

STATE OF ILLINOIS CONTRACT

Central Management Services
JPMC Drugs and Pharmaceuticals
22-416CMS-BOSS4-P-33618

The Parties to this contract are the State of Illinois acting through the undersigned Agency (collectively the State) and the Vendor. This contract, consisting of the signature page and numbered sections listed below and any attachments referenced in this contract, constitute the entire contract between the Parties concerning the subject matter of the contract, and in signing the contract, the Vendor affirms that the Certifications and Financial Disclosures and Conflicts of Interest attached hereto are true and accurate as of the date of the Vendor's execution of the contract. This contract supersedes all prior proposals, contracts and understandings between the Parties concerning the subject matter of the contract. This contract can be signed in multiple counterparts upon agreement of the Parties.

Contract includes BidBuy Purchase Order? (The Agency answers this question prior to contract filing.)

☐ Yes

☒ No

Contract uses Illinois Procurement Gateway Certifications and Disclosures?

☐ Yes (IPG Certifications and Disclosures including FORMS B)

☒ No


1. **DESCRIPTION OF SUPPLIES AND SERVICES**
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In consideration of the mutual covenants and agreements contained in this contract, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree to the terms and conditions set forth herein and have caused this contract to be executed by their duly authorized representatives on the dates shown on the following CONTRACT SIGNATURES page


**STATE OF ILLINOIS
CONTRACT**

Central Management Services
JPMC Drugs and Pharmaceuticals
22-416CMS-BOSS4-P-33618

VENDOR

Vendor Name: Cardinal Health 110, LLC	Address (City/State/Zip): 7000 cardinal Place Dublin, OH 43017
Signature: 	Phone: 832-577-5136
Printed Name: Christopher Gersitz	Fax: n/a
Title: VP, LTC & Government Sales	Email: Christopher.gersitz@cardinalhealth.com
Date: 05/18/2022	

STATE OF ILLINOIS

Procuring Agency: Central Management Services	Phone: 866-455-2897
Street Address: 1000 E Converse St	
City, State ZIP: Springfield, IL 62702	
Official Signature: 	Date: 5/25/22
Printed Name: Jane L. Forde, Director	
Official's Title: by Krysti Rinaldi, Assistant Deputy Director	
Legal Signature:	Date:
Legal Printed Name:	
Legal's Title:	
Fiscal Signature:	Date:
Fiscal's Printed Name:	
Fiscal's Title:	

AGENCY USE ONLY**NOT PART OF CONTRACTUAL PROVISIONS**

- Agency Reference #: 21-416CMS-BOSS4-R-72240
- Project Title: JPMC Drugs and Pharmaceuticals
- Contract #: 22-416CMS-BOSS4-P-33618
- Procurement Method (IFB, RFP, Small Purchase, etc.): IFB
- BidBuy Reference #: 22-416CMS-BOSS4-B-25474
- BidBuy Publication Date: 10/26/21
- Award Code: A
- Subcontractor Utilization? ☒ Yes ☐ No Subcontractor Disclosure? ☒ Yes ☐ No
- Funding Source:
- Obligation #:
- Small Business Set-Aside? ☐ Yes ☒ No Percentage:
- Minority Owned Business? ☐ Yes ☒ No Percentage:
- Women Owned Business? ☐ Yes ☒ No Percentage:
- Persons with Disabilities Owned Business? ☐ Yes ☒ No Percentage:
- Veteran Owned Small Business? ☐ Yes ☒ No Percentage:
- Other Preferences?

1. DESCRIPTION OF SUPPLIES AND SERVICES

- 1.1. GOAL:** It is the intent of the State of Illinois to establish a Joint Purchase Master Contract for drugs and pharmaceuticals to be purchased on an as-needed basis during the contract period.

This Joint Purchase Master Contract (JPMC) may be utilized by all Governmental Units and Qualified Not-For-Profit Agencies as defined in Section 5 of this Contract.

1.2. SUPPLIES AND/OR SERVICES REQUIRED:

- 1.2.1. All items must conform to specifications of the current United States Pharmacopeia (U.S.P.) or National Formulary (N.F.) where applicable and must be so labeled.

- 1.2.2. The Vendor must be a primary wholesaler with the ability to distribute all drug manufacturer brands. The Vendor must be able to source pharmaceuticals directly from the manufacturer.

- 1.2.3. Only products of drug and pharmaceutical manufacturers that have applied for and received approval by the U.S. Food and Drug Administration as a manufacturer for drug and drug products for use by State of Illinois institutions will be considered for purchase. The State of Illinois recognizes the official U.S.

The Vendor must allow changes to the State's formularies during the contract period; Vendor must be able to meet the demands of additions of drugs in any formation and dosage.

- 1.2.4. The Vendor shall always be capable of providing no less than a four (4) week supply of all medications included on the State's formulary or formularies. This requirement will not apply to manufacturer backorders and recalled products.

- 1.2.5. Repacking of drug and pharmaceutical products must be performed according to the standard manufacturing practices.

- 1.2.6. The Vendor must provide and maintain a secure internet ordering site that is available to the authorized ordering entities at no additional charge. The site will include, but not be limited to:

1.2.6.1 Disclose on-hand inventories and available quantities of drugs.

1.2.6.2 Disclose Wholesale Acquisition Cost (WAC), Public Health Services (PHS), and Group Purchasing Organization (GPO) price offerings.

