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## **AGGREGATE HARDWARE BUY 18-01 AGREEMENT TERMS AND CONDITIONS**

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The following terms and conditions shall apply to this Aggregate Hardware Buy 18-01 Agreement:

### **SECTION 1 GENERAL.**

The terms and conditions of the Contractor's Manufacturer Umbrella Contract including any Amendments and the additional terms and conditions set forth in Amended RFQ 18-01 govern this Aggregate Hardware Buy 18-01 Agreement ("Agreement").

### **SECTION 2 AGREEMENT SCOPE.**

#### **SECTION 2.1 DEFINITIONS.**

For purposes of this Agreement, the following definitions shall apply:

- "Configuration" is one of the twelve lots that were available to bid in RFQ 18-01.
- "Standard Configuration" refers to the specifications for the base device in each Configuration set forth in Attachment 1, Pricing Pages which is attached hereto and incorporated herein.
- "Required Products" are items that were mandatory for the Contractor to bid in RFQ 18-01.
- "Additional Products" are Products that are not part of the Standard Configuration and are optional for Authorized Users to purchase to enhance the Standard Configuration.
- "Installation" is defined in Section 2.5 of the Manufacturer Umbrella Contract.

#### **SECTION 2.2 PRICING.**

This Agreement is an Indefinite Delivery, Indefinite Quantity (IDIQ) award. Numerous factors could cause the actual volume of Product purchased to vary substantially.

Such factors include, but are not limited to, the following:

- Awards are nonexclusive
- There is no guarantee of volume to be purchased
- There is no guarantee of dollar value to be purchased
- There is no guarantee that demand will continue in any manner consistent with previous purchases

Attachment 1, Pricing Pages sets forth all Configuration Product prices, Standard Configuration prices, Required Product specifications and prices, pre-packaged Installation SKUs and prices and discount percentages for Additional Products and Installation NYS Regions.

Contractor must furnish all quantities actually ordered by Authorized Users at or below the prices in the Aggregate Hardware Buy 18-01 Agreement.

Contractor shall provide the Configurations initially awarded in this Aggregate Hardware Buy 18-01 Agreement, as the same may be modified through the process set forth in Section 9, Agreement Price List Modification, below, for the entire duration of Aggregate Hardware Buy 18-01 Agreement including any extensions.

The following descriptions, as applicable, delineate the scope and pricing terms of the Products available under the awarded Configurations.

## **SECTION 2.2.1 STANDARD CONFIGURATION.**

Pricing for Products included in each Standard Configuration represents a discount off the Net NYS Contract Price from the Contractor's Manufacturer Umbrella Contract Price List. Contractor must provide itemized pricing on all Products offered in each Standard Configuration. In no event may quoted pricing exceed Net NYS Contract Price on the Contractor's Manufacturer's Umbrella Contract Price List. The Price of the Standard Configuration and its component prices will remain equal to the Agreement awarded price for the term of the Agreement(s) and any extensions, though Contractor may offer lower pricing at any time.

## **SECTION 2.2.2 REQUIRED PRODUCTS.**

The following Required Product categories are defined below:

- Warranty & Services includes Products such as Multi-Year Warranty, Agency Specific Factory Imaging, Asset Tagging, Disk Retention and Accidental Damage.
- Components include Products such as Replacements or Additional Components to the Standard Configuration, e.g., CPU, Additional Memory, Internal Optical Drive, and Operating System. Component upgrades and downgrades may be executed by increment. When an upgrade is done by increment, it must be specified exactly how the upgrade will be provided.
- Peripherals include products such as a Cable, External Optical Drive, Docking Station, Wireless Keyboard, and Mouse.

Products that were bid as Required Products by the Contractor will be available under the Additional Product category on the Configuration price list and are subject to the final discount percentage that was bid by the Contractor in the On-line Reverse Auction. These items are not part of the Standard Configuration and are optional for Authorized Users to purchase to enhance the Standard Configuration, however, the price must remain equal to or better than the originally awarded price throughout the life of the Agreement.

## **SECTION 2.2.3 ADDITIONAL PRODUCTS.**

Contractors are required to apply the same discount percentages that were set for the three (3) Required Product categories (Warranty and Services, Components, and Peripherals), to the Additional Products in their respective categories. For all Additional Products, the discount percentages will apply to the Net NYS Contract Price from the Contractor's Manufacturer Umbrella Contract Price List. These discount percentages will apply to the original Additional Products bid with Contractor's response to RFQ 18-01 and any future Additional Products added within the scope of the Agreement. Discount percentages may be increased, but not decreased during the term of the Agreement and any extensions.

