

Dell Marketing, LP

Aggregate Hardware Buy

25-01 Agreement Terms and Conditions

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Section 1. GENERAL

This Agreement 25-01 (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 the RFQ, 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

In addition to the terms defined in Contractor’s Manufacturer Umbrella Contract, Section 2.5, Glossary, the following definitions shall apply to this Agreement.

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
Required Products	Products that are mandatory for Contractors to quote
Standard Configuration	All components/line items necessary for a functional computing device meeting the minimum specifications identified in <i>Attachment A - Technical Response</i>
Quote, RFQ Submission	A Contractors bid response package

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 awarded Configurations. Upon mutual agreement, this Agreement Pricing may be extended to additional States or governmental jurisdictions, as described in Section 3.8, Participation in Aggregate Buy Agreement.

	Standard Configuration	Brief Description
1	VDI PC	Desktop computer intended for use as a VDI or desktop-as-a-service endpoint
2	Enterprise Notebook - Standard	Laptop computer intended for deployment in an enterprise setting.
3	Enterprise All-In-One	Desktop computer integrating the computer case and system components into the monitor.
4	Chromebook Low	Laptop or tablet computer that runs Chrome OS with a standard 11” screen
5	Chromebook with Touchscreen	Laptop or tablet computer that runs Chrome OS with a touch 11” screen
6	Unbundled Displays	Computer displays available in a range of pre-defined sizes

Devices must appear on the Windows Hardware Compatibility List for the current windows version or one (1) version prior at time of sale under this Aggregate Buy Agreement RFQ 25-01.

<https://partner.microsoft.com/en-us/dashboard/hardware/search/cpl>

3.2 PRICING.

The approved Configuration price lists, included as *Attachment 1 – Pricing Pages* to this Agreement, will be posted on the OGS Procurement Services website. Only Products listed on the *Attachment 1 – Pricing Pages* shall be sold under this Agreement. This Agreement pricing is Not-To-Exceed Pricing, in accordance with the Contractor's Manufacturer Umbrella Contract, Section 2.5, Glossary, "Not-to-Exceed (NTE) Price."

3.2.1 MONETARY VALUES.

All monetary values shall be in U.S. Dollar amounts and will be two decimal places (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 REQUIRED PRODUCTS.

Required Products shall be available under the Additional Product category on the awarded Configuration price list and are subject to the discount percentage bid by the Contractor as part of the Contractor's RFQ submission. The Required Product price awarded 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.

3.2.4 ADDITIONAL PRODUCTS.

Contractor shall provide the same awarded discount percentages that applied 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 Contractor's 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 awarded 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 the awarded Agreement Configuration price lists. Products that are on the Contractor's Manufacturer Umbrella Contract 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 Aggregate Hardware Buy 25-01 Agreement will be 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. Contractor's OGS Information Technology Umbrella Contract – Manufacturer Based, in the order of precedence located therein;

2. Aggregate Hardware Buy 25-01 Agreement TERMS AND CONDITIONS
3. Attachment 1 - Pricing Pages, which consists of the price list for each awarded Configuration as approved by OGS from time to time during the term of this Agreement
4. Attachment 2 - Issue Escalation Plan
5. Attachment 3 - Sales Report Form
6. Attachment 4 - Agreement Price List Modification Procedures
7. Attachment 5 – Pricing Modification Form
8. 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
9. Attachment 7 - Contractor Information
10. RFQ 25-01 Request for Quote 25-01, Aggregate Hardware Buy
 - RFQ 25-01 Aggregate Hardware Buy
 - Attachment A – Technical Response
 - Attachment B – Bidder 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 – Aggregate Hardware Buy - Delayed Delivery Report
 - Appendix 6 – Responses to Inquiries Released

3.4 COMMENCEMENT OF SALES.

A Contractor can commence sales from their Agreement only upon OGS acceptance and posting of the Agreement and awarded Configurations with the Contractor's contact information on the OGS website.

3.5 ESTIMATED SPEND AND QUANTITY.

The estimated dollar value of the aggregated award of the 14 Standard Configurations in RFQ 25-01, based on historical purchases under previous awards, is approximately \$50 million. This Agreement is an Indefinite Delivery, Indefinite Quantity (IDIQ) award. 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' 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 Agreement pricing is lower than anticipated or historical pricing, actual quantities purchased could be substantially greater than the estimates; conversely, if 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 this Agreement could vary substantially from the estimates provided above. Contractor must furnish all quantities actually ordered by Authorized Users at or below the prices in the Aggregate Hardware Buy 25-01 Agreement.

