
Aggregate Hardware Buy 20-01 Agreement Terms and Conditions

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Section 1. GENERAL

This Aggregate Hardware Buy 20-01 Agreement (“Agreement”) incorporates the terms and conditions of the Contractor’s OGS Information Technology Umbrella Contract – Manufacturer Based (Statewide) (“Manufacturer Umbrella Contract”) including executed amendments and the additional terms and conditions set forth in this Agreement, its Attachments, and Appendices.

All purchases resulting from the Agreement shall be in accordance with the terms and conditions of the Contractor’s Manufacturer Umbrella Contract which can be found at: <https://online.ogs.ny.gov/purchase/snt/awardnotes/7360022802AppendicesPageCombo.pdf> along with any additional terms and conditions set forth in this Agreement, its Attachments and Appendices.

Section 2. DEFINITIONS

Term	Definition
Additional Products	Products that are not part of the Standard Configuration and are optional for Authorized Users to purchase to enhance the Standard Configuration.
Configuration	Entirety of Standard Configuration, Required Products, and Additional Products
Installation	Shall have the same definition as found in the Manufacturer Umbrella Contract section titled "Glossary".
Required Products	<p>Products that were mandatory for the Contractor to bid in RFQ 20-01. Required Product categories are defined below:</p> <ol style="list-style-type: none"> 1. <u>Warranty & Services</u> includes Products such as multi-year Warranty, agency specific factory imaging, asset tagging, disk retention and accidental damage coverage. 2. <u>Components</u> include Products such as replacements or additional components to the Standard Configuration, e.g., CPU, additional memory, internal optical drives, 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. For example, if an upgrade to RAM from 8GB to 16GB is offered, please specify how the upgrade capacity is met, such as 1x16GB memory module or 2x8GB memory modules. 3. <u>Peripherals</u> include products such as a cable, external optical drive, docking station, wireless keyboard, and/or mouse.
Standard Configuration	All components/line items necessary for a functional computing device meeting the minimum specifications identified in <i>Attachment 1 - Pricing Pages</i> .

Section 3. TERMS AND CONDITIONS

3.1 SCOPE.

This Agreement is considered an Aggregate Buy and all Authorized Users located within NYS (estimated at 7,600) will be able to purchase the Configurations. This Agreement pricing may be extended to

additional States or Governmental jurisdictions, as described in Agreement Section 3.8 - Participation in Aggregate Buy Agreement.

	Standard Configuration	Brief Description
1	VDI PC	Small form factor desktop computer intended for use as a VDI or desktop-as-a-service endpoint
2	Enterprise Desktop	Small form factor desktop computer intended for deployment in an enterprise setting. (high-performance, secure workloads)
3	Enterprise Desktop - vPro	Small form factor desktop computer intended for deployment in an enterprise setting, (high-performance, secure workloads) with Intel's vPro platform enabled
4	Enterprise Notebook	Laptop computer intended for deployment in an enterprise setting.
5	Enterprise Notebook - vPro	Laptop computer with Intel's vPro platform enabled intended for deployment in an enterprise setting.
6	Enterprise All-In-One	Desktop computer integrating the computer case and system components into the monitor.
7	Detachable Tablet	Laptop-tablet hybrid device, with a detachable keyboard
8	Convertible Tablet	Laptop-tablet hybrid device, with an attached keyboard
9	Workstation PC	High-end workstation class desktop intended for use with GPU intensive applications such as video editing, CAD, and machine learning
10	Chromebook Low	Laptop or tablet computer that runs Chrome OS with a standard 11" screen
11	Chromebook with Touchscreen	Laptop or tablet computer that runs Chrome OS with a touch 11" screen
12	Chromebook with Touchscreen – 14"	Laptop or tablet computer that runs Chrome OS with a 14" touch screen
13	Unbundled Displays	Computer displays available in a range of pre-defined sizes

3.2 PRICING.

3.2.1 MONETARY VALUES.

All monetary values shall be in U.S. Dollar amounts and will be two decimal points (for example: \$1.12).

