



# Kyndryl standard purchase order terms and conditions

August 2024

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**Agreement documents:** This Purchase Order (PO), any attachments made a part of this PO, and any documents or clauses incorporated by reference into this PO are the sole and exclusive agreement of Buyer and Supplier for the products and/or services in this PO, and no other document, including the Supplier's proposal, quotation or acknowledgment form, will be part of this PO, unless specifically agreed to in writing by Buyer. Terms contained in the Supplier's response to, or acknowledgment or acceptance of, this PO, if any, that are additional to, or different from, the terms set forth herein (which terms would constitute a counter-offer by Supplier) are specifically rejected by Buyer. Buyer's offer to purchase as provided in this PO may not be modified by Supplier counter-offers. Notwithstanding the foregoing, if this PO is deemed an acceptance by Buyer of a Supplier offer or counter-offer, then such acceptance is expressly made conditional on Supplier's assent to all of the terms of this PO, including those that are additional to, or different from, the terms of Supplier's offer or counter-offer. The terms and conditions of this PO are subject to change without notice.

**Prices:** If the PO does not include pricing, the price for the products and/or services provided hereunder will be Supplier's lowest prevailing market price for such products and/or services. Supplier is not entitled to reimbursement of expenses incurred in connection with fulfilling this PO, except as otherwise agreed in writing by Buyer.

**Taxes:** – Price shall be exclusive of all Indirect Taxes applicable on the scope of this contract, whether the statutory liability to discharge such Indirect Taxes is on the Supplier or Buyer. 'Indirect Taxes' shall include Central Goods and Services Tax ('CGST'), Integrated Goods and Services Tax ('IGST'), State Goods and Services Tax ('SGST') levied by the States, Union Territory Goods and Services Tax ('UTGST') levied by the Union Territories, allied cesses, duties and taxes (hereinafter collectively referred to as 'GST Laws'). Supplier shall pass on any benefits including but not limited to increase in credits of input taxes, decrease in tax rates to Buyer. Supplier shall be solely responsible for charging appropriate Indirect Taxes and timely depositing the same with the relevant authorities to the extent the Supplier is statutorily liable. Any interest, penalties or recoveries by authorities on account of default by the Supplier to be solely borne by the Supplier on its own account. Supplier shall be solely responsible for issuing and making available to Buyer all requisite documents in the manner prescribed under the GST Laws including but not limited to invoices, advance receipt vouchers, credit notes, debit notes, epermits and way bills. Such documents to specifically capture mandatory details including but not limited to GSTIN, HSN/ SAC, description of the supply, value, applicable Indirect Taxes, place of supply, as prescribed under the GST Laws. In case any credit, refund or other benefit is denied to Buyer due to any non-compliance by Supplier (such as failure to upload the details of the sale on the GSTN (Goods and Service Tax Network) portal, failure to pay GST to the Government etc.) or due to non-furnishing or furnishing of incorrect or incomplete documents, Supplier shall reimburse Buyer the loss including, but not limited to, the tax loss, interest and penalty. In case Supplier fails to reimburse the amount within forty-five(45) days from the date of intimation thereof, Kyndryl India reserves the



right to set off such losses, interest and penalty from the outstanding payable or initiate appropriate legal process for recovery of the same. Buyer shall deduct applicable taxes under the provision of the Income tax Act on payments made to Supplier hereunder and shall be required to remit to Supplier only the net proceeds thereof.

