

STATE OF ILLINOIS
CONTRACT
CENTRAL MANAGEMENT SERVICES
Mobile Computer Statewide Master
Contract # CMS701124A

VENDOR

Vendor Name: CDS Office Systems Inc. DBA CDS Office Technologies	Address: 612 S Dirksen Pkwy Springfield, IL 62703
Signature: <i>Ronald S. Clark</i>	Phone: 800-367-1508
Printed Name: Ronald S Clark	Fax: 217-753-4867
Title: VP of IT Sales	Email: RClark@cdsot.com
Date: 12-16-16	

STATE OF ILLINOIS

Procuring Agency or University: Department of Central Management Services	Phone: 312-814-5655
Street Address: 100 W. Randolph	Fax: 312-814-6886
City, State ZIP: Chicago, IL 60653	
Official Signature: <i>M. M. Hoffman</i> 13	Date: 12/28/16
Printed Name: Michael M. Hoffman	by Ronald Wilson, Agency Purchasing Officer
Official's Title: Acting Director	

AGENCY/UNIVERSITY USE ONLY

NOT PART OF CONTRACTUAL PROVISIONS

Agency or University Reference # 17-101124 Project Title: Mobile Computer Master Contract Re-Bid

Contract # CMS701124A Procurement Method (IFB, RFP, Small, etc): IFB

IPB Ref. # 22039245 IPB Publication Date: 08/24/16 Award Code: A

Subcontractor Utilization? ☐ Yes ☒ No Subcontractor Disclosure? ☐ Yes ☐ No

Funding Source Obligation #

Small Business Set-Aside? ☐ Yes ☐ No

Minority Owned Business? ☐ Yes ☐ No Percentage

Female-Owned Business? ☐ Yes ☐ No Percentage

Persons With Disabilities Owned Business? ☐ Yes ☐ No Percentage

Other Preferences?

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1. DESCRIPTION OF SUPPLIES AND SERVICES

1.1. GOAL: The Illinois Department of Central Management Services (CMS) is executing a statewide master contract for mobile computers, associated accessories, and support services.

1.2. SUPPLIES AND/OR SERVICES REQUIRED: Vendor shall provide equipment and services ordered which meet or exceed the specifications listed below for Category 2 Mobile Computers as described below. The same Original Equipment Manufacturer (OEM) must be utilized for all products within the category. Optional components may be from other OEMs, but must carry the same warranty coverage and support as the primary components.

Category 2: Mobile Computer – A mobile computer is a personal computer that is portable by design to allow flexibility in both when and where it is used. A mobile computer is comprised of multiple primary components integrated into a single unit by the OEM: 1) display, 2) keyboard, 3) point device such as a touchpad and 4) speakers. A mobile computer can be used away from an outlet using a rechargeable battery. Laptops, Notebooks, and Ultrabooks are included under the Mobile Computer category.

Optional upgrades/add-ons for this category include, but not limited to:

- LCD
- Central Processor (CPU)
- Memory
- Hard Drive
- Modular Bay Device
- Storage (including, but not limited to, memory sticks, USB drives)
- Graphics processor
- CD/DVD Drives
- Docking Solutions and Port replicators
- Video Card
- Audio Card
- Modems
- Webcams (integrated or external)
- Integrated Verizon and ATT Mobile Broadband
- Mobile Device Recovery service
- Network Interface
- Removable Storage
- Battery
- Carrying Case
- Extended warranty beyond the mandatory three (3) year warranty

Optional services for this category include, but are not limited to:

- Loading of Customer Images
- Recovery/Disposal Services (Keep your Hard Drive Service)

Vendor must provide hardware warranty and support services for all equipment, including third party products provided (including, but are not limited to, diagnosing and repairing defects and problems related to purchased hardware) with the following minimum coverage and service attributes:

- 3 years' parts
- 3 years' labor
- Service Hours: 8:00 AM to 5:00 PM, Monday – Friday
- Response/Repair Turn-Around: Three (3) business days of incident report

- Statewide on-site/remote hardware warranty support
- Statewide off-site/depot (pick-up, drop-off, or mail-in) hardware warranty support.

The State of Illinois shall create and promote standard configurations for each category (with options to upgrade) as well as warranty and related support services.