3.6 PARTICIPATION IN ONLINE NYS MARKETPLACE.

Contractors that are awarded a Configuration under the Agreement should provide a “hosted” or “punch-out” catalog that is available to Authorized Users via an online NYS marketplace, should one become available for technology products in the future.

3.7 CONTRACTOR WEBSITE.

If a Contractor maintains its own dedicated Agreement website, they are restricted to showing literature only directed toward the models currently on the approved OGS Hardware Buy 25-01 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 an online NYS marketplace.

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 this Agreement. Determination of compliance will be at the sole discretion of 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, Required Products 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 Aggregate price lists posted at the time of sale. Any conflicts between prices on the OGS Aggregate price lists and the Contractor’s dedicated website shall be resolved in favor of the best pricing for the Authorized User at the time of sale. Repeated conflicts between the two sources may, at OGS’ discretion, lead to the revoking of the Contractor’s 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, the 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 25-01 AGREEMENT.

The term of this Agreement shall be two (2) years. The term shall not commence until OGS execution, final approval by the Office of the State Comptroller (“OSC”) and posting of the final executed documents to the OGS Procurement Services website. 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 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.

3.10 RESELLER PARTICIPATION UNDER AGGREGATE AGREEMENT.

Resellers are permitted to be used 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 Buy, 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.

Authorized Resellers are allowed to be utilized 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 this Agreement. Products included under this Agreement can be modified through the processes described in *Appendix 2 – Agreement Price List Modification Procedures* utilizing both the Agreement Modification Form (last page of *RFQ 25-01, Appendix 2 – Agreement Price List Modification Procedures*) and *Appendix 3 - 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 previously submitted requests have been approved. The Contractor must request the most current approved *Appendix 3 – Pricing Modification Form* from the OGS Aggregate Buy 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 applicable Configuration must be specified in the request.

The Contractor shall submit the Product and price information for the Agreement modification electronically via email as described in *Appendix 2 – Agreement Price List Modification Procedures* and *Appendix 3 – Pricing Modification Form* (and in hardcopy if requested by OGS) to:

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

Subject Line: **Aggregate Hardware Buy 25-01 – [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 a Product can be lowered without lowering the Product price 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 Agreement price list to reflect the price decreases.

To lower the price for a component in the Standard Configuration, the new Product pricing must be indicated in the Proposed Aggregate Agreement Price column on the *Appendix 3 – Pricing Modification Form*. The proposed lower price will become the new Agreement price for the component upon OGS approval.

To lower the price of a Required Product or Additional Product, the new Product pricing must be indicated in the Proposed Aggregate Agreement Price column on the *Appendix 3 – Pricing Modification Form*. The proposed lower price minus the percentage discount will become the new Agreement price for the Required Product or Additional Product upon OGS approval.

3.12.2 ADDING ADDITIONAL PRODUCTS.

Once a Product has been successfully added to the Contractor's OGS-approved Manufacturer Umbrella Contract price list, the same Product can then be submitted for an add request under the Agreement. The new Additional Product price, as entered in the Proposed Aggregate Agreement Price column on the *Appendix 3 – Pricing Modification Form*, must be equal to or less than the Net NYS Contract price for the Product as listed on the Contractor's Manufacturer Umbrella Contract price list. The discount percentage described in 3.2.4, 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' satisfaction to be incompatible with the Standard Configuration, unavailable, or at End of Life (EOL). Contractor must submit notice and the reason an Additional Product is being removed from the Agreement no less than 60 calendar days before the Additional Product becomes unavailable or EOL. An Additional Product purchased prior to incompatibility, unavailability, or EOL must remain under warranty or be replaced at no additional charge to the Authorized User.

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 with the Standard Configuration, unavailable or at Product EOL.

If a Product in the awarded Standard Configuration and/or Required Products becomes incompatible with the Standard Configuration, unavailable, or EOL, a replacement Product of an equal or greater specification than the original Product must be submitted for OGS review and approval. The replacement Product must be offered on the Agreement price list at the same or lower Agreement pricing as the original Product. Replacement components 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 Configuration and/or Required Products.

Contractor must submit notice and the reason for the Replacement no less than 60 calendar days before the Product becomes unavailable or EOL. Products purchased prior to replacement of that Product must remain under warranty or be replaced at no additional charge to the Authorized User.

3.12.5 REPLACEMENT MODEL FOR STANDARD CONFIGURATION.

If an entire Standard Configuration becomes unavailable or EOL, a replacement Standard Configuration that meets or exceed the specifications of the original offered Standard Configuration in each of the component areas listed on *Attachment 1 – Pricing Pages* must be submitted for OGS review and approval.

The Contractor must submit notification of the modification no less than **60** calendar days before the Standard Configuration model becomes unavailable or EOL. All Standard Configurations purchased prior to the replacement of that Standard Configuration must remain under warranty or be replaced at no additional charge to the Authorized User.

