

## Appendix 5 - How to Use the Microsoft Aggregate Agreement

This document provides an Authorized User (“AU”) with instructions on How to Use the Information Technology Umbrella Contract – Manufacturer Based (Statewide) Microsoft Aggregate Buy 24-02 Agreement (“Aggregate Agreement”)

Authorized User must familiarize itself with the terms and conditions of both the Manufacturer Umbrella Contract and the Microsoft Aggregate Agreement and must adhere to the terms and conditions of both. Authorized Users are advised to follow these How to Use procedures when procuring Products under the Aggregate Agreement.

Authorized Users are cautioned that at-risk work is strictly prohibited.

These instructions assume Authorized Users have a working knowledge of procurement methodology. Additional general procurement information is available at the New York State Procurement website.

(<https://ogs.ny.gov/procurement>)

The Contractor's and Reseller's contact information may be found at the following link:

[https://online.ogs.ny.gov/purchase/snt/awardnotes/7360022802AggregateBuy\\_RFQ24-02.pdf](https://online.ogs.ny.gov/purchase/snt/awardnotes/7360022802AggregateBuy_RFQ24-02.pdf)

Authorized Users may contact the OGS Contract Administrator for the Microsoft Aggregate Agreement at [ogs.sm.PS.Microsoft@ogs.ny.gov](mailto:ogs.sm.PS.Microsoft@ogs.ny.gov) with any questions or concerns.

### 1. GENERAL INFORMATION

#### a. Microsoft Business Terms

OGS and Microsoft have agreed to a Microsoft Business Terms Agreement (MBT), which includes the additional or alternative terms and conditions made in accordance with Section 28 of Appendix B of Contract PM69723 for purposes of an Aggregate Agreement and establishes the overall licensing framework and the applicable terms and conditions for Authorized User use and acquisition of Microsoft Product. The MBT is incorporated into the Aggregate Agreement and all of its terms and conditions apply to all Authorized User transactions pursuant to the Aggregate Agreement. All MBT documents are available on the OGS Aggregate Agreement website.

#### b. Agreement Scope

OGS issued RFQ 24-02 to all authorized Resellers of Microsoft Products under the Information Technology Umbrella Contract – Manufacturer Based (Statewide) Contract PM69723, Lot 1 (Software) and Lot 3 (Cloud) on behalf of all Authorized Users to establish an Aggregate Agreement for the purchase of Microsoft Products that are determined by OGS to be within scope for the Aggregate Agreement.

##### i. Products in Scope

Products available under this Aggregate Agreement are Microsoft Software and certain Online Services, found on the Aggregate Agreement Price List.

##### ii. Software

All Products classified by Microsoft as Software are authorized for acquisition under this Aggregate Agreement, except as specifically excluded by OGS. Training services offered free of charge in relation to Software Products are in scope.

##### iii. Online Services

Online Services authorized for purchase under this Aggregate Agreement are Office 365, Azure, Intune, Dynamics CRM, and GitHub Enterprise. Only Online Services that are listed on the Aggregate Agreement Price List may be sold or purchased under this Aggregate Agreement. Online Services authorized for acquisition under this Aggregate Agreement for use with Criminal Justice Information Services (“CJIS”) data are Office 365, Azure, and CRM. All other Online Services are not authorized for purchase under this Aggregate Agreement.

##### iv. Products out of Scope

The following cannot be purchased under this Aggregate Agreement:

- Any items considered out of scope for the Microsoft Business Terms (MBT), as indicated in the Out-of- Scope Work and Products section included in MBT Section 1.7.
- Any items specifically listed in the RFQ 24-02 or the Aggregate Agreement.

### **c. Disputes under an Authorized User Agreement**

Should a dispute arise regarding an Enrollment/Affiliate Registration Form (“ARF”), the dispute will be considered and decided by the Authorized User (not OGS as the Contract Administrator of the Microsoft Aggregate Agreement).

All Informal Disputes between Reseller/Microsoft and an Authorized User related to an Authorized User’s Enrollment/ARF are to be handled by the Informal Dispute Process contained in Manufacturer Contract Appendix B, Section 64.II(A)

All Formal Disputes between Reseller/Microsoft and an Authorized User related to an Authorized User’s Enrollment/ARF are to be handled in accordance with the process specified by the Authorized User for Formal Disputes.

If an Authorized User wishes to include its Formal Disputes process, it must present it to the Reseller/Microsoft for consideration in advance of the Authorized User issuing a Purchase Order and executing an Enrollment/ARF. If an Authorized User does not have, opts not to use, or does not provide its own Formal Dispute process in advance of issuing a Purchase Order and executing an Enrollment/ARF, the Formal Dispute process in Manufacturer Contract Appendix B, Section 64.II(B), modified to reflect Authorized User’s name, contact information and equivalent titles, will be used for Formal Disputes between Microsoft and the Authorized User related to an Authorized User’s Enrollment/ARF.