## **SECTION 2.2.4 INSTALLATION.**

Where permitted under the Configuration, Installation services are limited to the New York State Regions (NYS Regions) awarded to Contractor. NYS Regions included in this Agreement are defined in Attachment 6, NYS Regions. The Installation location shall be designated by the Authorized User within a given NYS Region in New York State. Delivery of all Aggregate Hardware Products shall be made in accordance with Section 11, Product Delivery.

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#### **SECTION 2.2.4.1 Pre-packaged Installation SKUs.**

Pre-packaged Installation SKUs, listed on Attachment 1, Pricing Pages, that were bid by the Contractor are not part of the Standard Configuration and are optional for Authorized Users to purchase. Contractors may not remove awarded pre-packaged Installation SKUs throughout the duration of the Agreement and any extensions.

For each Standard Configuration, the pre-packaged SKU(s) for Installation services must include, but is not limited to:

- unboxing
- placement of unit
- attachment of peripherals as required
- attachment of monitors as required
- attachment of docking stations as required
- removal of all cardboard and packing materials for recycled disposal
- factory installation of a standard image
- inventory of new equipment including model number, serial number, and port location if required
- factory asset tagging

Aggregate Hardware Buy 18-01 Installation services shall not include:

- on-site imaging
- data transfer
- training

Outside the scope of the Manufacturer Umbrella Contract and this Aggregate Hardware Buy 18-01 Agreement:

- warehousing/storage

The awarded Installation price, listed in Attachment 1, Pricing Pages, for each NYS Region within each Configuration shall not increase for the term of the Agreement and any extensions; however, the Contractor may offer lower prices for a specific Authorized User transaction without having any obligation to apply said pricing on other transactions under the Contract. Depending on Authorized User needs as identified in the Purchase Order or other ordering document, Installation may be subject to the living wage rate or Prevailing Wage rate. Please see Manufacturer Umbrella Contract Sections 2.16 and 2.17.

#### **SECTION 2.2.4.2 Additional Installation SKUs.**

Contractors may also offer Authorized Users additional Installation, Configuration, and ancillary equipment and accessories which must be approved by OGS via the process described in Attachment 4, Agreement Price List Modification Procedures and listed on Attachment 1, Pricing Pages.

Contractors are required to apply the same NYS Region Installation discount percentages that were established in this Agreement to any additional Installation Products for the respective NYS Region. For all additional Installation Products, the NYS Region discount percentages will apply to the Net NYS Contract Price from the Contractor's Manufacturer Umbrella Contract Price List. These discount percentages were applied to the original additional Installation SKUs bid with Contractor's response to RFQ 18-01 and will apply to any future additional Installation Products added within the scope of the Agreement. Discount percentages may be increased, but not decreased during the term of this Agreement and any extensions.

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### **SECTION 3 AGREEMENT DOCUMENTS / ORDER OF PRECEDENCE.**

This Aggregate Hardware Buy 18-01 Agreement is comprised of the following documents. Any conflicts or inconsistencies among such documents shall be resolved by giving precedence to the documents in the following order:

1. Aggregate Hardware Buy 18-01 Agreement TERMS AND CONDITIONS (this document);
2. Attachment 1 - Pricing Pages, which consists of the Price Sheet for each awarded configuration as approved by OGS from time to time during the term of this Agreement;
3. Attachment 2 - Issue Escalation Plan;
4. Attachment 3 - Sales Report Form
5. Attachment 4 - Agreement Price List Modification Procedures
6. Attachment 5 – Pricing Modification Form
7. Attachment 6 - NYS Regions
8. Attachment 7 - How to Use. OGS reserves the right to unilaterally make revisions, changes and/or updates to this attachment without processing a formal amendment and/or modification to this Agreement;
9. Attachment 8 - Contractor Information;
10. RFQ 18-01 Amended Request for Quote 18-01, Aggregate Hardware Buy
  - Amended RFQ Aggregate Hardware Buy 18-01 (Amended)
  - Attachment A – Technical Response (Amended)
  - Attachment B – Contractor Questions and Comments (Amended)
  - Attachment C – Cost Response
  - Attachment D – Issue Escalation Plan
  - Attachment E – Reverse Auction Agreement
  - Appendix 1 – Sales Report Form (Amended)
  - Appendix 2 – Agreement Price List Modification Procedures
  - Appendix 3 – Pricing Modification Form
  - Appendix 4 – NYS Regions
  - Appendix 5 – How to Prepare a Successful Bid
  - Appendix 6 – Responses to Inquiries Released 9-14-2018

### **SECTION 4 COMMENCEMENT OF SALES.**

The Contractor can commence sales from this Aggregate Hardware Buy 18-01 Agreement only upon OGS acceptance and posting of the awarded Configurations with the Contractor 's contact information on the OGS Website.