3.2.2 DISCOUNT PERCENTAGE VALUES.

All Discount percentage values shall not exceed two decimal places (for example: 20.25222% shall be rounded to nearest one hundredth 20.25%). OGS will round any discount percentage to the nearest hundredth if necessary. A Discount Percentage value cannot be expressed as a range (for example: 10%-20%, or "varies").

3.2.3 STANDARD CONFIGURATION.

Contractors shall provide itemized pricing on all Products offered in the Standard Configurations. The Standard Configuration price and its component prices will remain equal to the Agreement awarded price for the term of the Agreement and any extensions, though Contractor may offer lower pricing at any time on an individual transaction.

3.2.4 REQUIRED PRODUCTS.

Required Products will be available under the Additional Product category on the Configuration Price List and are subject to the discount percentage bid by the Contractor as part of the RFQ Submission. The Required Product price shall remain equal to or better than the originally awarded price throughout the life of this Agreement, though Contractor may offer lower pricing at any time on an individual transaction. Required Product discount percentages may be increased, but not decreased during the term of this Agreement and any extensions.

3.2.5 ADDITIONAL PRODUCTS.

Contractor shall provide the same discount percentages that applies to 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 Manufacturer Umbrella Contract Price List. These discount percentages were applied to the original Additional Products bid and will apply to any future Additional Products added within the scope of the Agreement. Only Additional Products approved by OGS for inclusion on the Configuration Price List may be offered under this Agreement. Discount percentages may be increased, but not decreased during the term of the Agreement and any extensions.

Category Discount percentages are only applicable for products listed on this Agreement Price List. Products that are on the Manufacturers Umbrella Price List shall not be offered with the Category Discount under this agreement unless first being submitted to OGS for approval via *Attachment 5 - Pricing Modification Form*.

3.3 AGREEMENT DOCUMENTS/ORDER OF PRECEDENCE.

This 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 20-01 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 - 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;
8. Attachment 7 - Contractor Information;
9. Attachment 8 – Delayed Delivery Report
10. RFQ 20-01 Request for Quote 20-01, Aggregate Hardware Buy
 - RFQ Aggregate Hardware Buy 20-01
 - Attachment A – Technical Response
 - Attachment B – Contractor Questions and Comments
 - Attachment C – Financial Response
 - Attachment D – Issue Escalation Plan

- Appendix 1 – Sales Report Form
- Appendix 2 – Agreement Price List Modification Procedures
- Appendix 3 – Pricing Modification Form
- Appendix 4 – How to Prepare a Successful Quote
- Appendix 5 – Delayed Delivery Report
- Responses to Inquiries Released (11/23/20)

3.4 COMMENCEMENT OF SALES.

The Contractor can commence sales from this Agreement only upon OGS acceptance and posting of the Agreement and awarded Configurations with the Contractor contact information on the OGS website.

3.5 ESTIMATED SPEND AND QUANTITY.

The estimated dollar value of the aggregated award of the thirteen (13) Standard Configurations in this Agreement, based on historical purchases under previous awards, is approximately \$40 million. Certain factors including but not limited to the budget structure, the COVID-19 pandemic, and global industry supply chain have impacted the marketplace and estimated volumes. However, these Agreements will be Indefinite Delivery, Indefinite Quantity (IDIQ) awards. Numerous factors could cause the actual volume of Product purchased to vary substantially from the above estimate. Such factors include, but are not limited to, the following:

- 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 or the above estimates

In OGS's experience, depending on the price of a particular item, the actual volume of purchases for that item could be substantially in excess of, or substantially below, estimated volumes. Specifically, if actual agreement pricing is lower than anticipated or historical pricing, actual quantities purchased could be substantially greater than the estimates; conversely, if actual agreement pricing is higher than anticipated or historical pricing, actual quantities purchased could be substantially lower than the estimates. Contractor acknowledges the foregoing and agrees that actual good faith purchasing volumes during the term of the Agreement could vary substantially from the estimates provided above. Contractors must furnish all quantities actually ordered by Authorized Users at or below the prices in the Agreement.