In addition, the Contractor must submit a replacement Standard Configuration with specifications that meet or exceed the specifications of the original Standard Configuration model for OGS review no less than **30** calendar days before the original Standard Configuration model becomes unavailable or EOL. The replacement Standard Configuration price shall not exceed the original Standard Configuration price; provided, however, if the replacement Standard Configuration costs less than the original Standard Configuration, the price shall be reduced to the lower cost. OGS will be solely responsible for determining if the replacement Standard Configuration meets or exceeds the original Standard Configuration.

During the term of the Agreement, should the Contractor fail to provide timely notice of unavailable or EOL Standard Configuration(s), or fail to provide timely submission of a replacement Standard Configuration 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 25-01 for that Configuration that is willing to accept the Configuration award without rebidding. Under no circumstances will the new awardee 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.

3.13 QUOTES AND INVOICING.

All quotes and invoices must at a minimum, include the items listed below and any additional information identified in the Authorized User Purchase Order and Authorized User Agreement:

- Manufacturer Umbrella Contract Number: PMXXXXX
- RFQ Number: 25-01
- RFQ Title: Aggregate Hardware Buy 25-01
- Contractor Name
- NYS Vendor ID
- Manufacturer Part Number (SKU)
- Product Name
- Product Description
- Quantity
- Aggregate Buy Price for each Product SKU
- Specific designation of special price(s) which may be better than the Agreement price
- Invoice Total
- Standard Configuration Name

Any quote or invoice that does not contain this complete information may be rejected.

3.14 PRODUCT DELIVERY.

The Contractor shall deliver the units ordered by an Authorized User within 45 calendar days of receipt of a Purchase Order, approved by OSC if applicable, 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 must submit a written request to the Authorized User to extend the required Product delivery period as per the terms of Appendix B, Section 33. The Authorized User shall respond in writing to the Contractor either declining the request or specifying the revised delivery period.

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 *Appendix 5 – Aggregate Hardware Buy - Delayed Delivery Report*. If OGS becomes aware of multiple incidents of delays in delivery, OGS reserves the right to enforce any of the remedies available to us through the terms of this Agreement, including our rights to terminate the Agreement in whole or in part, and award to another contractor as per the terms of Section 3.22 Replacement Contractor.

3.15 ISSUE ESCALATION PLAN.

The Contractor's Issue Escalation Plan is attached hereto as *Attachment D – Issue Escalation Plan*. Contractor shall adhere to such plan during the term of this Agreement. OGS may require the Contractor to modify the plan at any time during the term of this Agreement. The Issue Escalation Plan is a part of this Agreement and must be kept current during the term of the Agreement.

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

Disputes between the Contractor and OGS regarding the Aggregate Hardware Buy 25-01 Agreement will be handled pursuant to Contractor's Manufacturer Umbrella Contract, Appendix B, sections 64(II)(A) and 64(II)(B). Informal disputes between other Authorized Users and the Contractor will be handled under Contractor's Manufacturer Umbrella Contract, 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 adding a SKU for Authorized User specific standard software imaging under Additional Products on *Attachment A – Technical Response* if it is not already included as part of the Standard Configuration or its Required Products. Contractors are therefore 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 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 **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 only approved Agreement Products to Authorized Users at the current Agreement price. The Contractor shall make all sales staff aware of this responsibility. Sales staff shall not quote or sell Products not available on the approved Agreement price lists. Products must be added to the approved Agreement price lists via the *Appendix 2 – Agreement Price List Modification Procedures*.

3.19 **SALES REPORTING AND FISCAL AUDITS.**

3.19.1 SALES REPORTING.

The Contractor shall provide OGS with accurate and timely sales reports containing detailed information of all purchases by all Authorized Users made pursuant to the Agreement.

Sales Reports for the Agreement must be submitted electronically in Microsoft Excel format (unprotected) utilizing all tabs of Appendix 1 – Sales Report Form to:

OGS.sm.PS.AggregateBuy@ogs.ny.gov
Subject Line: Aggregate Hardware Buy – RFQ 25-01 - Sales Report

Sales under the Agreement must also be submitted in accordance with Section 2.23 of the Manufacturer Umbrella Contract, using Appendix 1 – Sales Report Form.

The Aggregate Hardware Sales report must be submitted separately from the Contractor's Manufacturers Umbrella Contract sales report.

Aggregate Hardware Sales reports are due one month directly following the end of each quarter. The quarters for each sales report are as follows: January - March; April - June; July - September; October - December. Sales report submissions are due: April, July, October, January.