### **SECTION 5 PARTICIPATION IN THE eMARKETPLACE.**

Contractor should provide a “hosted” or “punch-out” catalog that integrates with the Statewide Financial System (SFS) and is available to Authorized Users via a centralized eMarketplace website. Additional information may be found at: <https://ogs.ny.gov/procurement/emarketplace>.

There are no fees required for Contractor’s participation in the catalog site development or management. Upon completion and activation of an on-line catalog, State Agencies may process their orders through the SFS functionality and other Authorized Users can access the catalog site to fulfill orders directly. The State is also implementing the PeopleSoft Inventory module in the near future to track inventory items within the item master table. Further information regarding business processes, interfaces, and file layouts may be found at: [www.sfs.ny.gov](http://www.sfs.ny.gov) and <http://www.osc.state.ny.us/agencies/guide/MyWebHelp/>.

The eMarketplace can be used by all Authorized Users of NYS centralized contracts. It can be accessed through the Statewide Financial System or directly through Perfect Commerce by Authorized Users who do not use SFS.

The Contractor with the winning bid for each Configuration may not receive an award until Contractor agrees to participate in the eMarketplace.

#### **SECTION 6 CONTRACTOR WEBSITE.**

If a Contractor maintains its own dedicated Aggregate Hardware Buy 18-01 website, it should have a web-based ordering system with the capability of receiving electronic orders from all OGS Authorized Users via the Internet. If such web-based ordering system is made available, the web-based ordering system shall have full order inquiry capabilities and shall acknowledge receipt of an Authorized User's order. Contractor will provide individual quotes to the Authorized Users based on their needs.

Each Contractor's website link will be listed under the Contractor information on the OGS website. The Contractor's website will be the responsibility of the Contractor to maintain and keep updated. This website must remain accurate and available throughout the duration of Aggregate Hardware Buy 18-01 Agreement. Determination of compliance will be at the sole discretion of the OGS. The State reserves the right to request demonstrations of the Contractor's website. The only offerings allowed within the Contractor's on-line configurator will be those within the OGS approved Configuration requirements (Standard Configuration, Additional Products, Installation). Contractor's website shall comply with Contractor's Manufacturer Umbrella Contract section titled Accessibility of Web Based Information and Applications Policy Language.

If a Contractor maintains its own Aggregate Hardware Buy 18-01 website, the eMarketplace link must be displayed on the page, which will be provided by the eMarketplace. Any conflicts between the OGS-posted price lists and items on a Contractor's dedicated website shall be resolved in favor of the OGS-posted pricelist at time of the sale.

#### **SECTION 7 PARTICIPATION IN AGGREGATE HARDWARE 18-01 BUY AGREEMENT.**

Pricing for this Aggregate Hardware Buy 18-01 Agreement may be extended to additional States or governmental jurisdictions upon mutual written agreement between New York State (the lead contracting State) and the Contractor. Political subdivisions and other authorized entities within each participating State or governmental jurisdiction may also participate in this Aggregate Hardware Buy 18-01 Agreement if such State normally allows participation by such entities. New York State reserves the right to negotiate additional discounts based on any increased volume generated by such extensions. In the event that this Aggregate Hardware Buy 18-01 Agreement is so extended, such other authorized entities shall be solely responsible for liability and performance under this Aggregate Hardware Buy 18-01 Agreement and Contractor agrees to hold them solely responsible for such liability and performance.

In the event of a supply shortage, Contractor shall not commence any sales under this Aggregate Hardware Buy 18-01 Agreement for authorized purchasers outside of New York State until Purchase Orders for New York State Authorized Users have been fulfilled, or OGS consents to the commencement of such sales.

#### **SECTION 8 TERM FOR AGGREGATE HARDWARE BUY 18-01 AGREEMENT.**

The term of this Aggregate Hardware Buy 18-01 Agreement shall be one (1) year. The term shall not commence until OGS execution and posting of the awarded configurations with the Contractor's contact information on the OGS Website. OGS reserves the right, at its sole discretion, to extend this Aggregate Hardware Buy 18-01 Agreement by an additional one (1) year upon written notice to the Contractor.

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## **SECTION 8.1 SHORT TERM EXTENSION.**

OGS reserves the right to seek an additional short-term extension for this Aggregate Hardware Buy 18-01 Agreement in accordance with Contractor's Manufacturer Umbrella Contract Section 2.18, Short Term Extension:

In the event a replacement Agreement has not been issued, any Agreement let and awarded hereunder by the State, may be extended unilaterally by the State for an additional period of up to three (3) months upon notice to the Contractor with the same terms and conditions as the original Agreement including, but not limited to, prices and delivery requirements. With the concurrence of the Contractor, the extension may be for a period of up to six (6) months in lieu of three (3) months. However, this extension terminates should the replacement Agreement be issued in the interim.