3.6 PARTICIPATION IN THE eMARKETPLACE.

Contractors under the Agreement should provide a "hosted" or "punch-out" catalog that is available to Authorized Users via the NYS eMarketplace. The eMarketplace can be used by all Authorized Users of NYS centralized contracts. It can be accessed through the Statewide Financial System (SFS) or directly through Perfect Commerce by authorized users who do not use SFS. Additional information may be found at: <https://ogs.ny.gov/procurement/emarketplace>.

There are no fees required for a Contractor's mandatory participation in the catalog site development or management. However, Contractors who wish to integrate their ERP system with the NYS eMarketplace can do so for an additional fee. Upon completion and activation of an on-line catalog, State Agencies and Authorized Users will process their orders through SFS or directly via the eMarketplace.

If after establishing an eMarketplace account, the Contractor opts to maintain its own Aggregate Hardware Buy website, the eMarketplace link must be the only ordering system link displayed on the page. This link will be provided by the eMarketplace team. The Contractor with the winning bid for each Configuration may not receive an award until Contractor agrees to participate in the eMarketplace.

3.7 CONTRACTOR WEBSITE.

If a Contractor maintains its own dedicated Agreement website, they are restricted to showing literature only directed toward the models that are currently on the approved OGS Agreement. The Contractor's website shall not have a web-based ordering system with the capability of receiving orders from Authorized Users. Contractor may provide a "hosted" or "punch-out" catalog that is available to Authorized Users via the NYS eMarketplace.

Each Contractor's website link will be listed under the Contractor information posted 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 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 and Additional Products). Contractor's website shall comply with Contractor's Manufacturer Umbrella Contract section titled Accessibility of Web Based Information and Applications Policy Language.

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 price list at time of the sale. Repeated conflicts between the two websites may at OGS' discretion lead to the revoking of the ability of the Contractor to host their own dedicated website.

3.8 PARTICIPATION IN AGGREGATE BUY AGREEMENT

This Agreement pricing 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 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 Agreement is so extended, such other authorized entities shall be solely responsible for liability and performance under the Agreement and Contractor agrees to hold them solely responsible for such liability and performance.

3.8.1 SUPPLY SHORTAGE PRIORITIZATION

In the event of a supply shortage a Contractor must make all reasonable efforts to prioritize orders placed under this originating Agreement for New York State Authorized Users, over any orders made by extension of this Agreement to customers outside of New York State Authorized Users. In addition, in the event that the Contractor believes it necessary to prioritize orders made by extension of this Agreement to customers outside of New York State Authorized Users, over orders placed under this originating Agreement for New York State Authorized Users, the Contractor must contact OGS for approval prior to fulfilling such orders.

3.9 TERM FOR AGGREGATE HARDWARE BUY 20-01 AGREEMENT.

The term of this Agreement shall be one (1) year. The term shall not commence until OGS execution and posting of the final executed documents to the Contractor. OGS reserves the right, at its sole discretion, to extend all or some Configurations of the Agreement for a period up to an additional one (1) year upon written notice to the Contractor.

3.9.1 SHORT TERM EXTENSION.

OGS reserves the right to seek an additional short-term extension for the Agreement in accordance with Manufacturer Umbrella Contract, Section 5, 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.

3.10 RESELLER PARTICIPATION UNDER AGGREGATE AGREEMENT.

Contractors are permitted to use Resellers in the fulfillment of orders under this Agreement. Contractors must receive payment from Authorized Users directly and must invoice Authorized Users directly. **OGS approved Resellers and Sales Agents are not authorized to receive Purchase Orders from Authorized Users or to invoice Authorized Users.** Contractors remain wholly and solely responsible for the actions of the Resellers acting on their behalf as part of the aggregate purchase, as well as the performance of all Products, and conformity with the Manufacturer Umbrella Contract and this Agreement. All services provided by the Resellers must be billed and invoiced through the Contractor and fall within the scope of the Agreement.