- 1.2.6.3 Use coding to indicate unavailable products, preferred products and contract products.
- 1.2.6.4 Ordering entities will be able to select the manufacturers and products needed. After ordering, the Vendor shall not substitute manufacturers or products without agency approval.
- 1.2.6.5 Be capable of allowing internet online drug ordering, re-ordering and tracking by class.
- 1.2.6.6 Allow searches for products: keyword, item number, description, generic name, National Drug Center (NDC), and Universal Product Code (UPC).
- 1.2.6.7 Be capable of receiving automated messages for reorders via electronic connectivity with automated repacking machines.
- 1.2.6.8 Provide regular updates of changes to drug prices.
- 1.2.6.9 Allow the creation and downloading of reports by approved users. The reports shall include the item number, NDC number, drug name, strength, unit of measure, quantities ordered, and total amounts of orders. Time intervals shall be previous month, previous quarter, and annually.
- 1.2.6.10 Display generic alternatives to brand name drugs and pharmaceuticals.
- 1.2.6.11 Be capable of producing electronic purchase schedule review and electronic confirmation of orders placed.
- 1.2.6.12 Be capable of reporting the records or purchases separately by agency and agency section.
- 1.2.6.13 Be capable of billing and invoicing purchases separately by agency and agency section.
- 1.2.6.14 Include access passcodes that shall be available to the governmental units and not-for-profits purchasing drugs under this contract.

Be able to distinguish and maintain accessibility parameters that can limit the rights of users to one location or multiple locations; non-ordering/administrative only, purchasing only, and both; and approval for final purchase.

- 1.2.7. When the Vendor's website does not reflect any quantity on-hand, or quantities listed are insufficient to meet the requirements, the order may be placed with

the manufacturer or another vendor. If this results in increased acquisition costs to the state, the prime vendor will be held fiscally responsible for the difference in price.

- 1.2.8. Bulk orders (generally 1,000+ tablets) of individual drugs must be filled from the same lot and must have an expiration date of a minimum of two (2) years or best dating available from manufacturer. All other drugs shipped must have a minimum expiration date of six (6) months from the date of the order. If the Vendor is unable to meet this requirement, then the vendor must contact the ordering entity to determine if proposed expiration date is acceptable. Vendor will facilitate special dating product requests as requested by State of Illinois based on what is available from the product's manufacturer/supplier.
- 1.2.9. Governmental units and qualified not-for-profit agencies reserve the right to purchase products from other vendors in cases when the manufacturer's direct price would be less than the price provided by the Vendor's (wholesaler) contract. This includes the right to purchase drugs that need to be repackaged in unit dose configuration from alternative vendors that re-package medication.
- 1.2.10. Certain drug and pharmaceutical needs are, or may be, met during the term of the contract by placing orders with other sources. For example, an agency may have contracts or will enter into contracts with health care providers and facilities that will include provision of drugs and pharmaceuticals. Such needs are not automatically covered by this contract.
- 1.2.11. Vendor must allow authorized entities to enroll in and participate in pricing with multiple Group Purchasing Organizations (GPO). Vendor agrees to facilitate contractual pricing resulting from any GPO to which any shipping location is enrolled.
- 1.2.12. The Aids Drug Assistance Program (ADAP) which operates under the Illinois Ryan White Part B Program of the Illinois Department of Public Health has negotiated ADAP crisis task force agreements with national manufacturers for discounted pricing on certain drugs. The Vendor must honor those discounted price points if they are lower than contract pricing. Approximately 95% of the drugs purchased for ADAP are in Category 1 – Antiretrovirals: Protease inhibitors, reverse transcriptase inhibitors and non-nucleoside reverse transcriptase inhibitors (see Attachment DPH ADAP Product List).
- 1.2.13. Under the contract Pharmacy Services Agreement guidelines in the Veteran's Health Care Act of 1992, 42 U.S.C.A. 256(A)4(C), the Illinois Department of Public Health Service (IDPH) is determined to be a "covered entity" for 340B Public Health Service (PHS) pricing. This entitles the IDPH and any other governmental

unit or qualified not-for-profit agency that is considered a “covered entity” under this agreement, to prices no higher than calculated under the Medicaid Act, at U.S.C.A. 1396R-8 (C) (1) and the “best price” definition at 42 U.S.C.A. 139R-8 (C) (1) (C). Under this form of agreement, Vendor may negotiate with the manufacturers for prices lower than the average PHS price.

- 1.2.14. The Vendor must work with the Illinois Department of Human Services (DHS) to ensure a seamless Electronic Data Interface within 30 days of Contract execution. DHS currently uses the RxWorks 11 system. In the event DHS or another agency modifies or changes their systems, the Vendor must work to ensure that the interface is not effected.
- 1.2.15. Vendor is encouraged to develop and utilize the “Punchout” module to process purchase orders through Illinois’ eprocurement system, BidBuy. The punchout may be linked to the Vendor’s order entry system for fulfillment.

For procurements conducted in BidBuy, the State may include in this contract the BidBuy Purchase Order as it contains the agreed Supplies and/or Services.

1.3. MILESTONES AND DELIVERABLES:

- 1.3.1. The Vendor must be able to provide pedigrees for all drugs and pharmaceuticals purchased.
- 1.3.2 The Vendor must maintain records as required by the Pharmacy Practice Act 225 ILCS 85, the Rules and Regulations Promulgated for the Administration of the Illinois Pharmacy Act, 68 Illinois Administrative Code 1130 and the Illinois Controlled Substance Act (Rules), 77 Illinois Administrative Code 3100 or subsequent update.
- 1.3.3 The Vendor will be expected to take an active role in communicating the contract and its provisions to using governmental agencies or qualified not-for-profit agencies. However, such communications will generally be initiated by the potential or current using governmental agencies or qualified not-for-profit agencies.
- 1.3.4 The Vendor will report to the Department of Central Management Services Bureau of Strategic Sourcing (BOSS) an annual Contract Usage Report. This report shall be in a tab-delimited text file or an Excel spreadsheet that references the BidBuy Purchase Order (PO) number, time period being reported, and must include the following:

NDC#, Quantity, Unit of Measure, 340B/non-340B classification, and Delivery Address.

The report will be sent to the following email address:

CMS.BOSS.Sourcing@illinois.gov.