## **SECTION 9 AGREEMENT PRICE LIST MODIFICATION.**

The Contractor is authorized to provide the Standard Configurations, Required Products and Additional Products awarded in this Aggregate Hardware Buy 18-01 Agreement. Products included under this Agreement can be modified through the processes described herein and in Attachment 4, Agreement Price List Modification Procedures and utilizing Attachment 5, Pricing Modification Form.

In order to expedite processing of an Agreement Modification, only one Agreement Modification request can be submitted at a time. Additional requests may be submitted once the Contractor has received approval of a previously submitted request. The Contractor must request the most current approved Attachment 5, Pricing Modification Form from the OGS Contract Manager in order to begin the modification process. This will help to ensure there will not be an overlap or discrepancy with the approved Configuration Price List. The Contractor must specify the Configuration in its request.

### **SECTION 9.1 TYPES OF AGREEMENT MODIFICATIONS.**

Agreement Modifications may include the following:

- Lowering Pricing of Products;
- Adding Additional Products;
- Deleting Products from the Additional Products Category;
- Replacement of Products; and
- Replacement Model for Standard Configuration.

#### **SECTION 9.1.1 LOWERING PRICING OF PRODUCTS.**

All Product Pricing can be lowered at any time throughout the term of this Agreement and any extensions.

Agreement pricing for Products can be lowered without lowering the Product prices on the Contractor's Manufacturer Umbrella Price List. If Product pricing on the Contractor's Manufacturer Umbrella Price List decreases, a modification must be made to the Price List under this Agreement to reflect the price decreases.

If Contractor wishes to lower the price for a component in the Standard Configuration, the Contractor must state the new Product pricing in the Proposed Aggregate Agreement Price column on the Attachment 5, Pricing Modification Form. The proposed lower price will become the new Agreement price for the component upon OGS approval.

If Contractor wishes to lower the price of a Required Product or an Additional Product, the Contractor must state the new Product pricing in the respective column on the Attachment 5, Pricing Modification Form. The proposed lower price minus the percentage discount will become the new Agreement price for the Additional Product upon OGS approval.

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### **SECTION 9.1.2 ADDING ADDITIONAL PRODUCTS.**

In order for Products to be added to the Additional Products pricing category under this Agreement, Products must first be approved on the Contractor's Manufacturer Umbrella Contract in accordance with the Manufacturer Umbrella Contract's Appendix C, Contract Modification Procedure.

Once products have been successfully added to the Contractor's OGS approved Manufacturer Umbrella Price List, the same products can then be submitted for an add request under this Aggregate Hardware Buy 18-01 Agreement. The new Additional Product price, as entered in the Proposed Aggregate Agreement Price column on the Attachment 5, Pricing Modification Form, must be equal to or less than the Net NYS Contract Price for this Product as listed on the Contractor's Manufacturer Umbrella Price List. The discount percentage set forth in this Aggregate Hardware Buy 18-01 Agreement, Attachment 1, Pricing Pages will be applied to the proposed Additional Product price resulting in the Agreement price for the Additional Product. Regions for Installation that are not included in this Aggregate Hardware Buy 18-01 Agreement may not be added later through the Agreement Modification Process.

### **SECTION 9.1.3 DELETING PRODUCTS FROM THE ADDITIONAL PRODUCTS CATEGORY.**

Additional Products can only be removed from this Agreement if the Products are shown to OGS's satisfaction to be incompatible with the Standard Configurations, or at End-of-Life (EOL). The reason an Additional Product is being removed from this Agreement must be provided in writing to the Aggregate Hardware Buy 18-01 Agreement contract administrator(s). OGS must receive no less than sixty (60) calendar days' notice of EOL for Additional Products. All EOL Additional Products purchased by Authorized Users must remain under warranty or be replaceable at no additional charge to the Authorized Users.

### **SECTION 9.1.4 REPLACEMENT OF PRODUCTS.**

Replacements are defined as substitute Products which take the place of a previously awarded/approved Product included in the Standard Configurations, Required Products or Additional Products due to the awarded/approved Product becoming incompatible or unavailable due to Product EOL. The reason a Replacement is needed must be provided in writing to the Aggregate Hardware Buy 18-01 Agreement contract administrator(s) for approval, and OGS must receive no less than sixty (60) calendar days' notice of EOL for Products. All EOL Replacement Products purchased by Authorized Users must remain under warranty or be replaceable at no additional charge to the Authorized Users.

If a Product in the awarded Standard Configuration and/or Required Products becomes incompatible, obsolete or unavailable, a replacement Product of equal or greater specification than the original Product offered in the Standard Configuration and/or Required Products must first be submitted for OGS approval by completing the modification process outlined in Attachment 4, Agreement Price List Modification Procedures. The replacement Product must be offered on the Aggregate Agreement Price List at the same or lower Aggregate Hardware Buy 18-01 Agreement pricing as the Product it is replacing.