All products furnished shall be new, unused, most recent manufacture and not discontinued. Given the changing marketplace and the evolution of technology, the State, at any point during the term of the contract, may review new and enhanced products, maintenance and support services, or equipment offered by Vendor that are within the scope of the contract and underlying procurement. In addition, if an item becomes discontinued or otherwise not available during any term, the vendor may propose to substitute an equivalent or better product. Prices and rates for any product or service offered may be revised downward from the contract price, but not upward. Similarly, discount schedules may be increased from the original contract, but not decreased. Any new technology the State takes advantage of must, at a minimum, replace a function or solution that the contract already covers.

The State and other governmental units (including certain not-for-profit entities) authorized by law to participate in the Joint Purchasing Program (JPP) may utilize any Contract(s) resulting from this procurement. This authority is governed by the Governmental Joint Purchasing Act [30 ILCS 525]. For more information on this program, please visit the CMS website: www.illinois.gov/cms/localgov/jpp/Pages/Default.aspx.

If a buyer experiences significant defects or incidents (greater than 10% of an order or install base) during the warranty period, the buyer has the option to have the Vendor, at no expense to the buyer, perform an audit of said equipment. Based on the outcome of the audit the buyer and seller will agree to one or more of the following options:

- continued normal warranty repairs; and/or
- replace all or a portion of said equipment with like or better equipment; and/or
- refund the original purchase; and/or
- use an alternate vendor for subsequent orders of said equipment.

Vendor shall provide Recovery and Disposal/Return Services in accordance with 20 ILCS 450 *et seq.* during the warranty period for all PC configurations. Any such services performed by Vendor must accomplish the goal that computer software or hardware be erased or wiped/sanitized in a manner that prevents retrieval of electronically stored information, OR secure return of the original failed hard drive to the IT department of the purchasing/owning agency. An acceptable method of disposal will prevent retrieval of electronically stored information by overwriting the hard drive or other permanent storage media 3 (three) times. If this option is not available, then a method such as destroying in a dry pulverizing system, shredding, grinding, milling, knurling, disintegration, or degaussing is appropriate. Recycling and electronic waste management must be consistent with required Electronic Product Environmental Assessment Tool (EPEAT) for the category. Vendor will be required to certify use of appropriate disposal services.

Vendor shall establish and maintain a website providing technical specifications of products, product pictures, part numbers, details specific to product components and upgrade options, and any other pertinent information, as well as contract pricing for use by State Agencies and Joint Purchasing entities.

Vendor shall notify CMS End User Computing of product changes (additions, upgrades, and/or retirements) a minimum of sixty (60) days prior to implementation.

Orders against the resulting contract will be made by the State using a State approved form (e.g. Basic Ordering Agreement, "BOA") as the need arises. Other institutions entitled to use the resulting contract will utilize their own individual purchase order. Orders written through and including the last day of the resulting contract shall be honored. Each individual order will have its own ship to/bill to information. Any Vendor terms and conditions on the Vendor's ordering document(s) shall not apply to the contract or any orders against it. For each order, the purchasing Agency or JPP entity shall be solely responsible for all payments or other applicable obligations or disputes that may arise related to the order. CMS shall have no obligations or responsibilities related to orders placed by other Agencies or JPP entities. Nothing in this contract or elsewhere, including in any non-State approved forms, shall create any obligation to purchase, and make payments on, any products or services offered hereunder. See section 4.1.6 for invoicing terms.

Vendor shall accept orders via mail, fax, and/or email. Vendor must provide a billing system with the following capabilities:

- a. Groups orders/billing; reducing the number of invoices and payees;
- b. Supports multiple agency billing names, addresses, and accounts;
- c. Provides online review of outstanding invoices;
- d. Supports multiple bill sorting options; and
- e. Provides on-line tracking and reporting of order status.

Vendor shall deliver ordered computer hardware to purchasing Agency-specified delivery location within 20 working days from receipt of order unless otherwise agreed to by the purchasing Agency.

Prior to delivery of ordered computer hardware, Vendor must contact the purchasing Agency to confirm delivery date, time and location to ensure Warehouse/Receiving readiness.

Vendor shall attend quarterly meetings at a State of Illinois location to be determined and provide reports to reflect the following service metrics:

- equipment orders;
- equipment deliveries;
- warranted equipment replacement turn-around; and
- warranted equipment repair turn-around.

Category 2: Mobile Computer Hardware Specifications

Mobile Computer: Professional Laptop - With an optional docking station, this device can serve both as a desktop replacement and mobile computer for customers working from multiple locations. The processing capacity will support multi-tasking requirements of office automation, email, multiple browser sessions and various support tools.