**Tax Collection at source:-** In situations where SUPPLIER is responsible for collecting taxes at source under the Indian Income-tax laws, the SUPPLIER shall explicitly mention such amounts separately on the invoice as per the applicable laws in force, collect such taxes, deposit such taxes to Government and issue certificate for the taxes collected at source within the timelines prescribed under the said laws. SUPPLIER shall continue to be liable to customer until issuance of such tax collection at source certificate. Further, Customer will not be liable to pay anything to the SUPPLIER towards taxes collection at source unless it is explicitly and separately mentioned on the invoice and the SUPPLIER alone is liable for any consequence on account of non-collection of tax. Customer shall ensure that the Permanent Account Number (“PAN”) of SUPPLIER is quoted rightly in quarterly TCS returns or any other document where the PAN of SUPPLIER is required to be mentioned. Furthermore, in the event of credit not being provided to SUPPLIER in respect of such TCS on account of the Customer not mentioning the correct PAN of SUPPLIER, the Customer shall file revised quarterly TCS returns so as to facilitate credit of such TCS to SUPPLIER and in the eventuality of credit not being provided to SUPPLIER in respect of such TCS on account of default/ non-compliance by the Customer, the Customer shall compensate SUPPLIER to the extent to which credit is not provided to SUPPLIER.

**MSME:-** For MSME registered with Government of India, Act 2006 *“The Supplier shall raise and submit an invoice for the services provided /goods delivered to Kyndryl pursuant to this Agreement/ Purchase Order, within [7] days from the date of provision of the services / delivery of the goods. The said invoice raised by the Supplier shall be complete and accurate in all respects and in strict compliance with all applicable tax laws. Kyndryl shall make payment to the Supplier for the services provided / goods delivered within [30] days of receipt of such invoice. Without prejudice to the rights or remedies available to Kyndryl under this Agreement (including any SOWs, POs, or other ancillary documents executed by it in connection with this Agreement) or any law in force, the parties agree and acknowledge that acceptance of the services / goods shall not be treated as complete until such invoice as aforementioned is received by Kyndryl. The parties further agree that in the event of any failure to provide such invoice, Kyndryl will be deemed to have objected in writing to the delivery and/or acceptance of the relevant goods/services at the relevant point of time, by virtue of the provisions hereof, whether or not any further objections are raised by Kyndryl .”*

**Terms of payment and acceptance:** Unless otherwise mandated by local law, the terms of payment are net 60 days after receipt of Supplier's valid invoice or after receipt of the products and/or services, whichever is later. Payment will not be deemed acceptance of products or services, and such products or services will be subject to inspection, test, acceptance or rejection. At Buyer's option, Buyer may reject products and/or services that do not comply with Buyer's acceptance criteria for a refund or require Supplier to repair or replace such products or reperform such services without charge and in a timely manner. Buyer may return non-conforming products to Supplier at Supplier's expense.

**Termination:** This PO may be terminated by Buyer with or without cause. Supplier's breach (or Kyndryl's reasonable belief that Supplier has breached or is likely to breach) of the Ethical Dealings provision constitutes a material breach of this PO and, in such event, Kyndryl may terminate this PO immediately on written notice to Supplier.



**Imports and exports:** Supplier is the importer and exporter of record, unless Buyer expressly agrees in writing to serve as the importer or exporter. Supplier will comply with all applicable import and export laws and administrative requirements, including the payment of all associated duties, taxes and fees and all applicable laws, regulations, certifications and registrations associated with the import or export of Supplier's products including but not limited to product safety, electromagnetic compatibility, telecommunications, product take-back/recycling and environmental requirements. Upon Buyer request, Supplier will promptly provide all information necessary to export and import products, including, as applicable, the Export Control Classification Numbers (ECCN) and subheadings or munitions list category number, certification and or test results relating to the products or services and any other and will notify Buyer in writing of any changes to the information provided by Supplier to export and import products. For products that will be imported by the Buyer, Supplier will provide promptly any requisite information, documentation, certification and/or test results for Buyer to comply with applicable import laws and administrative requirements. In all instances, Supplier may not undertake any routed export transactions, as defined in the United States Export Administration Regulations {15 CFR, Part 758.3(b)}, for any US export shipment, or undertake a similar arrangement for any export shipments originating outside of the United States, that name Buyer as a party to such shipments. Shipment terms in all cases are Delivered Duty Paid ("DDP"). Supplier shall retain and discharge all import, export, customs, and insurance obligations.