3.10.1 PERMISSIBLE USE OF RESELLERS.

Contractors are allowed to utilize authorized Resellers for the following purposes, including but not limited to:

- The fulfillment of orders;
- Coordination of deliveries;
- Installation of Products purchased under this Agreement; or
- Other functions that fall within the scope of the purchase by the Authorized User.

3.11 AGREEMENT PRICE LIST MODIFICATION.

The Contractor is authorized to provide the Standard Configuration(s), Required Products, and Additional Products initially awarded in the Agreement. Products included under the Agreement can be modified through the processes described in *Attachment 4 – 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 their request.

The Contractor shall submit the Product and price level information for the Agreement Modification electronically via email as described in *Attachment 4 – 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 20-01 – [Contractor Name] Modification**

3.12 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.

3.12.1 LOWERING PRICING OF PRODUCTS.

All Product pricing on the Contractor's Agreement Price List can be lowered at any time throughout the term of the Agreement and any extensions. Agreement pricing for Products can be lowered without lowering the Product prices on the Manufacturer Umbrella Price List. If Product pricing on the Manufacturer Umbrella Price List decreases, a modification must be made to the Agreement price list to reflect the price decreases.

If a 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.

If a Contractor wishes to lower the price of a Required Product or 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 Required Product or Additional Product.

3.12.2 ADDING ADDITIONAL PRODUCTS.

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

Once products have been successfully added to the OGS approved Manufacturer Umbrella Price List, the same products can then be submitted for an add request under this 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 Manufacturer Umbrella Price List. The discount percentage described in Agreement Section 3.2.5, Additional Products, will be applied to the proposed Additional Product price resulting in the Agreement price for the Additional Product.

3.12.3 DELETING PRODUCTS FROM THE ADDITIONAL PRODUCTS CATEGORY.

Additional Products can only be removed from the 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 the Agreement must be provided in writing to the Agreement contract administrators. OGS must receive no less than 60 calendar days' notice for EOL 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.

3.12.4 REPLACEMENT OF PRODUCTS.

Replacements are defined as substitute Products which take the place of a previously awarded Product included in the Standard Configurations and/or Required Products due to the awarded Product becoming incompatible or unavailable due to Product EOL. The reason a Replacement is

needed must be provided in writing to the Agreement contract administrators for approval, and OGS must receive no less than sixty (60) calendar days' notice for EOL 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 Standard Configurations 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 Configurations and/or Required Products must first be submitted for OGS approval by completing the modification process outlined in *Attachment 4 – Price List Modification Procedures*. The replacement Product must be offered on the Agreement Price List at the same or lower Agreement pricing as the Product it is replacing. Replacement components within the Agreement must be compatible with Agreement peripherals or the Contractor will be responsible for replacement of both the component and the peripheral. 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.

Contractor must provide advance notification of no less than sixty (60) calendar days for EOL Products in order for OGS to process modifications for Product substitutions in a timely manner.

3.12.5 REPLACEMENT MODEL FOR STANDARD CONFIGURATION.

The 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 Agreement Contract Manager. 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*.

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 exceed the original awarded amount for the Standard Configuration and its components; provided, however, if the replacement model costs less than the original Standard Configuration, the price shall be reduced to the lower cost.

No less than 30 calendar days prior to the Standard Configuration becoming obsolete or unavailable for purchase by Authorized Users, a substitute Standard Configuration with specifications that meet or exceed the specifications of the original offered Standard Configuration must be submitted for OGS approval by completing the modification process outlined in *Attachment 4 – Price List Modification Procedures*. The replacement Standard Configuration must be offered on the Agreement Price List at the same or lower price than the Standard Configuration price that was originally awarded. OGS's determination that a replacement system meets or exceeds the original offered Standard Configuration will be final and binding on the Contractor.