Mobile Computer: Professional Laptop - Lenovo Brand

Vendor agrees to meet or exceed the State's minimum requirements below:

Processor:	Intel Core i3-6100U Processor
Speed:	(3M Cache, 2.30 GHz)
RAM:	4 GB DDR3 (2 SODIMM slots) Upgradeable to 16 GB
Hard Disk:	500 GB SATA 7200 RPM
Graphics:	Integrated with: (1) HDMI output connector (1) VGA output connector (1) DVI or DisplayPort (dual mode/DP++ support) output connector (if additional dongle/converter is needed to meet this requirement, it MUST be included in pricing for this configuration)

Ronald S. Gilgus
6/1/17

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by Tracy Rutter

6/2/17

Tracy Rutter,
Deputy Director

Display:	15.6" High Definition (1920x1080) (1366 x 768)
Manageability:	The ability for ad-hoc modification from the Microsoft Operating System into the machine BIOS, Windows Management Instrumentation (WMI) is preferred
Crypto processor:	Trusted Platform Module (TPM 1.2, TPM 2.0 for Windows 10). For standard imaging purposes we require minimum 12 month platform/chipset lifecycle.
LAN:	10/100/1000 w/RJ-45 connector
Wireless:	Integrated 802.11 b/g/n/ac
Operating System:	Support current version of Microsoft Windows Enterprise
Other Ports:	2 USB Ports with 1 USB 3.0 Minimum 1 Serial Port (if dongle is needed to meet this requirement, it MUST be included in pricing for this configuration) 1 Headphone / Lineout 1 Microphone In/Other Integrated Speakers 1 AC Power
Input:	Full-sized Keyboard Touchpad with scroll/buttons
Security:	Kensington lockable compatible
Battery:	Minimum 6 hour battery life
Weight:	Less than 5 pounds
Carry Case:	Standard (must be size and weight appropriate for proposed device)
Certification & Compliance:	Energy Star 6.0 or higher qualified EPEAT registered Gold UL listed
Warranty:	3 years' parts 3 years' labor Support: On-Site Service Hours: 8:00 AM to 5:00 PM CST, Monday – Friday Response/Repair Turn-Around: Three (3) business days of incident report

Mobile Computer: Executive Laptop – This device is ultra-portable with the processing capacity of a regular notebook computer that will support multi-tasking requirements of office automation, email, multiple browser sessions and various support tools and with extended battery life.

Mobile Computer: Executive Laptop - Lenovo Brand

Vendor agrees to meet or exceed the State's minimum requirements below:

Processor:	Intel Core i7-6600U Processor
Speed:	(4M Cache, up to 3.40 GHz)
RAM:	8 GB DDR3 (2 SODIMM slots) Upgradeable to 32 GB
Hard Disk:	500 GB SATA 7200 RPM
Graphics:	Integrated with: (1) HDMI output connector (1) VGA output connector (1) DVI or DisplayPort (dual mode/DP++ support) output connector (if additional dongle/converter is needed to meet this requirement, it MUST be included in pricing for this configuration)

Display:	12.1" to 14.1" High Definition (1920x1080) (1366 x 768)
Manageability:	The ability for ad-hoc modification from the Microsoft Operating System into the machine BIOS, Windows Management Instrumentation (WMI) is preferred
Crypto processor:	Trusted Platform Module (TPM 1.2, TPM 2.0 for Windows 10). For standard imaging purposes we require minimum 12 month platform/chipset lifecycle.
LAN:	10/100/1000 w/RJ-45 connector
Wireless:	Integrated 802.11 b/g/n/ac
Operating System:	Support current version of Microsoft Windows Enterprise
Other Ports:	2 USB Ports with 1 USB 3.0 Minimum 1 Headphone / Lineout 1 Microphone In/Other Integrated Speakers 1 AC Power
Input:	Full-sized Keyboard Touchpad with scroll/buttons
Security:	Kensington lockable compatible
Battery:	Minimum 6 hour battery life
Weight:	Less than 4 pounds
Carry Case:	Deluxe/lightweight (must be size and weight appropriate for proposed device)
Certification & Compliance:	Energy Star 6.0 or higher qualified EPEAT registered Gold UL listed
Warranty:	3 years' parts 3 years' labor Support: On-Site Service Hours: 8:00 AM to 5:00 PM CST, Monday – Friday Response/Repair Turn-Around: Three (3) business days of incident report

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6/1/17

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by Tracy Rutter
6/2/17

*Tracy Rutter,
Deputy Director*

1.3. MILESTONES AND DELIVERABLES: N/A.

1.4. VENDOR / STAFF SPECIFICATIONS: Vendor must be an authorized reseller of proposed manufactured equipment and have the ability and authorization to provide pre- and post-sales support where applicable. A "Warranty Technician" must be original equipment manufacturer (OEM) certified to work on the equipment.