## **2. HOW TO PROCURE PRODUCTS**

A Reseller and pricing have already been established on behalf of all AUs through the results of RFQ 24-02. Authorized Users do NOT need to send out a Manufacturer Umbrella Contract Request for Quote to purchase under this Aggregate Agreement, however the following actions apply:

- Authorized User identifies the Microsoft Products they need. If an Authorized User requires assistance developing a package of Microsoft Products they may work with Microsoft to develop the package that best fits their need.
- Authorized User submits a request to the Reseller for a price quote for their selected Products.
- Reseller develops a price quote and sends the completed price quote, Microsoft Program Signature Form, Enrollment/ARF Form and/or any other applicable Microsoft amendments to the Authorized User via electronic transmission.
- Authorized User reviews, completes, prints, signs and scans all documents to pdf to place an Order in accordance with Section 1.3 of the MBT, making sure to provide the following information, if applicable, as indicated on each Enrollment/ARF or ARF:
  - a. country or countries where the Authorized User will use the Products;
  - b. Authorized User’s Data Risk Level (see 1(c) of this document).
- Authorized User returns the signed documentation to Reseller via electronic transmission.
- Authorized User and Reseller finalize the Order.
- Authorized User issues Purchase Order to the Reseller, following OSC approval if applicable.

Pursuant to Chapter 839 of the Laws of 2022, OSC approval is required for purchases from OGS centralized contracts exceeding the OSC approval threshold as defined in STF §112. Please refer to OSC Contract Advisory No.31, Purchases From Centralized Contracts for guidance on how to obtain OSC approval for such purchases made under this Aggregate Agreement.

### 3. MICROSOFT AZURE SERVICES

OGS suggests that Authorized Users encumber funds to cover the estimated costs for their identified need for Microsoft Azure Services. Please be aware there are a number of very specific payment terms and conditions that apply to Azure and other Online Services that should be discussed thoroughly with Microsoft and fully understood by the Authorized User before an agreement is entered into.

These include but are not limited to:

- i. Commitments of usage of Online Services are set at the time of ordering. These dollar commitments can be increased at any time but cannot be decreased during the annual Enrollment/ARF period.
- ii. Reducing commitments of usage can only be made by notification to Microsoft and Reseller more than 90 calendar days prior to the end of the existing annual period and will impact only the following annual period.
- iii. Actual services used are not included on the Purchase Order unless specifically designated by the Authorized User. Unused or underutilization of services does not reduce the monthly/quarterly payment due but may be used to support expenditure of other online services. This may be completed without modification of the Purchase Order unless product specific language is included.
- iv. Consumption Based Billing

Azure Services in the Government Community Cloud may be made by issuing a zero dollar Purchase Order to Reseller and are paid for in arrears on a monthly basis. To purchase services in this manner, an Authorized User would add a commitment provision to their Enterprise Enrollment/ARF and would pay the consumption rate for the services used.

An Authorized User may view the price per unit at the following link: <https://azure.microsoft.com/en-us/pricing/calculator/>. When adding Products to the calculator, make sure to choose the "Region" as "US Gov" [Iowa, Arizona, Texas, or Virginia] for the Azure Government Community Cloud pricing.

If an Authorized User provisions Microsoft Azure Services in this manner, the Authorized User will be invoiced monthly at the current rate set by Microsoft for Microsoft Azure Services. Any usage of Microsoft Azure Services after the expiration or termination of the Authorized User's subscription will be invoiced at the then-current rate set by Microsoft for Microsoft Azure Services.

- v. Pre-Payment of Azure Services

Authorized User may also purchase Azure Services using a pre-paid option either for Commercial Cloud or Government Community Cloud regions. A Monetary Commitment is defined by Microsoft as the total monetary amount a customer commits to pay during the term of the subscription for its use of eligible Microsoft Azure Services.

There is a minimum commitment level for the pre-paid option. Authorized Users must commit to a purchase of 1 Monetary Commitment unit per month.

An Authorized User has a choice of invoicing options for prepaid Monetary Commitments. One, an Authorized User may choose to be invoiced for the full amount of the Monetary Commitment upfront and will have access to the entire Monetary Commitment through the Enrollment/ARF term (the "Fully Prepaid Option"). The Authorized User will be invoiced immediately for the entire amount of the Monetary Commitment. Second, an Authorized User may elect to be invoiced on an annual basis and would then have access to only the portion of the Monetary Commitment allocated annually through the Enrollment/ARF term (the "Annually Prepaid Option"). This portion of the

Monetary Commitment annually allocated to the Authorized User is referred to by Microsoft as the Allocated Annual Commitment. The Authorized User will be invoiced for the first Allocated Annual Commitment at the time of order and any future Allocated Annual Commitments will be invoiced on the anniversary of the Enrollment/ARF effective date.

