

#### **18.1.1 Disqualifying Offenses**

If at any time it is determined that a Person has a criminal misdemeanor or felony record regardless of adjudication (e.g., adjudication withheld, a plea of guilty or nolo contendere, or a guilty verdict) within the last six years from the date of the court's determination for the crimes listed below, or their equivalent in any jurisdiction, the Contractor is required to immediately remove that Person from any position with access to State of Florida Data or directly performing services under the Contract. The disqualifying offenses are:

- Computer related crimes;
- Information technology crimes;
- Fraudulent practices;
- False pretenses;
- Frauds;
- Credit card crimes
- Forgery;
- Counterfeiting;
- Violations involving checks and drafts;
- Misuse of medical or personnel records; and
- Felony theft

If the Contractor finds a Disqualifying Offense for a Person within the last six years from the date of the court's disposition, it may obtain information regarding the incident and determine whether that Person should continue providing services under the Contract or have access to State of Florida Data. The Contractor will consider the following factors only in making the determination: i.) nature and gravity of the offense, ii.) the amount of time that lapsed since the offense, iii.) the rehabilitation efforts of the person and iv.) relevancy of the offense to the job duties of the Person. If the Contractor determines that the Person should be allowed access to State of Florida Data, then Contractor shall maintain all criminal background screening information and the rationale for such access in the

Person's employment file. The Contractor will promptly notify the Department of any determinations made pursuant to this subsection.

#### **18.1.2 Refresh Screening**

The Contractor will ensure that all background screening will be refreshed every five years from the time initially performed for each Person during the Term of the Contract.

#### **18.1.3 Annual Certification**

The Contractor is required to submit an annual certification demonstrating compliance with the background screening to the Department by December 31 of each Contract year.

#### **18.1.4 Self-Disclosure**

The Contractor shall ensure that all Persons have a responsibility to self-report within three calendar days to the Contractor any updated court disposition regarding any disqualifying offense, regardless of adjudication (adjudication withheld, a plea of guilty or nolo contendere, or a guilty verdict). The Contractor shall immediately reassess whether to disallow that Person access to any State of Florida premises or from directly performing services under the Contract. Additionally, the Contractor shall require that the Person complete an annual certification that they have not received any additional criminal misdemeanor or felony record regardless of adjudication (adjudication withheld, a plea of guilty or nolo contendere, or a guilty verdict) for the Disqualifying Offenses and shall maintain that certification in the employment file.

In addition, the Contractor shall ensure that all Persons have a responsibility to self-report to the Contractor within three calendar days, any arrest for any Disqualifying Offense. The Contractor shall notify the Contract Manager within 24 hours of all details concerning any reported arrest.

### **18.2 Duty to Provide Secure Data**

The Contractor will maintain the security of State of Florida Data including, but not limited to, a secure area around any display of such Data or Data that is otherwise visible. The Contractor will also comply with all HIPAA requirements and any other state and federal rules and regulations regarding security of information. Data cannot be disclosed to any person or entity that is not directly approved to participate in the scope of work set forth in this Contract.

### **18.3 Warranty of Security**

Unless otherwise agreed in writing, the Contractor and its Subcontractors will not perform any of the services from outside of the United States, and the Contractor will not allow any State of Florida Data to be sent by any medium, transmitted, or accessed outside of the United States. For purposes of this subsection, "State of Florida Data" does not include media transmissions required to complete telephone or video calls for purposes of conducting business.

The Contractor agrees that a violation of items listed above will result in immediate and irreparable harm to the Customer and will entitle the Customer to a credit as provided in the Contract documents. This credit is intended only to cover the Customer's internal

staffing and administrative costs as well as the diminished value of services provided under the Contract and will not preclude the Customer from recovering other damages it may suffer as a result of such violation. For purposes of determining the damages due hereunder, a group of violations relating to a common set of operative facts (e.g., same location, same time period, same off-shore entity) will be treated as a single event. A violation of this provision will also entitle the Customer to recover any damages arising from a breach of this section and constitutes an event of default.