1.5. TRANSPORTATION AND DELIVERY:

- Delivery charges must be included in equipment pricing.
- Vendor must deliver ordered computer hardware to the purchasing agency specified delivery location within 20 working days from receipt of order.
- If computer hardware does not arrive within 20 working days from receipt of order, the purchasing agency has the option to cancel the order and purchase equipment from an alternate vendor.
- Prior to delivery of ordered computer hardware, vendor must contact the purchasing agency to confirm delivery date, time, and location to ensure Warehouse/Receiving readiness.

- Vendor must limit delivery of ordered computer hardware to State business hours.
- Claims for extra work or materials not specifically noted in the warranty agreement will not be allowed by the State nor shall the contract holder provide any materials or extra work not covered by the agreement without written agreement between the vendor and the purchasing agency.

1.6. SUBCONTRACTING

Subcontractors are not allowed.

1.7. 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: United States of America

Value of services performed at this location: Full Contract Value

2. PRICING

2.1 FORMAT OF PRICING:

2.1.1 Vendor's pricing in the format shown below is based on the terms and conditions set forth in section 1 of this Contract.

Vendor's website with Manufacturer's Suggested Retail Price list is:

Category 2 – Mobile Computers

Configuration	Mfg.	% Discount off MSRP
Professional	Lenovo	65.83%
Executive	Lenovo	62.8%
Optional Upgrades/Add-ons		17%
Services		20%

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

2.3 EXPENSES ALLOWED: Expenses are not allowed as follows: N/A.

2.4 DISCOUNT: The State may receive a 0 % discount for payment within 30 days of receipt of correct invoice. This discount will not be a factor in making the award.

2.5 VENDOR'S PRICING: Attach additional pages if necessary or if the format of pricing specified above in Section 2.1 requires additional pages.

2.5.1. Vendor's Price for the Initial Term: % Discount off MSRP as shown in Section 2.1.

2.5.2. Renewal Compensation: If the contract is renewed, the price shall be at the same rate as for the initial term unless a different compensation or formula for determining the renewal compensation is stated in this section.

2.5.2.1. Agency/University Formula for Determining Renewal Compensation: Same as the initial term.

2.5.2.2. Vendor's Price for Renewal(s): Same as initial term. Vendor may also offer the State a higher discount.

- 2.6 MAXIMUM AMOUNT:** The total payments under this contract shall not exceed \$N/A without a formal amendment. The maximum amount will be entered by the State prior to execution of the contract.

3. TERM AND TERMINATION

3.1 TERM OF THIS CONTRACT: This contract has an initial term of 36 months. If a start date is not identified, the term shall commence upon the last dated signature of the Parties.

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.

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:

3.2.1. Any renewal is subject to the same terms and conditions as the original contract unless otherwise provided in the pricing section. The State may renew this contract for any or all of the option periods specified, may exercise any of the renewal options early, and may exercise more than one option at a time based on continuing need and favorable market conditions, when in the best interest of the State. The contract may neither renew automatically nor renew solely at the Vendor's option.

3.2.2. Pricing for the renewal term(s), or the formula for determining price, is shown in the pricing section of this contract.

3.2.3. The State reserves the right to renew for a total of two (2) years in any one of the following manners:

3.2.3.1 One renewal covering the entire renewal allowance;

3.2.3.2 Individual one-year renewals up to and including the entire renewal allowance; or

3.2.3.3 Any combination of full or partial year renewals up to and including the entire renewal allowance.

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 OTHER TERMINATION:** The State may also terminate, in whole or in part, this contract without advance notice pursuant to Section 3.7.

- 3.6 SUSPENSION:** The State may suspend, in whole or in part, this contract without advance notice pursuant to Section 3.7.

- 3.7 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 or CMS reserves funds, 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 or available funds for payment.. Contractor will be notified in writing of the failure of appropriation or of a reduction or decrease and CMS' election to terminate or suspend, in whole or in part, as soon as practicable. Any suspension or termination pursuant to this section will be effective upon the date of the written notice unless otherwise indicated.

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/University's Illinois tax exemption number and Federal tax exemption information.
 - 4.1.6.2 Vendor shall invoice on a per order basis unless invoicing is tied in this contract to milestones, deliverables, or other invoicing requirements agreed to in the contract.