- vi. An Authorized User of Azure Services must be aware of the following:
- Under the Fully Prepaid Option, any unused Monetary Commitment will be forfeit at the end of the Enrollment/ARF Term
  - Under the Annually Prepaid Option, any unused Allocated Annual Commitment will be forfeited on the following Enrollment/ARF anniversary date.
  - Under a Monetary Commitment, Microsoft will deduct the monetary value of the Authorized User's usage of eligible Azure Services. If the balance of the Monetary Commitment or Allocated Annual Commitment has been exhausted, any additional usage will be invoiced at the current rate set by Microsoft for Microsoft Azure Services. Invoicing of Monetary Commitment overage will be invoiced at the end of each Enrollment/ARF month.

#### **4. AUTHORIZED USER RESPONSIBILITIES**

The following Authorized User Responsibilities represent only a subset of the Authorized User responsibilities set forth in the Contract, Aggregate Agreement, MBT, and associated documents. Authorized Users shall be aware of and comply with all Authorized User Responsibilities set forth in the Contract, Aggregate Agreement, MBT, and associated documents.

a. **Note to Authorized Users.**

When placing Purchase Orders under the Aggregate Agreement, the Authorized User must be familiar with the Contract, Aggregate Agreement, and MBT and shall follow the terms and conditions governing their use. The Authorized User is accountable and responsible for compliance with the requirements of public procurement processes. The Authorized User, when purchasing from this Aggregate Agreement, should hold the Reseller/Microsoft accountable for compliance and meeting all terms, conditions, specifications, and other requirements. Also, in recognition of market fluctuations over time, Authorized Users are encouraged to seek improved pricing whenever possible. Authorized Users have the responsibility to document purchases, which documentation should include:

- a statement of need and associated requirements,
- all necessary prior approvals,
- a summary of the alternatives considered for the purchase,
- the reason(s) supporting the resulting purchase.

b. **Determination of Compliance with Statutory and Regulatory Requirements.**

It is the responsibility of each Authorized User to evaluate Microsoft's offerings and determine if an offering complies with the Authorized User's statutory and regulatory requirements prior to acquisition. For a list of selected statutory and regulatory requirements, Authorized Users may refer to Contract PM69723, Appendix F, Primary Security and Privacy Mandates. OGS advises all Authorized Users to consult with Counsel or your organization's Data Security Officer to ensure compliance with all statutory and regulatory requirements.

c. **Data Categorization Study and Data Risk Level.**

It is REQUIRED that prior to entering into an Enrollment/ARF for an Online Service, the Authorized User complete a Data categorization study, consistent with NYS-S14-002 Information Classification Standard (or successor standard) available at: <https://its.ny.gov/document/information-classification-standard> to determine the following:

- the level of Data risk,
- the required Breach Notification Procedures; and
- the required Cloud service security measures for your agency

Authorized User must make a business decision, based on their Data categorization results, as to the appropriateness of a Cloud solution.

The Authorized User is REQUIRED to include, as part of the Enrollment/ARF:

- Data Risk Level as per the results of the Data Categorization Study

If applicable, Authorized User should also provide the following during the Enrollment/ARF process:

- applicable statutory requirements (See Contract Appendix F – Primary Security and Privacy Mandates)
- Data categorization elements (not actual Data)
- the required Breach Notification Procedures
- the required Cloud service security measures for your agency

d. **Online Services - Criminal Justice Information (CJI).**

The only Online Services authorized for acquisition under this Aggregate Agreement for use with Criminal Justice Information Services (“CJIS”) data are Office 365, Azure, and CRM.

e. **Online Services – Federal Tax Information (FTI).**

Because the Contract does not contain specific contractual provisions related to the requirements set forth in IRS Publication 1075, Online Services may not be used for the storage and processing of FTI.

f. **Contractor Deficiency Report.**

If the Reseller/Microsoft fails to meet the requirements of the Aggregate Agreement, Authorized Users are encouraged to submit a Contractor Deficiency Report (CDR) to OGS, using the CDR, where all deficiencies or non-compliance reports will be recorded centrally. A blank CDR form is available on the OGS Aggregate Agreement website.