The Contractor agrees that a violation of items listed above will result in immediate and irreparable harm to the Department and will entitle the Department to a credit of \$50,000 per violation, with a total cap of \$500,000 per event. This credit is intended only to cover the Department's internal staffing and administrative costs as well as the diminished value of Services provided under the Contract and will not preclude the Department from recovering other damages it may suffer as a result of such violation. For purposes of determining the damages due hereunder, a group of violations relating to a common set of operative facts (e.g., same location, same time period, same off-shore entity) will be treated as a single event. A violation of this provision will also entitle the Department to recover damages, if any, arising from a breach of this section and constitutes an event of default.

The Contractor must notify the Department and the Customer as soon as possible, in accordance with the requirements of section 501.171, F.S., if applicable, and in all events within one (1) business day in the event Contractor discovers any State of Florida Data is breached, any unauthorized Access of State of Florida Data occurs (even by persons or companies with authorized Access for other purposes), any unauthorized transmission of State of Florida Data occurs, or of any credible allegation or suspicion of a material violation of the above. This notification is required regardless of the number of persons or type of State of Florida Data affected. The notification must be clear and conspicuous and include a description of the following:

- (a) The incident in general terms.
- (b) The type of information that was subject to the unauthorized Access and acquisition.
- (c) The type and number of entities who were, or potentially have been affected by the breach.
- (d) The actions taken by the Contractor to protect the State of Florida Data from further unauthorized Access. However, the description of those actions in the written notice may be general so as not to further increase the risk or severity of the breach.

Upon becoming aware of an alleged security breach or security incident, the Contractor's Account Manager shall set up a conference call with the Department's Contract Manager. The conference call invitation shall contain a brief description of the nature of the event. When possible, a thirty (30) minute notice shall be given to allow Department personnel to be available for the call. If the designated time is not practical for the Department, an alternate time for the call shall be scheduled. All available information shall be shared on the call. The Contractor shall answer all questions based on the information known at that time and shall answer additional questions as additional information becomes known. The

Contractor shall provide the Department with final documentation of the incident including all actions that took place. If the Contractor becomes aware of a security breach or security incident outside of normal business hours, the Contractor shall notify the Department's Contract Manager and in all events, within one (1) business day.

Access as referenced in this subsection shall mean review, inspect, approach, instruct, communicate with, store data in, retrieve data from, or otherwise make use of any data, regardless of type, form, or nature of storage. Access to a computer system or network includes local and remote access.

#### **18.3.1 Indemnification (Breach of Warranty of Security)**

The Contractor agrees to defend, indemnify, and hold harmless the Department, Customer, the State of Florida, its officers, directors and employees for any claims, suits or proceedings related to a breach of the Warranty of Security. The Contractor will include credit monitoring services at its own cost for those individuals affected or potentially affected by a breach of this warranty for a two (2) year period of time following the breach.

#### **18.3.2 Annual Certification**

The Contractor is required to submit an annual certification demonstrating compliance with the Warranty of Security to the Department by December 31st of each Contract year.

### **18.4 Department's Ability to Audit Screening Compliance and Inspect Locations**

The Department reserves the right to audit the Contractor's background screening process upon two days prior written notice to the Contractor during the Term of the Contract. Department will have the right to inspect the Contractor's working area, computer systems, and/or location upon two business days prior written notice to the Contractor to ensure that access to the State of Florida Data is secure and in compliance with the Contract and all applicable state and federal rules and regulations.

### **18.5 Data Access**

The Contractor shall retain a list of all persons with Access to State of Florida Data, including a statement confirming that each person has passed the Background Screening required herein. Such a statement shall not include the substance of the screening results, only that the Person has passed the screening.

The Contractor shall create a written policy for the protection of State of Florida Data, including a policy and procedure for Access to State of Florida Data.

The Contractor shall document and record, with respect to each instance of Access to Data:

1. The identity of all individual(s) who accessed Data in any way, whether those individuals are authorized Persons or not;
2. The duration of the individual(s)' access to Data, including the time and date at which the access began and ended;

3. The identity, form, and extent of Data accessed, including, but not limited to, whether the individual accessed partial or redacted versions of Data, read-only versions of Data, or editable versions of Data; and
4. The nature of the access to Data, including whether Data was edited or shared with any other individual or entity during the duration of the access, and, if so, the identity of the individual or entity.