Send invoices to:

Agency/University:	Per Basic Ordering Agreement
Attn:	Per Basic Ordering Agreement
Address:	Per Basic Ordering Agreement
City, State Zip	Per Basic Ordering Agreement

- 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. Upon written notice to the Vendor, CMS may transfer or assign to the Department of Innovation and Technology (DoIT) this contract, in whole or in part.
- 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.
- 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/University, 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:** 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 performed or supplies created by Vendor under this contract, whether written documents or data, goods 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, unless otherwise agreed in writing. Vendor hereby assigns to the State all right, title, and interest in and to such work 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.
- 4.10 INDEMNIFICATION AND LIABILITY:** The Vendor shall indemnify and hold harmless the State of Illinois, its agencies, officers, employees, agents and volunteers from any and all costs, demands, expenses, losses, claims, damages, liabilities, settlements and judgments, including in-house and contracted attorneys' fees and expenses, arising out of: (a) any breach or violation by Vendor of any of its certifications, representations, warranties, covenants or agreements; (b) any actual or alleged death or injury to any person, damage to any real or personal property, or any other damage or loss claimed to result in whole or in part from Vendor's negligent performance; (c) any act, activity or omission of Vendor or any of its employees, representatives, subcontractors or agents; or (d) any actual or alleged claim that the services

or goods provided under this contract infringe, misappropriate, or otherwise violate any intellectual property (patent, copyright, trade secret, or trademark) rights of a third party. 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 bonds and 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 of Vendor's and subcontractor's officers, employees or agents. 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:** If Vendor does not pursue any claim or cause of action it has arising under Federal or State antitrust laws relating to the subject matter of this contract, then upon request of the Illinois Attorney General, Vendor shall assign to the State all of Vendor's rights, title and interest to the claim or cause of action.
- 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 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.
- 4.20 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.
- 4.21 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.
- 4.22 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.

4.23 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.

4.24 WARRANTIES FOR SUPPLIES AND SERVICES:

4.24.1. Vendor warrants that the supplies furnished under this contract will: (a) conform to the standards, specifications, drawing, samples or descriptions furnished by the State or furnished by the Vendor and agreed to by the State, including but not limited to all specifications attached as exhibits hereto; (b) be merchantable, of good quality and workmanship, and free from defects for a period of twelve months or longer if so specified in writing, and fit and sufficient for the intended use; (c) comply with all federal and state laws, regulations and ordinances pertaining to the manufacturing, packing, labeling, sale and delivery of the supplies; (d) be of good title and be free and clear of all liens and encumbrances and; (e) not infringe any patent, copyright or other intellectual property rights of any third party. Vendor agrees to reimburse the State for any losses, costs, damages or expenses, including without limitations, reasonable attorney's fees and expenses, arising from failure of the supplies to meet such warranties.

4.24.2. Vendor shall ensure that all manufacturers' warranties are transferred to the State and shall provide to the State copies of such warranties. These warranties shall be in addition to all other warranties, express, implied or statutory, and shall survive the State's payment, acceptance, inspection or failure to inspect the supplies.

4.24.3. 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.

4.25 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.

4.26 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.

4.27. SUPPLEMENTAL TERMS: Notwithstanding any provision to the contrary in the Vendor's supplemental terms and conditions, or in any licensing agreement attached hereto:

4.27.1 The procuring Agency and the State do not waive sovereign immunity;

4.27.2 The procuring Agency and the State do not consent to be governed by the laws of any state other than Illinois;

4.27.3 The procuring Agency and the State do not consent to be represented in any legal proceeding by any person or entity other than the Illinois Attorney General or his or her designee;

- 4.27.4 The procuring Agency and the State shall not be bound by the terms and conditions contained in any click-wrap agreement, click-wrap license, click-through agreement, click-through license, end user license agreement or any other agreement or license contained or referenced in the software or any quote provided by Vendor, except as attached to this Contract.
- 4.27.5 The procuring Agency and the State shall not indemnify Vendor or its subcontractors (including any equipment manufacturers or software companies);
- 4.27.6 Vendor shall indemnify the procuring Agency and State pursuant to the terms and conditions of Section 4.10 of the Contract; and
- 4.27.7 Vendor's liability shall be governed by the terms and conditions contained in Section 4.10 of the Contract.

5. STATE SUPPLEMENTAL PROVISIONS

- ☐ Agency/University Definitions
- ☐ 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/University Specific Terms and Conditions
- ☐ Other (describe)