During the term of the Agreement, should the Contractor fail to provide acceptable notice of EOL Standard Configuration(s); fail to submit a replacement Standard Configuration via the process outlined in *Attachment 4 – Price List Modification Procedures* in the timeframe referenced above; or, is unable to provide a replacement model with specifications that meet or exceed the specifications of the original Configuration, OGS reserves the right to award the Configuration to the Contractor with the next lowest bid from RFQ 20-01 for that Configuration that is willing to accept the Configuration award without rebidding. Under no circumstances will the new Contractor awarded be permitted to increase its component pricing for the Standard Configuration components or Required Products or decrease the percentage discounts on Required Product categories that were originally Bid. Should the Standard Configuration bid at the time of RFQ 20-

01 be obsolete or unavailable, a substitute Standard Configuration with specifications that meet or exceed the specifications of the original offered Standard Configuration may be proposed.

3.13 **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: PMXXXXX
- RFQ Number: 20-01
- RFQ Title: Aggregate Hardware Buy 20-01
- 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

3.14 **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 unless either the Authorized User or OGS grants an extension of time as provided below.

If upon receipt of a Purchase Order the Contractor determines it cannot meet the 45 calendar day delivery period the Contractor may submit a written request to the Authorized User to extend the required Product delivery period to up to sixty (60) calendar days. The Authorized User shall respond in writing to the Contractor either declining the request or specifying the revised delivery period.

If an Authorized User wants to extend the delivery period beyond sixty (60) calendar days, the Authorized User may submit a written request to extend the Product delivery period beyond sixty (60) calendar days to OGS for its approval. Approval of substantially delayed deliveries (over 60 calendar days), when the delayed delivery will impact more than one order fulfillment in a thirty (30) day time frame for more than 75 calendar days per incident, will be limited to delays that are a result of an industry wide event or other acceptable extenuating circumstance, that limits or prohibits Contractor's ability to deliver within Agreement delivery timeframes. Final determination of an industry-wide event or acceptable extenuating circumstance will be at the sole discretion of OGS.

The product delivery period 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. Contractor shall submit a monthly report to OGS of any delays in delivery by using *Attachment 8 – Delayed Delivery*

Report. If OGS becomes aware of multiple incidents of delays in delivery, OGS reserves the right to terminate the Agreement in whole or in part.

3.15 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 Agreement. OGS may require Contractor to modify this plan at any time during such term.

3.16 DISPUTES OR CONTROVERSIES OCCURRING DURING THE TERM OF THE AGGREGATE AGREEMENT – CONTRACTOR AND OGS

Disputes between the Contractor and OGS regarding the Agreement will be handled pursuant to Appendix B sections 64(II)(A) and 64(II)(B). Informal disputes between other Authorized Users and the Contractor will be handled under Appendix B sections 64(II)(A), and formal disputes between other Authorized Users and Contractor shall be handled under the Authorized User's dispute procedures.

3.17 IMAGING / LOADING SERVICES.

The Contractor is responsible for providing a SKU(s) for Authorized User specific standard software image under Additional Products 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 thirty (30) calendar days from the date of Authorized User's written approval of the test unit. Notwithstanding the foregoing in this clause the delivery date shall not be required to be less than 45 days from date of Purchase Order.

3.18 AGGREGATE HARDWARE BUY 20-01 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 the Agreement. Inquiries shall be responded to within twenty-four (24) hours.

The Contractor shall ensure that their sales staff sell Agreement Products to Authorized Users at the current Agreement price. The Contractor shall make all sales staff aware of this responsibility.

3.19 EXTENSION OF USE.

This Agreement may be extended in accordance with Manufacturer Umbrella Contract Section 2.36, Non-State Agencies Participation in Centralized Contracts and Extension of Use.