1.4. VENDOR / STAFF SPECIFICATIONS:

1.4.1. The Vendor agrees that neither Vendor nor any staff in its employ will divulge or release any data or information developed or obtained in connection with the performance of this contract unless authorized to do so in writing by the State. The Vendor agrees that all records and other information maintained by the Vendor about persons receiving benefits under this contract are confidential and shall be protected by the Vendor from unauthorized disclosure.

1.4.2. All governmental units, qualified not-for-profit agencies, and the Vendor shall remain compliant with Drug enforcement Administration (DEA) and Food and Drug Administration (FDA) regulations including but not limited to ordering, shipping, and maintenance of inventory. Vendor will ensure that all necessary credentials are verified and active including but not limited to DEA numbers from locations before allowing the placement and delivery of orders.

Vendor must be in compliance with Drug Supply Chain Security Act (DSCSA), including but not limited to authorized trading partners, verification requirements, and product tracing.

1.4.3. Vendor shall have current drug distributor accreditation by the National Association of Boards of Pharmacy (NAPB).

1.4.4 Bidder must be a licensed pharmaceutical wholesaler/distributor and must also be compliant with the Drug Enforcement Agency (DEA) and Federal Drug Administration (FDA) guidelines and must maintain this license during the life of the contract.

1.4.5 The Vendor must be a primary wholesaler with the ability to distribute all drug manufacturer brands. The Vendor must be able to source pharmaceuticals directly from the manufacturer.

1.4.6 Vendor compliance to all contract requirements will be monitored. A "Complaint to Vendor" form will be filed with Department of Central Management Services-Bureau of Strategic Sourcing (BOSS) and the vendor when an infraction occurs. Failure to immediately resolve the complaint may cause contract cancellation.

1.5. TRANSPORTATION AND DELIVERY:

- 1.5.1. Deliveries to ordering entities will be made within one (1) business day of receipt of the order if placed by 4:00 p.m. CST unless the item is out of stock at the forwarding distribution center that fills the orders. The ordering entity reserves the right to cancel orders and obtain said products from alternative sources if delivery cannot be made within one (1) business day.
- 1.5.2. Delivery will be made F.O.B. Destination to any location within the State of Illinois. It is the expectation of the State of Illinois that shipping and handling will be provided to the governmental unit or qualified not-for-profit at no additional cost.
- 1.5.3. It is the responsibility of the vendor to ensure that all necessary licensing and regulations are followed and/or established and verification of the 340B identification number (as applicable) of the ordering entity before delivery to any location is allowed.
- 1.5.4 The Department of Public Health will notify the Vendor of the name and shipping address of:
 - 1.5.4.1 The ADAP contracted dispensing pharmacy, along with the IDPH hospital identification number (HIN) for the purchase of drugs.
 - 1.5.4.2 The Immunization Promotion Center Warehouse for STD and TB drugs and pharmaceuticals delivery.
- 1.5.5. The Department of Human Services will notify the Vendor of name and address of the pharmacy locations (currently in Alton, Anna, Centralia, Chester, Chicago, Dixon, Dwight, Elgin, Hines, Kankakee, Springfield, Park Forest and Waukegan) as well as the Bureau of Pharmacy and Clinical Support Services.
- 1.5.6. Vendor must be able to deliver to any governmental unit or qualified not-for-profit within Illinois.
- 1.5.7. Packing lists showing order number provided to Vendor must be furnished with each shipment and must be shown on the outside of each shipping container along with the Vendor name.
- 1.5.8. Deliveries made to State Agencies will be delivered between 9:00 AM and 3:00 PM (Monday through Friday), excluding State holidays, unless pre-approved by the ordering entity.

- 1.5.9. Deliveries made to non-State Agencies will be arranged between the ordering entity and the Vendor.
- 1.5.10. There is no guarantee of quantities for actual orders or usage. Vendor shall furnish all requirements for the Contract period.
- 1.5.11. If Vendor is unable, or anticipates that it will not be able, to fulfill an order in accordance with the requirements of the Contract, Vendor will submit a request to delay order fulfillment to the ordering entity in writing within 72 hours of receipt of the applicable order and will include in such request its best estimate of the duration of the delay and the reasons for the delay. At the ordering entity's discretion, the entity may choose to approve the delay or be relieved from its obligations to purchase any quantities of supplies or equipment in such order and may cancel such quantities effective upon notice to the Vendor. The ordering entity may elect to pursue alternative sources to fulfill the obligations of the canceled order. Vendor shall, at its own cost, use commercially reasonable efforts to remedy any shortage of supply and resume meeting the requirements of the Contract as soon as possible.

1.6. SUBCONTRACTING

Subcontractors are allowed.

- 1.6.1. Will subcontractors be utilized? ☒ Yes ☐ No

A subcontractor is a person or entity that enters into a contractual agreement with a total value of \$50,000 or more with a person or entity who has a contract subject to the Illinois Procurement Code pursuant to which the person or entity provides some or all of the goods, services, real property, remuneration, or other monetary forms of consideration that are the subject of the primary State contract, including subleases from a lessee of a State contract.

All contracts with subcontractors must include Standard Certifications completed and signed by the subcontractor.

- 1.6.2. Please identify below subcontracts with an annual value of \$50,000 or more that will be utilized in the performance of the contract, the names and addresses of the subcontractors, and a description of the work to be performed by each.

- Subcontractor Name: 1st Choice Delivery

Amount to Be Paid: route work greater than \$50,000

Address: 5481 Brown Ave. St. Louis, MO 63115

Description of Work: deliveries

- Subcontractor Name: Zip Express Courier

Amount to Be Paid: route work greater than \$50,000

Address: 6149 Wedeking Ave. Bldg. C Evansville, IN 47715

Description of Work: deliveries

- Subcontractor Name: United Delivery Service, LTD

Amount to Be Paid: route work greater than \$50,000

Address: 1s376 Summit Ave #1F Oakbrook Terrace, IL 60181

Description of Work: deliveries

If additional space is necessary to provide subcontractor information, please attach an additional page.