The Contractor shall retain the written policy and information required in this subsection for the duration of this Contract and a period of no less than five years from the date of termination of this Contract and any Contract extensions. The written policy and information required in this subsection shall be included in the Department's audit and screening abilities. The written policy and information required in this subsection shall also be subject to immediate disclosure upon written or oral demand at any time by the Department or its designated agents or auditors.

Access as referenced in this Section shall mean review, inspect, approach, instruct, communicate with, store data in, retrieve data from, or otherwise make use of any data, regardless of type, form, or nature of storage. Access to a computer system or network includes local and remote access.

The Contractor shall document and record, with respect to each instance of Access to State of Florida Data:

1. The identity of all individual(s) who Accessed State of Florida Data in any way, whether those individuals are authorized Persons or not;
2. The duration of the individual(s)' Access to State of Florida Data, including the time and date at which the Access began and ended;
3. The identity, form, and extent of State of Florida Data Accessed, including, but not limited to, whether the individual Accessed partial or redacted versions of State of Florida Data, read-only versions of State of Florida Data, or editable versions of State of Florida Data; and
4. The nature of the Access to State of Florida Data, including whether State of Florida Data was edited or shared with any other individual or entity during the duration of the Access, and, if so, the identity of the individual or entity.

Notwithstanding any provision of the Contract to the contrary, the Contractor shall notify the Department as soon as possible and in all events within one (1) business day in the event it discovers any unauthorized Access of State of Florida State of Florida Data occurs, any unauthorized transmission of State of Florida Data, or any credible allegation or suspicion of a material violation of the above. This notification is required whether the event affects one employee/retiree or the entire population. The notification shall be clear and conspicuous and include a description of the following:

- (a) The incident in general terms.

- (b) The type of personal information that was subject to the unauthorized Access and acquisition.
- (c) The number of individuals who were, or potentially have been affected by the breach.
- (d) The actions taken by the Contractor to protect the State of Florida Data information from further unauthorized Access. However, the description of those actions in the written notice may be general so as not to further increase the risk or severity of the breach.

Upon becoming aware of an unauthorized access to State of Florida Data, the Contractor's Account Manager shall set up a conference call with the Department's Contract Manager. The conference call invitation shall contain a brief description of the nature of the event. When possible, a thirty (30) minute notice shall be given to allow Department personnel to be available for the call. If the designated time is not practical for the Department, an alternate time for the call shall be scheduled. All available information shall be shared on the call. The Contractor shall answer all questions based on the information known at that time and shall answer additional questions as additional information becomes known. The Contractor shall provide the Department with final documentation of the incident including all actions that took place. If the Contractor becomes aware of an unauthorized access to State of Florida Data outside of normal business hours, the Contractor shall notify the Department's Contract Manager and in all events, within one (1) business day.

Failure to compile, retain, and disclose the written policy and information as required in this subsection shall be considered a breach of the Contract. The resulting damages to the Department from a breach of this subsection are by their nature impossible to ascertain presently and will be difficult to ascertain in the future. The issues involved in determining such damages will be numerous, complex, and unreasonably burdensome to prove. The parties acknowledge that these financial consequences are liquidated damages, exclusive of any other right to damages, not intended to be a penalty and solely intended to compensate for unknown and unascertainable damages. The Contractor therefore agrees to credit the Department the sum of \$500 for each breach of this subsection.

#### **18.6 Indemnification**

The Contractor agrees to defend, indemnify and hold harmless the Department, the State of Florida, its officers, directors and employees for any claims, suits or proceedings related to a breach of this section. The Department may use counsel of its choosing to defend any such claims, and the Offeror shall promptly pay the Department's invoices for legal services on a monthly basis for all costs and expenses, including legal fees, incurred in defending such claims.

### **SECTION 19. PERFORMANCE BOND**

The Contractor shall furnish DMS with a Performance Bond for all Projects over one hundred thousand dollars (\$100,000.00). The Performance Bond shall be for the amount of the total cost of the order. The form of the guarantee shall be a Performance Bond made payable to DMS. The guarantee shall be furnished to the Product Manager prior to commencement of the Project.