**Packages/transportation:** Supplier will comply with: (i) all country of origin marking instructions and all Buyer instructions for exports to Buyer; (ii) all packaging and labelling requirements set out in this PO; and (iii) the transportation routing guidelines in this PO and pursuant to the Shipping transportation guidelines. Default minimum requirements for (i) and (ii) are found under Instructions for exports to Kyndryl.

**Social and environmental management system:** Supplier will comply with the Social and environmental management system supplier requirements.

**Risk of loss; delivery:** Title and risk of loss remain with Supplier until products purchased under this PO have been delivered to Buyer at the location specified in the PO and accepted by Buyer. For Supplier's delivery of products, time is of the essence. If Supplier fails to deliver on time, Buyer may purchase replacements elsewhere, and Supplier will be liable for actual and reasonable costs and damages Buyer incurs. Supplier will promptly notify Buyer if it is unable to comply with the delivery date specified in this PO.

**Warranties:** Supplier warrants that:

- i. it has the right to enter into this PO;
- ii. it is knowledgeable with, and is and will remain in full compliance with (at its own expense) all laws, rules and regulations that are, or may become, applicable in the provision of products and services hereunder including, without limitation,
  - a. labor and employment laws,
  - b. applicable export and import laws, regulations, orders, and policies, including, but not limited to:
    - i. securing all necessary clearance requirements, export and import licenses and exemptions from, and making all proper filings with appropriate governmental bodies and/or disclosures relating to the release or transfer to non-U.S. nationals of technology and software in the U.S., or outside the U.S., release or transfer of technology and software having U.S. content or derived from U.S.- origin software or technology);
    - ii. being knowledgeable with applicable supply chain security recommendations issued by applicable governments and industry standards organizations and making best efforts to comply with such recommendations;



- iii. agreeing not to transfer to Kyndryl any hardware, software, technical data or services controlled under the U.S. International Traffic in Arms Regulations ("ITAR");
- c. environmental laws, regulations or ordinances governing product environmental and energy characteristics, product content prohibitions, product end-of-life management/product take-back, and/or product safety related to Buyer's transport, import, export, distribution, sale and/or use of Supplier's products as, or as part of, a Buyer product;
- d. anti-corruption laws; and
- e. laws and regulations regarding data privacy and data protection;
- iii. its execution of this Agreement will not result in a breach of any other agreements or contracts to which it is a party;
- iv. no claim, lien, or action exists or is threatened against Supplier that would interfere with Buyer's rights under this PO; v. products and services do not infringe any privacy, publicity, reputation or intellectual property right of a third party;
- vi. (A) it has disclosed to Buyer in writing the existence of any third party code, including without limitation open source code, that is included in or is provided in connection with the product(s) and/or services and (B) it and the products and/or services comply fully with all licensing agreements applicable to such third party or open source code;
- vii. all authors have agreed not to assert their moral rights in the products and/or services, to the extent permitted by law;
- viii. products are free from defects in design and free from defects in material and workmanship;
- ix. products are safe for use consistent with and will comply with the warranties, specifications and requirements of this PO;
- x. products do not contain harmful code and Supplier will not engage in electronic self-help;
- xi. products do not contain (and products are not manufactured using) ozone depleting substances known as halons, chlorofluorocarbons, hydro chlorofluorocarbons, methyl chloroform and carbon tetrachloride as defined by the Montreal Protocol and as specified by Buyer in writing;
- xii. products are new and do not contain used or reconditioned parts unless Buyer agrees otherwise in writing;
- xiii. it will not use, disclose, or transfer across borders any information that may identify an individual ("Personal Data") that is processed for or on behalf of Buyer, except to the extent necessary to perform under this PO;
- xiv. it will not offer, promise or make, directly or indirectly any payment for the purpose of improperly influencing (or inducing anyone to influence) decisions or actions of any official of a government controlled entity or public international organization.
- xv. (A) it will implement and maintain appropriate technical and organizational measures and other protections for Personal Data (including, without limitation, not loading any Personal Data provided to Supplier on (a) any laptop computers or (b) any portable storage media that can be removed from Supplier's premises unless each case (i) such data has been encrypted and (ii) such data is loaded onto portable storage media solely for the purpose of moving such data to off-site storage), (B) it will report to Buyer any breaches of security of Personal Data immediately after discovery ("Security Incident"), (C) it will cooperate fully with Buyer in investigating any Security Incidents, (D) it will cooperate fully with Buyer's requests for access to, correction of, and destruction of Personal Data in Supplier's possession, and (E) it will comply with all instructions or other requirements provided or issued by Buyer from time to time relating to Personal Data;
- xvi. it will not export, directly or indirectly, any technology, software or commodities of U.S. origin or having U.S. content provided by Buyer or their direct product to any of the countries or to nationals of those