- 1.6.3. All contracts with the subcontractors identified above must include the Standard Certifications completed and signed by the subcontractor.
- 1.6.4. If the annual value of any the subcontracts is more than \$50,000, then the Vendor must provide to the State the Financial Disclosures and Conflicts of Interest for that subcontractor.
- 1.6.5. If at any time during the term of the Contract, Vendor adds or changes any subcontractors, Vendor is required to promptly notify, in writing, the State Purchasing Officer or the Chief Procurement Officer of the names and addresses and the expected amount of money that each new or replaced subcontractor will receive pursuant to this Contract. Any subcontracts entered into prior to award of this Contract are done at the sole risk of the Vendor and subcontractor(s).

1.7. SUCCESSOR VENDOR

☐ Yes ☒ No This contract is for services subject to 30 ILCS 500/25-80. Heating and air conditioning service contracts, plumbing service contracts, and electrical

service contracts are not subject to this requirement. Non-service contracts, construction contracts, qualification-based selection contracts, and professional and artistic services contracts are not subject to this requirement.

- 1.8. WHERE SERVICES ARE TO BE PERFORMED:** Unless otherwise disclosed in this section all services shall be performed in the United States. If the Vendor performs the services purchased hereunder in another country in violation of this provision, such action may be deemed by the State as a breach of the contract by Vendor.

Vendor shall disclose the locations where the services required shall be performed and the known or anticipated value of the services to be performed at each location. If the Vendor received additional consideration in the evaluation based on work being performed in the United States, it shall be a breach of contract if the Vendor shifts any such work outside the United States.

- Location where services will be performed: St. Louis Distribution Center 2840 Elm Point Industrial Drive St. Charles, MO 63301

Value of services performed at this location: Annual FY2020 Spend: \$6,772,415 (Illinois Department of Human Services and Illinois Department of Public Health STD Program)

- Location where services will be performed: Aurora Distribution Center 2353 Prospect Drive Aurora, IL 60502

Value of services performed at this location: Annual FY2020 Spend: \$6,097,299 (Illinois Department of Human Services)

2. PRICING

2.1 FORMAT OF PRICING: (see attached Exhibit A- Pricing Matrix and 340B Compliance)

- 2.1.1 Vendor shall submit pricing in the format shown below, based on the terms and conditions set forth in section 1 of this Contract.
- 2.1.2 Pricing shall be submitted by entering the percent discount off the Final Price (WAC*Mark-up or PHS Price*Mark-up) as instructed on each line item in BidBuy. Prices must include all costs shipped F.O.B. Destination and may not include any additional costs due to taxes (federal or otherwise) unless accompanied by proof the State is subject to the tax.

2.2 TYPE OF PRICING: The Illinois Office of the Comptroller requires the State to indicate whether the contract price is firm or estimated at the time it is submitted for obligation. The total price of this contract is estimated.

2.3 EXPENSES ALLOWED: Expenses are not allowed.

2.4 DISCOUNT: The State may receive a 0 % discount for payment within 0 days of receipt of correct invoice. This discount will not be a factor in making the award.

2.5 VENDOR'S PRICING:

- 2.5.1 The percent discount will remain stable throughout the life of the contract.
- 2.5.2 Pricing for 340B eligible entities can be no higher than Public Health Services (PHS) pricing.
- 2.5.3 WAC and PHS Price Lists may be updated and provided to the State for availability with the contract.
 - 2.5.3.1 New drugs enter the market
 - 2.5.3.2 Deletions or discontinued drugs
 - 2.5.3.3 Price adjustments must follow the Economic Adjustment Clause under Section 2.6
- 2.5.4. Invoice pricing will be the discount percentage applied to the WAC + Mark-up cost for non-340B entities and/or discount percentage applied to the PHS + Mark-up costs for 340B eligible entities, as applicable.
- 2.5.5. Pricing will include all costs shipped F.O.B. Destination. No additional fees or taxes (federal or otherwise) may be affixed unless accompanied by proof the ordering entity is subject to the tax.
- 2.5.6. During the contract period, the Vendor is responsible for requesting chargebacks, rebates and discounts from the pharmaceutical manufacturers. Vendor will

recognize and administer manufacturer pricing contracts for pharmaceutical products between the State and any manufacturer (collectively, "Manufacturer Contract") (i) subject to their continued validity in accordance with applicable laws, (ii) provided such manufacturer is a vendor-in-good-standing with Vendor, and (iii) subject to such credit considerations concerning the applicable manufacturers as Vendor considers appropriate. However, if manufacturers' chargebacks for contract items submitted by Vendor are disallowed, uncollectable, or unreconcilable, then the applicable charge will be to bill back to the State.

2.6 ECONOMIC ADJUSTMENT:

2.6.1. Drug and pharmaceutical pricing is anticipated to fluctuate during the contract term. The mark-up percentage added to the WAC and PHS prices shall not be changed throughout the duration of the contract.

2.6.2. The PHS and WAC Price Lists must remain firm for six (6) months after the execution date of the contract.

Thereafter, requested adjustments will be limited to once during any given six (6) month period.

2.6.3. Vendor will provide revised Price List(s) and shall include the following columns in an Excel format: NDC#, Drug Name, Manufacturer Name, Dosage, Strength, Unit of Measure, original WAC/PHS Price, Proposed WAC/PHS Price, Proposed WAC/PHS + Mark-up Price. WAC and PHS Price Lists will be separate.

2.6.4. All adjustment requests shall be made in writing. Vendor shall not be entitled to apply an upward price adjustment without first obtaining approval of such request from the Bureau of Strategic Sourcing (BOSS).