3.20 SALES REPORTING, ADMINISTRATIVE FEES AND FISCAL AUDITS.

3.20.1 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 the Agreement. Sales under this Agreement must be

submitted in accordance with Section 2.23 of the Manufacturer Umbrella Contract, using Appendix I – Report of Contract Sales. Sales Reports for this Agreement must also be submitted to 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. The Contractor must 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 Agreement Section 3.14 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 Agreement Section 3.23 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 the Agreement via email to:

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

Subject Line: **Aggregate Hardware Buy 20-01 – Sales Report**

3.20.2 ADMINISTRATIVE FEE.

The Contractor is required to pay an Administrative Fee in the amount of point five percent (0.50%) for all sales generated from this Agreement. This fee shall apply to all sales made to state and non-state Authorized Users, political subdivisions, and other authorized entities within other State or governmental jurisdictions as outlined in Agreement Section 3.8 Participation in Aggregate 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 20-01,
- Reporting Period (January - March; April - June; July - September; October – December), and
- Contractor Contact Person and Contact Information.

Please mail 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.

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 20-01 – Administrative Fee**

3.20.3 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 second-place contractor.

In addition, OGS reserves the right to review Sales Reports and other such documentation for accuracy of all required reporting documents for both NYS Authorized Users and other parties using this Agreement. As a result of such review, if inaccuracies of more than 5% are found in any of the reporting documents, Contractors shall pay the cost of such audit or three times the discrepancy, whichever is higher.

3.21 EPEAT REQUIREMENTS.

Desktops, laptops, and computer monitors provided under this Agreement are required to have achieved a minimum certification of EPEAT Silver at the time of award. 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).

Contractors are 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 unit 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 are viewable at www.greenelectronicscouncil.org.

3.22 EXPORT ADMINISTRATION REGULATIONS RESTRICTED BUSINESS ENTITIES.

OGS will not allow the sale(delivery) of or accept as part of an Agreement Price List Modification, a Contractor product that contains products made by an entity on any of the lists maintained by the US Customs and Border Patrol at the link set out below.

If Contractor cannot deliver a Product because either the Contractor or a supplier to the Contractor is listed on any of these lists, the Contractor must remove the Product from the Contractor's Agreement Price List. Additionally, for any order that cannot be fulfilled as a result of such listing, the Authorized User, at their discretion, may either terminate the order or allow Contractor to fulfill the order with a replacement product that either meets or exceeds the applicable Product Specifications. The replacement product must be added to the Agreement Price List via *Attachment 5 - Pricing Modification Form*.

<https://www.cbp.gov/trade/programs-administration/forced-labor/withhold-release-orders-and-findings>

3.23 REPLACEMENT CONTRACTOR.

In the event that OGS terminates this Agreement or any Configuration included in such Agreement, OGS reserves the right to then make an award to the Contractor with the next highest Total Financial Score from RFQ 20-01 that is willing to accept an Agreement or Configuration award without rebidding. Under no circumstances will the new awardee be permitted to increase its component prices for Standard Configurations, the prices of the Required Products or decrease the percentage discounts on Additional Products that were originally bid.

3.24 ADVERTISING.

Contractor is reminded of the requirements set forth in the Contractor's Manufacturer Umbrella Contract, *Appendix B General Specifications - Advertising Results*, incorporated as part of the Contract, that 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.

3.25 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.

3.26 MWBE GOALS AND REPORTING.

The Contractor is reminded of their 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, Contractors 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.

3.27 WARRANTY

The following terms and conditions shall apply to all warranties under this Agreement:

- If a unit becomes inoperable within the warranty window and cannot be repaired, a brand new unit shall be provided at no charge. Contractors shall not provide refurbished or remanufactured equipment as they are not allowed under this 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.
- 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.

Signature Page

This Page is to be Completed By the Manufacturer Acknowledging award under RFQ 20-01 Aggregate Hardware Buy and agreeing to this Aggregate Hardware Buy 20-01 Agreement

This Award Acknowledgment and Aggregate Hardware Buy 20-01 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 20-01 Agreement and Contractor's Information Technology Umbrella Contract – Manufacturer Based (Statewide), Group 73600:

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