## 5. RESELLER RESPONSIBILITIES

a. **Responsibility to Inform.**

The awarded Reseller has the following responsibilities relating to the provision of information to Authorized Users:

- i. It is essential that Authorized Users fully understand the nature of Products being offered or provided under the Enrollment/ARF prior to issuing a Purchase Order. Accordingly, the Reseller is required to fully answer any questions an Authorized User may have regarding all Products offered and upon request, must provide a full written description of the Product.
- ii. Reseller shall provide Microsoft-specific available information, as appropriate, to the Authorized User in order to facilitate a determination as to whether an offering complies with the Authorized User's statutory and regulatory requirements and is within the scope of this Aggregate Agreement. This includes, but is not limited to, Microsoft's data protection and privacy protocols and protocols for Authorized User transfer of data at the end of the Enrollment/ARF term.
- iii. Upon request of the Authorized User, Reseller shall provide for all Online Services, a chart of all roles and responsibilities pertaining to security, data ownership, encryption, and data location, including backup.
- iv. Reseller must provide to the Authorized User a copy of the MBT at the time of an executed

Enrollment/ARF.

**b. Service Credits for Online Services.**

Reseller must, on behalf of an Authorized User, facilitate and submit any claims for service credit for Online Services to Microsoft.

The Authorized User must provide to Reseller all information necessary for Microsoft to validate the claim, including but not limited to:

- (i) a detailed description of the Incident;
- (ii) information regarding the time and duration of the Downtime;
- (iii) the number and location(s) of affected users (if applicable); and
- (iv) descriptions of the Authorized User's attempts to resolve the Incident at the time of occurrence

In the event Microsoft grants a claim for service credit, the Authorized User will receive that service credit directly from the Reseller.

**c. Product Quotes.**

Reseller must provide quotes for Product within a maximum of two (2) business days after receiving a request for a quote for Product listed on the Aggregate Agreement Price List. Reseller must honor all quotes for thirty (30) calendar days, regardless of any price increases.

**6. MICROSOFT PROGRAM AGREEMENTS, ENROLLMENT FORMS AND AFFILIATE REGISTRATION FORMS**

OGS and Microsoft have agreed to a Microsoft Business Terms Agreement (MBT), which includes the additional or alternative terms and conditions made in accordance with Section 28 of Appendix B of Contract PM69723 for purposes of an Aggregate Agreement and establishes the overall licensing framework and the applicable terms and conditions for Authorized User use and acquisition of Microsoft Product, which is limited to software and certain Online Services. All MBT documents are available on the OGS Aggregate Agreement website.

As part of the MBT, custom Program Agreements, Enrollments, and Affiliate Registration Forms have been established for use by the Authorized Users of this Aggregate Agreement. Reseller must utilize these custom forms and documents for transactions under this Aggregate Agreement.

<b>Microsoft Business Terms (MBT)</b>			
<b>Program Agreements</b>			
<b>Enterprise Agreement State and Local (EA)</b>		<b>Campus and School Agreement (CASA)</b>	<b>Select Plus License Program Agreement State and Local</b>
			<b>Academic Select Plus Agreement</b>
<b>Enrollments - Affiliate Registration Form</b>			
<b>Custom Enterprise Enrollment State and Local</b>		<b>Custom Enrollment for Education Solutions</b>	<b>Custom Select Plus Affiliate Registration Form</b>
<b>Custom Enterprise Subscription Enrollment State and Local</b>			
<b>Custom Server and Cloud Enrollment State and Local</b>			

**a. Product Use Rights.**

To determine the use rights for a particular Product obtained under this Aggregate Agreement, an Authorized User must review the following documents, as applicable:

1. The MBT, which contains the license terms common to all Products;
2. The Product Terms document, which contains use rights and terms of service for Products.

Authorized Users must be aware that the Product Terms are updated from time to time. Authorized Users can access the current and archived editions of the Product Terms and Online Services Terms documents at the

following website <https://www.microsoft.com/licensing/docs/view/Product-Terms>

Authorized Users are encouraged to download the Product Terms and Online Services Terms documents that apply to the Products purchased under this Aggregate Agreement, for their reference.

**b. Service Level Agreements for Microsoft Online Services.**

Microsoft publishes a document, the Service Level Agreements, which provide commitments for uptime and connectivity for Microsoft Online Services. The Service Level Agreement applicable to an Authorized User's use of an Online Service is the one posted to the licensing site at the time an Authorized User initiates or renews its subscription license. This document is updated from time to time. Refer to MBT for links to Microsoft documents.

## **7. AGGREGATE AGREEMENT PRICING**

**a. Aggregate Agreement Price.**

The pricing under this Aggregate Agreement is established on a Cost-Minus or Cost-Plus basis. The Reseller applies a Cost-Minus or Cost-Plus Percentage to its Net Reseller Cost from Microsoft to determine the Aggregate Agreement Price for each Aggregate Agreement SKU.

**b. Aggregate Agreement Price List.**

Reseller updates the Aggregate Agreement Price List in accordance with updates to Contract PM69723 Price List updates. OGS publishes the Aggregate Agreement Price List on the Aggregate Agreement website.

**c. Enrollment/ARF Pricing.**

Each Enrollment/ARF provides the detail for how pricing is set and applied for purchases related to that Enrollment/ARF.