2.6.5. In the event a downward adjustment is warranted, the State reserves the right to adjust once during any given six (6) month period for this decrease. It will be the responsibility of the vendor to notify BOSS of any such decrease.

2.6.6. In all cases the Vendor must file a claim for such adjustment prior to the delivery of the goods. In any event, the claim for such adjustment will not apply to release orders executed prior to the date the Bureau of Strategic Sourcing approved the Economic Adjustment request.

2.6.7. If the Vendor has unresolved complaints filed against him for non-delivery or poor quality, the request may be denied until such time as all past complaints are resolved.

For procurements conducted in BidBuy, the State may include in this Contract the BidBuy Purchase Order as it contains the agreed pricing.

2.7 MAXIMUM AMOUNT: This Joint Purchase Master Contract is an indefinite quantity contract.

3. TERM AND TERMINATION

- 3.1 TERM OF THIS CONTRACT:** This contract has a term of ten (10) years commencing upon the last dated signature of the Parties.

For procurements conducted in BidBuy, the State may include in this contract the BidBuy Purchase Order as it contains the agreed term.

3.1.1 In no event will the total term of the contract, including the initial term, any renewal terms and any extensions, exceed ten (10) years. 30 ILCS 500/20-60

3.1.2 Vendor shall not commence billable work in furtherance of the contract prior to final execution of the contract except when permitted pursuant to 30 ILCS 500/20-80.

- 3.2 RENEWAL: N/A**

- 3.3 TERMINATION FOR CAUSE:** The State may terminate this contract, in whole or in part, immediately upon notice to the Vendor if: (a) the State determines that the actions or inactions of the Vendor, its agents, employees or subcontractors have caused, or reasonably could cause, jeopardy to health, safety, or property, or (b) the Vendor has notified the State that it is unable or unwilling to perform the contract.

If Vendor fails to perform to the State's satisfaction any material requirement of this contract, is in violation of a material provision of this contract, or the State determines that the Vendor lacks the financial resources to perform the contract, the State shall provide written notice to the Vendor to cure the problem identified within the period of time specified in the State's written notice. If not cured by that date the State may either: (a) immediately terminate the contract without additional written notice or (b) enforce the terms and conditions of the contract.

For termination due to any of the causes contained in this Section, the State retains its rights to seek any available legal or equitable remedies and damages.

- 3.4 TERMINATION FOR CONVENIENCE:** The State may, for its convenience and with thirty (30) days prior written notice to Vendor, terminate this contract in whole or in part and without payment of any penalty or incurring any further obligation to the Vendor.

Upon submission of invoices and proof of claim, the Vendor shall be entitled to compensation for supplies and services provided in compliance with this contract up to and including the date of termination.

- 3.5 AVAILABILITY OF APPROPRIATION:** This contract is contingent upon and subject to the availability of funds. The State, at its sole option, may terminate or suspend this contract,

in whole or in part, without penalty or further payment being required, if (1) the Illinois General Assembly or the federal funding source fails to make an appropriation sufficient to pay such obligation, or if funds needed are insufficient for any reason (30 ILCS 500/20-60), (2) the Governor decreases the Agency's funding by reserving some or all of the Agency's appropriation(s) pursuant to power delegated to the Governor by the Illinois General Assembly, or (3) the Agency determines, in its sole discretion or as directed by the Office of the Governor, that a reduction is necessary or advisable based upon actual or projected budgetary considerations. Contractor will be notified in writing of the failure of appropriation or of a reduction or decrease.

4. STANDARD BUSINESS TERMS AND CONDITIONS

4.1 PAYMENT TERMS AND CONDITIONS:

- 4.1.1 Late Payment: Payments, including late payment charges, will be paid in accordance with the State Prompt Payment Act and rules when applicable. 30 ILCS 540; 74 Ill. Adm. Code 900. This shall be Vendor's sole remedy for late payments by the State. Payment terms contained in Vendor's invoices shall have no force or effect.
- 4.1.2 Minority Contractor Initiative: Any Vendor awarded a contract of \$1,000 or more under Section 20-10, 20-15, 20-25 or 20-30 of the Illinois Procurement Code (30 ILCS 500) is required to pay a fee of \$15. The Comptroller shall deduct the fee from the first check issued to the Vendor under the contract and deposit the fee in the Comptroller's Administrative Fund. 15 ILCS 405/23.9.
- 4.1.3 Expenses: The State will not pay for supplies provided or services rendered, including related expenses, incurred prior to the execution of this contract by the Parties even if the effective date of the contract is prior to execution.
- 4.1.4 Prevailing Wage: As a condition of receiving payment Vendor must (i) be in compliance with the contract, (ii) pay its employees prevailing wages when required by law, (iii) pay its suppliers and subcontractors according to the terms of their respective contracts, and (iv) provide lien waivers to the State upon request. Examples of prevailing wage categories include public works, printing, janitorial, window washing, building and grounds services, site technician services, natural resource services, security guard and food services. The prevailing wages are revised by the Illinois Department of Labor (DOL) and are available on DOL's official website, which shall be deemed proper notification of any rate changes under this subsection. Vendor is responsible for contacting DOL at 217-782-6206 or (<http://www.state.il.us/agency/idol/index.htm>) to ensure understanding of prevailing wage requirements.
- 4.1.5 Federal Funding: This contract may be partially or totally funded with Federal funds. If Federal funds are expected to be used, then the percentage of the good/service paid using Federal funds and the total Federal funds expected to be used will be provided to the awarded Vendor in the notice of intent to award.
- 4.1.6 Invoicing: By submitting an invoice, Vendor certifies that the supplies or services provided meet all requirements of this contract, and the amount billed and expenses incurred are as allowed in this contract. Invoices for supplies purchased, services performed, and expenses incurred through June 30 of any year must be submitted to the State no later than July 31 of that year; otherwise Vendor may have to seek payment through the Illinois Court of Claims. 30 ILCS 105/25. All invoices are subject to statutory offset. 30 ILCS 210.
 - 4.1.6.1 Vendor shall not bill for any taxes unless accompanied by proof that the State is subject to the tax. If necessary, Vendor may request the

applicable Agency's Illinois tax exemption number and Federal tax exemption information.