If an approved Additional Product becomes incompatible, obsolete or unavailable, a replacement Product of equal or greater specification than the original approved Product must first be submitted for OGS approval by completing the modification process outlined in Attachment 4, Agreement Price List Modification Procedures. The replacement Product must be offered on the Aggregate Agreement Price List at the same or lower Aggregate Hardware Buy 18-01 Agreement category discount percentage as the Product it is replacing.

Replacement components within the Aggregate Hardware Buy 18-01 Agreement must be compatible with RFQ 18-01 peripherals or the Contractor will be responsible for replacement of both the component and the peripheral at no cost to the Authorized User. OGS will be solely responsible for determining if the replacement Product meets or exceeds the original Product offered in the Standard Configurations and/or Required Products.

Note: Contractor must provide advance notification of EOL Products in order for OGS to process modifications for Product substitutions in a timely manner.

#### **SECTION 9.1.5 REPLACEMENT MODEL FOR STANDARD CONFIGURATION.**

Contractor will be able to update the entire Standard Configuration(s) to a new model as long as acceptable proof of EOL is provided in writing to the Aggregate Hardware Buy 18-01 Agreement administrators. The new model(s) must meet or exceed the specifications of the original offered Standard Configuration(s) in each of the component areas listed on Attachment 1, Pricing Pages. At this time, Contractor may replace the pre-packaged Installation SKU(s) or Additional Installation SKUs for any or all NYS Regions to reflect any changes in the new replacement Standard Configuration, if applicable. The Contractor shall offer the replacement Installation SKU(s) at the same or lower Aggregate Hardware Buy 18-01 Agreement pricing. OGS must receive notification no less than 60 calendar days before a Standard Configuration model becomes EOL. All EOL Standard Configurations purchased by Authorized Users must remain under warranty or be replaceable at no additional charge to the Authorized Users. The replacement model price shall not be increased from the original awarded amount for the Standard Configuration. If the replacement model costs less than the original Standard Configuration, the Standard Configuration price shall be reduced to the lower cost.

If the awarded Standard Configuration becomes obsolete or unavailable, a substitute Standard Configuration with specifications that meet or exceed the specifications of the original offered Standard Configuration must first be submitted for OGS approval by completing the modification process outlined in Attachment 4, Agreement Price List Modification Procedures. The replacement Standard Configuration must be offered on the Aggregate Hardware Buy 18-01 Agreement Price List at the same or lower price than the Standard Configuration price that was originally awarded. OGS's determination that a replacement model meets or exceeds the original offered Standard Configuration will be final and binding on the Contractor.

Contractor shall submit the Product and price level information for the Agreement Modification electronically via email as described in Attachment 4, Agreement Price List Modification Procedures and Attachment 5, Pricing Modification Form (and in hardcopy if requested by OGS) to:

Submit electronically via e-mail:

OGS.sm.PS.AggregateBuy@ogs.ny.gov

Subject Line: Aggregate Hardware Buy 18-01 Agreement – [Contractor Name] Modification

Submit hardcopy:

NYS Office of General Services

Procurement Services

38th Floor, Corning Tower, ESP

Albany, NY 12242

Attention: IT Procurement

[Contractor Name], Aggregate Hardware Buy 18-01



## **SECTION 10 INVOICING.**

All Invoices shall at a minimum, include the items listed below and any additional information identified in the Authorized User Purchase Order and resulting Authorized User Agreement:

- Manufacturer Umbrella Contract Number: PM21120
- RFQ Number: 18-01, Aggregate Hardware Buy 18-01
- Contractor Name
- NYS Vendor ID
- Manufacturer Part Number (SKU)
- Product Name
- Product Description
- Quantity
- Aggregate Buy Price for each Product
- Specific designation of special price(s) which may be better than the Aggregate Buy Price
- Invoice Total
- Standard Configuration Name

Note:

Contractors are encouraged to offer additional discounts at the time of a transaction. Contractors are required to directly receive all Purchase Orders from Authorized Users and to invoice Authorized Users. OGS-approved Resellers and Sales Agents are not authorized to receive Purchase Orders from Authorized Users or to invoice Authorized Users. OGS-approved Resellers may be used to fulfill orders. Maintenance, support, and installation may be carried out by a Contractor's authorized Resellers, but the Contractor is fully responsible for the performance of all products and services, and conformity with the Contractor's Manufacturer Umbrella Contract and this Aggregate Hardware Buy 18-01 Agreement.