The Performance Bond provided for any Project shall guarantee to DMS that the Contractor shall complete the Project associated with the Performance Bond in accordance with the terms of the Project including services provided, price, time, and provisioning for securing E-Rate funding where Customers have been qualified by USAC. If the Contractor defaults or is terminated by the Customer, DMS may call upon the surety to complete the Project.

The Contractor and insurer or bonding company shall provide the Department prior written notice or immediate notice upon knowledge of any attempt to cancel or to make any other material change in the status, coverage, or scope of the Performance Bond, or of the Contractor's failure to pay bond premiums.

The Department shall not be responsible for any premiums or assessments on or in relation to the Performance Bond.

The Performance Bond is to protect the Department and the State against any loss sustained through failure of the Contractor's performance in accordance with the Contract. No payments shall be made to the Contractor until the Performance Bond is in place and approved by the Department in writing.

The Performance Bond provided under this Section shall be used solely to the extent necessary to satisfy the damage claims made by the State pursuant to the terms of the Contract. In no event shall the Performance Bond be construed as a penalty bond.

## **SECTION 20. NO OFFSHORING**

Unless otherwise agreed in writing, the Contractor and its Subcontractors will not perform any of the Services from outside of the United States, and the Contractor will not allow any State of Florida Data to be sent by any medium, transmitted or accessed outside of the United States.

The Contractor agrees that a violation of items listed above will result in immediate and irreparable harm to the Department and will entitle the Department to a credit of \$50,000 per violation, with a total cap of \$500,000 per event. This credit is intended only to cover the Department's internal staffing and administrative costs as well as the diminished value of Services provided under the Contract and will not preclude the Department from recovering other damages it may suffer as a result of such violation. For purposes of determining the damages due hereunder, a group of violations relating to a common set of operative facts (e.g., same location, same time period, same off-shore entity) will be treated as a single event. A violation of this provision will also entitle the Department to recover damages, if any, arising from a breach of this section and constitutes an event of default.

Notwithstanding any provision of this Contract to the contrary, the Contractor shall notify the Department as soon as possible and in all events within one business day in the event it discovers any Data is breached, any unauthorized access of State of Florida Data occurs (even by persons or companies with authorized access for other purposes), any unauthorized transmission of Data or any credible allegation or suspicion of a material violation of the above. This notification is required whether the event affects one employee/retiree or the entire population. The notification shall be clear and conspicuous and include a description of the following:

- (a) The incident in general terms.
- (b) The type of personal information that was subject to the unauthorized access and acquisition.
- (c) The number of individuals who were, or potentially have been affected by the breach.
- (d) The actions taken by the Contractor to protect the Data information from further unauthorized access. However, the description of those actions in the written notice may be general so as not to further increase the risk or severity of the breach.

Upon becoming aware of an alleged security breach or security incident, the Contractor Security Officer shall set up a conference call with the Department's Contract Manager. The conference call invitation shall contain a brief description of the nature of the event. When possible, a 30-minute notice shall be given to allow Department personnel to be available for the call. If the designated time is not practical for the Department, an alternate time for the call shall be scheduled. All available information shall be shared on the call. The Contractor shall answer all questions based on the information known at that time and shall answer additional questions as additional information becomes known. The Contractor shall provide the Department with final documentation of the incident including all actions that took place. If the Contractor becomes aware of a security breach or security incident outside of normal business hours, the Contractor shall notify the Department's Contract Manager and in all events, within one business day.

## **SECTION 21. PREFERRED PRICING**

Contractor acknowledges and recognizes that the Department wants to take advantage of any improvements in price/fees over the course of the Contract period. To that end, the price indicated in this Contract is a maximum guarantee.

Contractor's fee under this Contract will not exceed the Contractor's total fees then in effect for substantially the same services to any organization with similar services to those in this Contract. During the term of the Contract, if Contractor implements or provides any other client, whether a public or private entity, such pricing with more favorable than the pricing in this Contract, then Contractor agrees to offer equivalent pricing terms to the Department and the Department and Contractor will execute an amendment of this Contract. The Contractor shall submit to the Department, a completed preferred pricing affidavit form annually.