- 4.1.6.2 Vendor shall invoice at this completion of the contract unless invoicing is tied in this contract to milestones, deliverables, or other invoicing requirements agreed to in the contract.

Send invoices to:

Agency:	Requesting Agency/Entity
Attn:	Requesting Agency/Entity
Address:	Requesting Agency/Entity
City, State Zip	Requesting Agency/Entity

For procurements conducted in BidBuy, the Agency may include in this contract the BidBuy Purchase Order as it contains the Bill To address.

- 4.2 ASSIGNMENT:** This contract may not be assigned or transferred in whole or in part by Vendor without the prior written consent of the State.
- 4.3 SUBCONTRACTING:** For purposes of this section, subcontractors are those specifically hired to perform all, or part of the work covered by this contract. Vendor must receive prior written approval before use of any subcontractors in the performance of this contract. Vendor shall describe, in an attachment if not already provided, the names and addresses of all authorized subcontractors to be utilized by Vendor in the performance of this contract, together with a description of the work to be performed by the subcontractor and the anticipated amount of money that each subcontractor is expected to receive pursuant to this contract. If required, Vendor shall provide a copy of any subcontracts within fifteen (15) days after execution of this contract. All subcontracts must include the same certifications that Vendor must make as a condition of this contract. Vendor shall include in each subcontract the subcontractor certifications as shown on the Standard Certification form available from the State. If at any time during the term of the Contract, Vendor adds or changes any subcontractors, then Vendor must promptly notify, by written amendment to the Contract, the State Purchasing Officer or the Chief Procurement Officer of the names and addresses and the expected amount of money that each new or replaced subcontractor will receive pursuant to the Contract. 30 ILCS 500/20-120.
- 4.4 AUDIT/RETENTION OF RECORDS:** Vendor and its subcontractors shall maintain books and records relating to the performance of this contract and any subcontract necessary to support amounts charged to the State pursuant this contract or subcontract. Books and records, including information stored in databases or other computer systems, shall be maintained by the Vendor for a period of three (3) years from the later of the date of final payment under the contract or completion of the contract, and by the subcontractor for a period of three (3) years from the later of final payment under the term or

completion of the subcontract. If Federal funds are used to pay contract costs, the Vendor and its subcontractors must retain their respective records for five (5) years. Books and records required to be maintained under this section shall be available for review or audit by representatives of: the procuring Agency, the Auditor General, the Executive Inspector General, the Chief Procurement Officer, State of Illinois internal auditors or other governmental entities with monitoring authority, upon reasonable notice and during normal business hours. Vendor and its subcontractors shall cooperate fully with any such audit and with any investigation conducted by any of these entities. Failure to maintain books and records required by this section shall establish a presumption in favor of the State for the recovery of any funds paid by the State under this contract or any subcontract for which adequate books and records are not available to support the purported disbursement. The Vendor or subcontractors shall not impose a charge for audit or examination of the Vendor's or subcontractor's books and records. 30 ILCS 500/20-65.

- 4.5 TIME IS OF THE ESSENCE:** Time is of the essence with respect to Vendor's performance of this contract. Vendor shall continue to perform its obligations while any dispute concerning this contract is being resolved unless otherwise directed by the State.
- 4.6 NO WAIVER OF RIGHTS:** Except as specifically waived in writing, failure by a Party to exercise or enforce a right does not waive that Party's right to exercise or enforce that or other rights in the future.
- 4.7 FORCE MAJEURE:** Failure by either Party to perform its duties and obligations will be excused by unforeseeable circumstances beyond its reasonable control and not due to its negligence, including acts of nature, acts of terrorism, riots, labor disputes, fire, flood, explosion, and governmental prohibition. The non-declaring Party may cancel this contract without penalty if performance does not resume within thirty (30) days of the declaration.
- 4.8 CONFIDENTIAL INFORMATION:** Notwithstanding anything to the contrary that may be contained in the Contract transactional purchase data generated, compiled, or stored by Vendor reflecting the purchase and resale of products to the State ("Sales Data") does not constitute the Confidential Information of the State, and Vendor will be entitled to utilize all such Sales Data in any manner deemed appropriate by it, including, but not limited to, selling and/or otherwise providing such Sales Data to manufacturers and/or other third parties without limitation. Each Party to this contract, including its agents and subcontractors, may have or gain access to confidential data or information owned or maintained by the other Party in the course of carrying out its responsibilities under this contract. Vendor shall presume all information received from the State or to which it gains access pursuant to this contract is confidential. Vendor information, unless clearly marked as confidential and exempt from disclosure under the Illinois Freedom of Information Act, shall be considered public. No confidential data collected, maintained, or used in the course of performance of this contract shall be disseminated except as authorized by law and with the written consent of the disclosing Party, either during the

period of this contract or thereafter. The receiving Party must return any and all data collected, maintained, created or used in the course of the performance of this contract, in whatever form it is maintained, promptly at the end of this contract, or earlier at the request of the disclosing Party, or notify the disclosing Party in writing of its destruction. The foregoing obligations shall not apply to confidential data or information lawfully in the receiving Party's possession prior to its acquisition from the disclosing Party; received in good faith from a third Party not subject to any confidentiality obligation to the disclosing Party; now is or later becomes publicly known through no breach of confidentiality obligation by the receiving Party; or that is independently developed by the receiving Party without the use or benefit of the disclosing Party's confidential information.