## **SECTION 11 PRODUCT DELIVERY.**

The Contractor shall deliver the units ordered by an Authorized User within forty-five (45) calendar days of receipt of a Purchase Order. The forty-five (45) days shall start at the time of receipt of a Purchase Order and shall conclude with delivery to the Authorized User. This timeframe shall include all work to be done by a Contractor and/or its Resellers. The Contractor must provide a Purchase Order receipt notification to the Authorized User within five (5) calendar days of receipt of a Purchase Order. An Advanced Shipping Notice must be provided to Authorized Users upon request fourteen (14) calendar days prior to delivery. Such notification must include Purchase Order number, quantity, itemized SKUs, description, price, purchase date, received date, and warranty start date. The Contractor shall notify the Authorized User of any delays, and be the main point of contact for all communications, even if using a Reseller to fulfill the order. If OGS becomes aware of multiple incidents of delays in delivery, OGS reserves the right to terminate this Aggregate Hardware Buy 18-01 Agreement in whole or in part.

## **SECTION 12 ISSUE ESCALATION PLAN.**

The Contractor's Issue Escalation Plan is attached hereto as Attachment 2, Issue Escalation Plan. Contractor shall adhere to such plan during the term of this Aggregate Hardware Buy 18-01 Agreement. OGS may require Contractor to modify this plan at any time during such term.

## **SECTION 13 IMAGING / LOADING SERVICES.**

The Contractor is responsible for providing a SKU(s) for Authorized User specific standard software image under Additional Products for the entire term of this Aggregate Hardware Buy 18-01 Agreement on Attachment 1, Pricing Pages if it is not already included as part of the Standard Configuration or its Additional Products. The Contractor is required to install a factory Authorized User specific standard software image on each computing device purchased, when such image is provided by the Authorized User. If an Authorized User requires customized factory imaging, the Contractor shall provide a test unit

with the customized image within five (5) business days of receiving the Authorized User's image. The Contractor must deliver the remainder of the imaged units ordered by the Authorized User, within 45 calendar days from the date of Authorized User's written approval of the test unit.

**SECTION 14 AGGREGATE HARDWARE BUY 18-01 AGREEMENT - CUSTOMER SERVICE REQUIREMENT.**

The Contractor shall provide a sufficient number of Customer Service employees who are knowledgeable and can effectively respond to any Authorized User issues related to this Aggregate Hardware Buy 18-01 Agreement. Inquiries shall be responded to within twenty-four (24) hours.

The Contractor shall ensure that its sales staff sell Aggregate Hardware Buy 18-01 Agreement Products and services to Authorized Users at the current Aggregate Hardware Buy 18-01 Agreement price. The Contractor shall make all sales staff aware of this responsibility.

**SECTION 15 EXTENSION OF USE.**

This Aggregate Hardware Buy 18-01 Agreement may be extended in accordance with the section of Contractor's Manufacturer Umbrella Contract titled Non-State Agencies Participation in Centralized Contracts and Extension of Use.

**SECTION 16 SALES REPORTING, ADMINISTRATIVE FEES AND FISCAL AUDITS.**

**SECTION 16.1 SALES REPORTING.**

The Contractor shall provide OGS with accurate and timely sales reports containing detailed information of all purchases by State and non-state Authorized Users, political subdivisions and other authorized entities within other State or governmental jurisdictions, made pursuant to this Aggregate Hardware Buy 18-01 Agreement. Sales under this Agreement must be submitted in accordance with Section 2.23 of the Contractor's Manufacturer Umbrella Contract, using the Contractor's Manufacturer Umbrella Contract Appendix I – Report of Contract Sales. Sales Reports for this Aggregate Hardware Buy 18-01 Agreement must also be submitted to [OGS.sm.PS.AggregateBuy@ogs.ny.gov](mailto:OGS.sm.PS.AggregateBuy@ogs.ny.gov) utilizing the format in Attachment 3, Sales Report Form attached hereto and must be submitted separately from the Contractor's Manufacturer Umbrella Contract sales documentation.

Sales reports are due to OGS on the fifteenth (15th) of the month directly following the end of each quarter. The quarters for each sales report submission are as follows: January - March; April - June; July - September; October - December. However, the Contractor must continue to send OGS sales reports for the duration of the Agreement and any extensions.

Contractor must submit, along with Attachment 3, Sales Report Form, a report of any and all deliveries that fall outside the 45-day period stated in Section 11 – Product Delivery.

Failure to submit accurate reports on a timely basis may result in termination of the Contractor's Manufacturer Umbrella Contract in whole or in part and activation of Section 18, Replacement Contractor.

If requested by OGS, Contractor shall provide backup documentation of all quarterly sales reports to support a sales and fiscal audit of the Administrative Fee to be paid to OGS. These records will be made available on request, no more than fifteen (15) business days after request, in a searchable electronic format as specified by OGS.