During the term of the Agreement, OGS reserves the right to amend Aggregate Hardware Buy - Sales Report template or to require sales to be reported in a different format. Further, OGS may require additional related sales information and/or detailed Authorized User purchases to be supplied upon request.

All fields of information shall be accurate and complete. Failure to submit accurate reports on a timely basis may result in termination of the Contractor's Aggregate Buy Agreement in whole or in part and activation of Section 3.22, Replacement Contractor.

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

3.19.2 FISCAL AUDITS.

OGS reserves the right to audit the accuracy of the sales reports collected under Award 22802. Audits shall be conducted during regular business hours, upon not less than 15 business days prior written notice. Repeated errors on subsequent audits may result in a responsibility hearing 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 another Bidder as per the terms of Section 3.22 Replacement 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.

3.20 EPEAT REQUIREMENTS.

All products provided under this Agreement are required to have achieved a minimum certification of EPEAT Gold. 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 each 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.

3.21 EXPORT ADMINISTRATION REGULATIONS RESTRICTED BUSINESS ENTITIES.

OGS will not accept a contractor price list that contains Products made by an entity on any of the lists maintained by the US Customs and Border Patrol (see link):

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

If Contractor cannot offer 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 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 *Appendix 3 - Pricing Modification Form*.

3.22 REPLACEMENT CONTRACTOR.

In the event that OGS terminates this Agreement, or any awarded Configuration included in such Agreement, OGS reserves the right to then make an award to the Bidder with the next highest Total Financial Score from RFQ 25-01 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.

3.23 ADVERTISING.

Contractor is reminded of the requirements set forth in the Contractor's Manufacturer Umbrella Contract, Appendix B, Section 13, Contract Publicity, incorporated as part of the Contract, that any Contractor's press or media releases, advertisements, or promotional literature, regardless of the medium, referring to a 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.

3.24 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.

3.25 MWBE GOALS AND REPORTING.

The Contractor is reminded of their responsibility under the 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.

3.26 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. Contractor shall not provide refurbished or remanufactured equipment as they are not allowed under this Aggregate Hardware Buy 25-01. 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. Contractor should review NYS ITS Technology Standard NYS-S14-010, Remote Access.
- Manufacturer must offer comprehensive software support for OEM devices and peripherals for 48 months from the release date of the device. Software support includes driver and utility software support for Windows 11 (or successor product) for any build serviced by Microsoft.

3.26.1 DOCKING STATION WARRANTY.

The Contractor is responsible for providing a warranty SKU(s) for docking stations listed as a Required Product or Additional Product on the price lists. The warranty SKU(s) must fully cover hardware, software, and drivers. The warranty SKU(s) for docking stations must provide complete support, including break/fix, for all compatible operating systems.

3.26.2 ADDITIONAL PRODUCT WARRANTIES.

The Contractor is responsible for adding SKUs for additional warranty year options (e.g. 3-year, 4-year, 5-year) under Additional Products on *Attachment 1 – Pricing Pages*.

Signature Page

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date last written below, and the Agreement shall become effective and binding on the date of OSC approval. The Parties further hereby certify that copies of this executed and approved signature page will be affixed, upon final approval, to exact copies of this Agreement being executed simultaneously herewith. The Parties agree that this Agreement may be signed electronically, and that by signing below, the Parties intend to be bound by the terms of this Agreement. The Parties understand and agree that electronically signing the document is the legal equivalent of having placed a handwritten signature and affirmation on the document.

By signing you certify your express authority to sign on behalf of yourself, your company, or other entity and full knowledge and acceptance of this Contract, Appendix A Standard Clauses For New York State Contracts (June 2023)), Appendix B General Specifications, and State Finance Law § 139-j and § 139-k (Procurement Lobbying), and that all information provided is complete, true and accurate. By signing, Contractor affirms that it understands and agrees to comply with the OGS procedures relative to permissible contacts as required by State Finance Law § 139-j(3) and § 139-j(6)(b).

CONTRACTOR

Signed by: *Ana Pitti*
 Signature: _____
61ACFE02E08649E...

Printed Name: Ana Pitti

Title: Paralegal Senior Analyst

Date: 10/22/2025 | 4:15 PM EDT

Company Name: Dell Marketing, LP

Federal ID: 742616805

NYS Vendor ID: 1000041162

THE PEOPLE OF THE STATE OF NEW YORK, ACTING BY AND THROUGH THE COMMISSIONER OF GENERAL SERVICES

Signed by: *Kylesha Davis*
 Signature: _____
7B45354A85864B7...

Printed Name: Kylesha Davis

Title: Assistant Director

Date: 10/23/2025 | 10:34 AM EDT

Office of General Services

NEW YORK STATE OFFICE OF THE STATE COMPTROLLER