4.9 USE AND OWNERSHIP: All work product created by Vendor specifically for the State under this contract, whether written documents, reports, or deliverables of any kind, shall be deemed work for hire under copyright law and all intellectual property and other laws, and the State of Illinois is granted sole and exclusive ownership to all such work product, unless otherwise agreed in writing. Vendor hereby assigns to the State all right, title, and interest in and to such work product including any related intellectual property rights, and/or waives any and all claims that Vendor may have to such work including any so-called "moral rights" in connection with the work. Vendor acknowledges the State may use the work product for any purpose. Confidential data or information contained in such work shall be subject to the confidentiality provisions of this contract. Notwithstanding anything to the contrary herein, the ideas, concepts, methodologies, processes, data, web-based applications, inventions and tools (including computer hardware and software where applicable) that Vendor previously developed and brings to the State in furtherance of the performance of the Contract shall remain the property of the Vendor. Vendor grants to the State a nonexclusive license to use and employ such software, ideas, concepts, methodologies, processes, inventions, and tools solely within its enterprise.

4.10 INDEMNIFICATION AND LIABILITY: Vendor shall indemnify and hold harmless the State of Illinois, its agencies, officers, employees, and agents from and against any and all damages, liabilities, losses, costs and expenses (including, but not limited to, reasonable attorneys' fees) arising from or relating to any third-party claim, suit, action, investigation or proceeding to the extent arising out of or resulting from the breach of any certification, representation or warranty of Vendor contained in this Contract or directly attributable to the negligent failure of Vendor or Vendor's subcontractor(s) to properly store, handle or distribute the Products; it being understood, however, that Vendor is not the manufacturer of the products and that no indemnification of any type is being provided other than as specifically stated in this paragraph. NEITHER PARTY SHALL BE LIABLE FOR INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES.

- 4.11 INSURANCE:** Vendor shall, at all times during the term of this contract and any renewals or extensions, maintain and provide a Certificate of Insurance naming the State as an additionally insured for all required insurance. Certificates may not be modified or canceled until at least thirty (30) days' notice has been provided to the State. Vendor shall provide: (a) General Commercial Liability insurance in the amount of \$1,000,000 per occurrence (Combined Single Limit Bodily Injury and Property Damage) and \$2,000,000 Annual Aggregate; (b) Auto Liability, including Hired Auto and Non-owned Auto (Combined Single Limit Bodily Injury and Property Damage), in amount of \$1,000,000 per occurrence; and (c) Worker's Compensation Insurance in the amount required by law. Insurance shall not limit Vendor's obligation to indemnify, defend, or settle any claims.
- 4.12 INDEPENDENT CONTRACTOR:** Vendor shall act as an independent contractor and not an agent or employee of, or joint venturer with the State. All payments by the State shall be made on that basis.
- 4.13 SOLICITATION AND EMPLOYMENT:** Vendor shall not employ any person employed by the State during the term of this contract to perform any work under this contract. Vendor shall give notice immediately to the Agency's director if Vendor solicits or intends to solicit State employees to perform any work under this contract.
- 4.14 COMPLIANCE WITH THE LAW:** The Vendor, its employees, agents, and subcontractors shall comply with all applicable Federal, State, and local laws, rules, ordinances, regulations, orders, Federal circulars and all license and permit requirements in the performance of this contract. Vendor shall be in compliance with applicable tax requirements and shall be current in payment of such taxes. Vendor shall obtain at its own expense, all licenses and permissions necessary for the performance of this contract.
- 4.15 BACKGROUND CHECK:** Whenever the State deems it reasonably necessary for security reasons, the State may conduct, at its expense, criminal and driver history background checks for Vendor's and subcontractor's officers, employees or agents who will enter the State property in performance of the contract. Vendor or subcontractor shall immediately reassign any individual who, in the opinion of the State, does not pass the background check.
- 4.16 APPLICABLE LAW:**
- 4.16.1 PREVAILING LAW:** This contract shall be construed in accordance with and is subject to the laws and rules of the State of Illinois.
- 4.16.2 EQUAL OPPORTUNITY:** The Department of Human Rights' Equal Opportunity requirements are incorporated by reference. 44 Ill. Adm. Code 750.
- 4.16.3 COURT OF CLAIMS; ARBITRATION; SOVEREIGN IMMUNITY:** Any claim against the State arising out of this contract must be filed exclusively with the Illinois Court of

Claims. 705 ILCS 505/1. The State shall not enter into binding arbitration to resolve any dispute arising out of this contract. The State of Illinois does not waive sovereign immunity by entering into this contract.

4.16.4 **OFFICIAL TEXT:** The official text of the statutes cited herein is incorporated by reference. An unofficial version can be viewed at (www.ilga.gov/legislation/ilcs/ilcs.asp).

4.17 ANTI-TRUST ASSIGNMENT: N/A.

4.18 CONTRACTUAL AUTHORITY: The Agency that signs this contract on behalf of the State of Illinois shall be the only State entity responsible for performance and payment under this contract. When the Chief Procurement Officer or authorized designee or State Purchasing Officer signs in addition to an Agency, he/she does so as approving officer and shall have no liability to Vendor. When the Chief Procurement Officer or authorized designee or State Purchasing Officer signs a master contract on behalf of State agencies, only the Agency that places an order or orders with the Vendor shall have any liability to the Vendor for that order or orders.

4.19 EXPATRIATED ENTITIES: Except in limited circumstances, no business or member of a unitary business group, as defined in the Illinois Income Tax Act, shall submit a bid for or enter into a contract with a State agency if that business or any member of the unitary business group is an expatriated entity.

4.20 NOTICES: Notices and other communications provided for herein shall be given in writing via electronic mail whenever possible. If transmission via electronic mail is not possible, then notices and other communications shall be given in writing via registered or certified mail with return receipt requested, via receipted hand delivery, via courier (UPS, Federal Express or other similar and reliable carrier), or via facsimile showing the date and time of successful receipt. Notices shall be sent to the individuals who signed this contract using the contact information following the signatures. Each such notice shall be deemed to have been provided at the time it is actually received. By giving notice, either Party may change its contact information.