Contractors shall provide sales reports specific to this Aggregate Hardware Buy 18-01 Agreement via email to:

[OGS.sm.PS.AggregateBuy@ogs.ny.gov](mailto:OGS.sm.PS.AggregateBuy@ogs.ny.gov)

Subject Line: Aggregate Hardware Buy 18-01 Agreement – Sales Report

## **SECTION 16.2 ADMINISTRATIVE FEE.**

The Contractor is required to pay an Administrative Fee to OGS in the amount of point five percent (0.50%) for all sales generated from this Aggregate Hardware Buy 18-01 Agreement, including all state and non-state Authorized Users, political subdivisions, and other authorized entities within other State or governmental jurisdictions as outlined in Section 7, Participation in Aggregate Hardware 18-01 Buy Agreement.

The Administrative Fee check should be made out to “NYS OGS Finance Office.” Payments will be due quarterly in arrears. The due date for each payment will be fifteen (15) calendar days following the end of the quarter.

Included with the payment shall be the following information, on either the remittance stub and/or a cover letter on company letterhead:

- Contractor Name,
- Title of RFQ, Aggregate Hardware Buy 18-01,
- Reporting Period (January - March; April - June; July - September; October – December), and
- Contractor Contact Person and Contact Information.

Please mail the Administrative Fee payment to:  
OGS Financial Administration  
Empire State Plaza  
PO Box 2166  
Albany, NY 12220

Administrative Fees may also be paid electronically, with the required information noted above. Contact OGS Financial Administration at (518) 474-3634 for instructions regarding electronic payment.

Note: it is also required that Procurement Services be notified of this payment (provide date of payment and amount) via email to:

OGS.sm.PS.AggregateBuy@ogs.ny.gov  
Subject Line: Aggregate Hardware Buy 18-01 Agreement – Administrative Fee

## **SECTION 16.3 FISCAL AUDITS.**

OGS reserves the right to audit the accuracy of the sales reports and Administrative Fees. Audits shall be conducted during regular business hours, upon not less than fifteen (15) business days prior written notice. Administrative Fees will be due immediately for any errors or omissions disclosed by any such audit. If, as a result of any such audit, Administrative Fees are determined to have been underpaid by more than five percent (5%) for the period audited, Contractor shall pay the costs of such audit or three times the discrepancy, whichever is higher. Failure to make such payments or repeated errors on subsequent audits may result in the scheduling of a responsibility meeting in relation to Contractor's Manufacturer Umbrella Contract, and may lead to termination of this Agreement in whole or in part, after which OGS reserves the right to award to the Contractor with the next highest Total Financial Score that is willing to accept an Agreement or Configuration Award.

## **SECTION 17 EPEAT REQUIREMENTS.**

All desktops, laptops, and computer monitors provided under this Agreement are required to have achieved a minimum certification of EPEAT Gold at the time of award, and beginning May 2019, meet Bronze registration or higher in the EPEAT system in the United States. EPEAT is an ecolabel designed

to help large volume purchasers evaluate, compare, and select electronic products based upon their environmental attributes as specified in the consensus-based IEEE Standard for the Environmental Assessment of Personal Computer Products (IEEE 1680.1).

Contractor is required to provide quarterly reporting on the number of EPEAT registered products purchased under this Agreement. The report is part of the Sales Report. For base units sold, EPEAT Registration Status (i.e. Bronze, Silver, Gold or Unregistered) must be provided. The information must be reported in aggregate in a matrix providing the following data: Desktop, Notebook, Display Unit.

The database of all products that currently meet EPEAT criteria is viewable at [www.greenelectronicscouncil.org](http://www.greenelectronicscouncil.org).

#### **SECTION 18 REPLACEMENT CONTRACTOR.**

In the event that OGS terminates this Aggregate Hardware Buy 18-01 Agreement or any awarded Configuration included herein, OGS reserves the right to then make an award to the Contractor with the next highest Total Financial Score that is willing to accept an Agreement or Configuration award. Under no circumstances will the new awardee be permitted to increase its component prices for Standard Configurations or decrease the percentage discounts on Required Product categories that were finalized at the conclusion of the On-Line Reverse Auction.

#### **SECTION 19 ADVERTISING.**

In addition to the requirements set forth in the Contractor's Manufacturer Umbrella Contract, Appendix B General Specifications - Advertising Results, incorporated herein, any Contractor press or media releases, advertisements, or promotional literature, regardless of the medium, referring to Contractor must be reviewed and approved by OGS prior to issuance. The Contractor also cannot use, for any purpose, the New York State of Opportunity registered trademark or the State coat of arms without prior approval from the State.