## **SECTION 22. SPECIFIC APPROPRIATION**

The following is the specific state funds from which the state will make payment under the contract:

2018 General Appropriations Act (Florida Law)

2845 SPECIAL CATEGORIES  
CENTREX AND SUNCOM PAYMENTS  
FROM COMMUNICATIONS WORKING

CAPITAL TRUST FUND . . . . . 108,035,421

The Department of Management Services is authorized to submit budget amendments in accordance with Chapter 216, Florida Statutes, to increase Specific Appropriation 2845, in the event that payments for telecommunications services exceed the amount appropriated.

**SECTION 23. INDEPENDENT CONTRACTOR**

The Contractor and its employees, agents, representatives, and Subcontractors are not employees or agents of the Department and are not entitled to the benefits of State of Florida employees. The Department will not be bound by any acts or conduct of the Contractor or its employees, agents, representatives, or Subcontractors. The Contractor agrees to include this provision in all of its subcontracts under the Contract.

**SECTION 24. SAFETY STANDARDS**

Performance of the Contract for all commodities or contractual services must comply with requirements of the Occupational Safety and Health Act and other applicable State of Florida and federal requirements.

**SECTION 25. TIME IS OF THE ESSENCE**

Time is of the essence regarding each and every obligation of the Contractor. Each obligation is deemed material, and a breach of any such obligation (including a breach resulting from untimely performance) is a material breach.

**SECTION 26. MODIFICATION AND SEVERABILITY**

The Contract may only be modified by written agreement between the Department and the Contractor. Should a court determine any provision of the Contract is invalid, the remaining provisions will not be affected, and the rights and obligations of the Parties will be construed and enforced as if the Contract did not contain the provision held invalid.

**SECTION 27. PERFORMANCE STANDARDS**

The Contractor agrees to perform all tasks and provide deliverables as set forth in the Statement of Work and exhibits to the Contract. The Department and the Customer will be entitled at all times, upon request, to be advised as to the status of work being done by the Contractor and of the details thereof. Coordination must be maintained by the Contractor with representatives of the Customer, the Department, or of other agencies involved in the Contract on behalf of the Department.

**SECTION 28. COMMUNICATIONS AND CONFIDENTIALITY**

The Contractor shall not, without first notifying the Department's Contract Manager and securing the Department's prior written consent, make public statements which concern the Contract or its subject matter, disclose or permit disclosure of any data or information obtained or furnished in accordance with the Contract, or use any statement attributable to the Department or its employees. Public statements include press releases, publicity releases, promotions, marketing materials, corporate communications, or other similar communications. The Department's written consent shall not be construed to supersede or waive the Contract requirements imposed on the Contractor to maintain confidential information.

The Contractor must maintain confidentiality of all confidential data, files, and records related to the services and commodities provided pursuant to the Contract and must comply with all state and federal laws, including, but not limited to Chapter 119, F.S., and sections 381.004, 384.29, 392.65, and 456.057, F.S. The Contractor's confidentiality procedures must be consistent with the most recent version of the Department security policies, protocols, and procedures. The Contractor must also comply with any applicable professional standards with respect to confidentiality of information.

Contractor will not use the State seal, name, or logo of the Department or State, or Contractor's relationship to the Department for any purpose without the prior written consent of the Department.

Contractor may refer to the Contract as an experience citation with other customers without prior approval.

Contractor shall not publicly disseminate any information concerning the Contract without prior written approval from the Department, including, but not limited to:

- 1) mentioning the Contract in a press release or other promotional material,
- 2) identifying the Department or the State as a reference, or
- 3) otherwise linking Contractor's name and either a description of the Contract or the name of the State, the Department or any SUNCOM Client in any material published, either in print or electronically, to any entity that is not a party to Contract, except potential or actual authorized distributors, dealers, resellers, or service representative.

**SIGNATURE PAGE IMMEDIATELY FOLLOWS**