4.21 MODIFICATIONS AND SURVIVAL: Amendments, modifications and waivers must be in writing and signed by authorized representatives of the Parties. Any provision of this contract officially declared void, unenforceable, or against public policy, shall be ignored and the remaining provisions shall be interpreted, as far as possible, to give effect to the Parties' intent. All provisions that by their nature would be expected to survive, shall survive termination. In the event of a conflict between the State's and the Vendor's terms, conditions and attachments, the State's terms, conditions, and attachments shall prevail.

4.22 PERFORMANCE RECORD / SUSPENSION: Upon request of the State, Vendor shall meet to discuss performance or provide contract performance updates to help ensure proper

performance of this contract. The State may consider Vendor's performance under this contract and compliance with law and rule to determine whether to continue this contract, suspend Vendor from doing future business with the State for a specified period of time, or whether Vendor can be considered responsible on specific future contract opportunities.

4.23 FREEDOM OF INFORMATION ACT: This contract and all related public records maintained by, provided to, or required to be provided to the State are subject to the Illinois Freedom of Information Act (FOIA) notwithstanding any provision to the contrary that may be found in this contract. 5 ILCS 140.

4.24 SCHEDULE OF WORK: Any work performed on State premises shall be performed during the hours designated by the State and performed in a manner that does not interfere with the State and its personnel.

4.25 WARRANTIES FOR SUPPLIES AND SERVICES:

4.25.1. Vendor warrants that the products furnished under this contract will be distributed by Vendor, and all services provided hereunder will be performed, in compliance with all applicable federal and state laws, regulations, and ordinances. VENDOR DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY, NONINFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE. NEITHER PARTY SHALL BE LIABLE FOR INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES.

4.25.2. Vendor will transfer to the State (on a non-exclusive basis) any representations and warranties made by the manufacturers of the products to the extent that such representations and warranties are assignable by Vendor, and will cooperate with all reasonable requests made by the State to enforce such representations and warranties against such manufacturers. Notwithstanding anything to the contrary herein, Vendor reserves its own rights under such representations and warranties made by such manufacturers and the remedies available to it for any breach of such representations and warranties by the manufacturers.

4.25.3. Vendor warrants that all services will be performed to meet the requirements of this contract in an efficient and effective manner by trained and competent personnel. Vendor shall monitor performances of each individual and shall immediately reassign any individual who does not perform in accordance with this contract, who is disruptive or not respectful of others in the workplace, or who in any way violates the contract or State policies.

4.26 REPORTING, STATUS AND MONITORING SPECIFICATIONS: Vendor shall immediately notify the State of any event that may have a material impact on Vendor's ability to perform this contract.

4.27 EMPLOYMENT TAX CREDIT: Vendors who hire qualified veterans and certain ex-offenders may be eligible for tax credits. 35 ILCS 5/216, 5/217. Please contact the Illinois Department of Revenue (telephone #: 217-524-4772) for information about tax credits.

The Vendor is required to report to Central Management Services – Bureau of Strategic Sourcing (BOSS) an annual report on the hiring of Veterans and Ex-Offenders, this report must be sent by September 30th of every year. The report shall be attached and sent to the following email address: CMS.BOSS.Sourcing@illinois.gov.

5. STATE SUPPLEMENTAL PROVISIONS

☒ Agency Definitions

5.1. "Chief Procurement Officer" means the chief procurement officer appointed pursuant to 30 ILCS 500/10-20(a)(4).

5.2. "Governmental unit" means State of Illinois, any State agency as defined in Section 1-15.100 of the Illinois Procurement Code, officers of the State of Illinois, any public authority which has the power to tax, or any other public entity created by statute.

5.3. "Qualified not-for-profit agency" means any not-for-profit agency that qualifies under Section 45-35 of the Illinois Procurement Code and that either (1) acts pursuant to a board established by or controlled by a unit of local government or (2) receives grant funds from the State or from a unit of local government.

☐ Required Federal Clauses, Certifications and Assurances

☐ Public Works Requirements (construction and maintenance of a public work) 820 ILCS 130/4.

☐ Prevailing Wage (janitorial cleaning, window cleaning, building and grounds, site technician, natural resources, food services, security services, and printing, if valued at more than \$200 per month or \$2,000 per year) 30 ILCS 500/25-60.

☒ Agency Specific Terms and Conditions

5.4. The Chief Procurement Officer for General Services makes this contract available to all governmental units and qualified not-for-profit agencies.

5.5. Vendor agrees to extend all terms and conditions, specifications, and pricing or discounts specified in this contract for the items in this contract to all governmental units and qualified not-for-profit agencies.

5.6. The supplies or services subject to this Contract shall be distributed or rendered directly to each governmental unit or qualified not-for-profit agency.

5.7. Vendor shall bill each governmental unit or qualified not-for-profit agency separately for its actual share of the costs of the supplies or services purchased.

5.8. The credit or liability of each governmental unit or qualified not-for-profit agency shall remain separate and distinct.

5.9. Disputes between vendors and governmental units or qualified not-for-profit agencies shall be resolved between the affected parties.

5.10. All terms and conditions in this Contract apply with full force and effect to all purchase orders.

☒ Other (describe)

- 5.11. COVID-19 PROTECTIONS: In response to the COVID-19 pandemic, Governor J.B. Pritzker issued Executive Order 2021-22 and 2021-23. These Executive Orders mandate certain contractors shall use face coverings, have COVID-19 vaccinations, or undergo testing for COVID-19 when in indoor public places, Health Care Facilities, Schools, Institutions of Higher Education, and State-owned and operated congregate facilities. Vendor shall adhere to the requirements of these Executive Orders as applied by the Agency. The Agency may also implement vaccination or testing requirements that exceed those in the Executive Orders.