#### **SECTION 20 INSTRUCTION MANUALS AND ASSOCIATED DOCUMENTATION.**

Instruction Manuals and Associated Documentation shall be provided in accordance with Manufacturer Umbrella Contract Section 2.21, Instruction Manuals and Associated Documentation.

#### **SECTION 21 MWBE GOALS AND REPORTING.**

The Contractor is reminded of its responsibility under Manufacturer Umbrella Contract Section 2.68, Contractor Requirements And Procedures For Participation By New York State Certified Minority- And Women-Owned Business Enterprises And Equal Employment Opportunities For Minority Group Members And Women. For reporting purposes, Contractor must accurately track and report the effort of the minority or women owned businesses performing such duties as would be covered under the scope of this Agreement.

#### **SECTION 22 WARRANTY.**

The following terms and conditions shall apply to all warranties under this Aggregate Hardware Buy 18-01 Agreement:

- If a unit becomes inoperable within the warranty window and cannot be repaired, a brand new unit shall be provided at no charge. Contractor shall not provide refurbished or remanufactured equipment as they are not allowed under this Aggregate Hardware Buy 18-01 Agreement. The data from the unit being replaced shall be transferred to a new replacement unit at no charge in the event that the data is accessible and non-corrupted. The data storage device, or if not

removable, the entire unit, must remain in the custody and ownership of the Authorized User after the Contractor has completed the repair or replacement of the unit.

- Any remote diagnosis and/or support service arrangements if offered/provided with the Product shall be included in the Product description. Connections to the Authorized User's networks must be performed in a manner prescribed by an Authorized User to preserve the integrity of the Authorized User's network, confidentiality and integrity of information transmitted over that Authorized User's network, and the availability of the network. Access for remote diagnosis must be approved and supervised by the Authorized User's technical representative for each specific incident. All Contractors should review NYS ITS Technology Standard NYS-S14-010, Remote Access. Any Remote Administration, Maintenance/support service that falls under the definition of Cloud and/or Cloud Solution as defined in Section 2.5 of the Contractor's Manufacturer Umbrella Contract is prohibited under this Aggregate Hardware Buy 18-01 Agreement.

### **SECTION 23 DISPUTES OR CONTROVERSIES OCCURRING DURING THE TERM OF THE AGGREGATE AGREEMENT – CONTRACTOR AND OGS.**

Disputes between the Contractor and OGS regarding this Aggregate Hardware Buy 18-01 Agreement will be handled pursuant to Appendix B sections 64(II)(A) and 64(II)(B) of Contractor's Manufacturer Umbrella Contract. Informal disputes between other Authorized Users and the Contractor will be handled under Appendix B section 64(II)(A) of Contractor's Manufacturer Umbrella Contract, and formal disputes between other Authorized Users and Contractor shall be handled under the Authorized User's dispute procedures.

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## Signature Page

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**This Page is to be Completed By the Manufacturer Acknowledging award under RFQ 18-01 Aggregate Hardware Buy and agreeing to this Aggregate Hardware Buy 18-01 Agreement**

This Award Acknowledgment and Aggregate Hardware Buy 18-01 Agreement must be fully and properly executed by a person authorized to legally bind the Manufacturer. The undersigned certifies that s/he is authorized to bind the Manufacturer, that the Manufacturer accepts and acknowledges this Award, and that all information provided is complete, true and accurate.

Contract #	Manufacturer Name	
PM21120	Lenovo (United States) Inc.	
Signature:		Date:
Printed or Typed Name:		Title:
Phone Number:		E-Mail:
Configurations are awarded subject to this Aggregate Hardware Buy 18-01 Agreement and Contractor's Information Technology Umbrella Contract – Manufacturer Based (Statewide), Group 73600:		
Enterprise Notebook Enterprise All-In-One Convertible Tablet		

INDIVIDUAL, CORPORATION, PARTNERSHIP, OR LLC ACKNOWLEDGMENT

STATE OF                    }  
                                  }  
                                  }     SS.:  
COUNTY OF                }

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_\_\_, before me personally appeared \_\_\_\_\_, known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that \_he maintains an office at \_\_\_\_\_, and further that:

[Check One]

- If an individual):** \_\_\_he executed the foregoing instrument in his/her name and on his/her own behalf.
- If a corporation):** \_\_\_he is the \_\_\_\_\_ of \_\_\_\_\_, the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, \_\_\_he is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, \_\_\_he executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.
- If a partnership):** \_\_\_he is the \_\_\_\_\_ of \_\_\_\_\_, the partnership described in said instrument; that, by the terms of said partnership, \_he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, \_he executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.
- If a limited liability company):** \_\_\_he is a duly authorized member of \_\_\_\_\_ LLC, the limited liability company described in said instrument; that \_he is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, \_he executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.

\_\_\_\_\_  
Notary Public  
Registration No.