countries, wherever located, listed in U.S. Export Administration Regulations, as modified from time to time, unless authorized by appropriate government license or regulations;

xvii. it will not, nor will it authorize or permit Supplier Personnel to, disclose, export or re-export any of Buyer's information, or any process, or product that is produced under this PO, without prior notification and compliance with all applicable Federal, State and local laws, regulations and ordinances, including U.S. export control regulations.

**Intellectual property:** Supplier grants Buyer all rights and licenses necessary for Buyer and its affiliates to use, transfer, pass-through, and sell the products and/or services and to exercise the rights granted under this PO.

**Ownership of products:** Except for products consisting of software (which is licensed as provided under Intellectual Property above), all work product developed by Supplier and provided to Buyer under this PO are and shall remain the personal property of Buyer.

**Indemnification:** Supplier agrees to defend, hold harmless, and indemnify Buyer and its affiliates from any claim (including without limitation costs, expenses and attorneys' fees) arising from (a) claims that any product infringes any intellectual property rights, (b) the failure of Supplier to comply with its warranties and obligations under this PO or (c) a Security Incident. If a claim of infringement is made, Supplier will, at its own expense, exercise the first of the following remedies that is practicable: (i) obtain for Buyer the rights granted under this PO; (ii) modify the product so it is non-infringing and in compliance with this PO; (iii) replace the product with non-infringing ones that comply with this PO; or (iv) accept the return or cancellation of the infringing product and refund any amount paid.

**Limitation of liability:** To the extent permitted by local law, in no event will Buyer or its affiliates be liable for any lost revenues, lost profits, incidental, indirect, consequential, special or punitive damages. In no event shall Buyer's liability to Supplier exceed the total amount of fees actually paid by Buyer to Supplier hereunder.

**Assignment:** Supplier will not assign its rights or subcontract its duties without Buyer's written consent. Any unauthorized assignment is void.

**Exchange of information:** All exchanges of information between the parties pursuant to this PO will be considered non-confidential. If the parties intend to exchange confidential information, such exchanges shall be made under a separate written confidentiality agreement. For any Personal Data relating to Supplier's personnel that Supplier provides to Buyer, Supplier will obtain the informed consent of such personnel to release the information to Buyer and to allow Buyer to use, disclose, and transmit such information on a worldwide basis among Buyer and its affiliates in connection with this PO.

**Ethical dealings:** Supplier will be familiar and will strictly comply with all laws and regulations on bribery, corruption, and prohibited business practices. Supplier and its affiliates have not and will not, for the purpose of influencing or inducing anyone to influence decisions in favor of Buyer or any of its affiliates, offer, promise, or make or agree to make, directly or indirectly, (a) any political contributions of any kind or any payment to or for the benefit of any public official, whether elected or appointed, (b) any payments for gifts, meals, travel, or other value for a government employee or his/her family members, or (c) any payments or gifts (of money or anything of value) to anyone. Buyer shall not reimburse Supplier for any such political contributions, payments, or gifts.



**Record Keeping and Audit Rights** Supplier will maintain (and subject to applicable law provide to Kyndryl upon request) relevant business, technical and accounting records i) to support Supplier's invoices; ii) show proof of required permits and professional licenses and iii) to demonstrate compliance with Supplier's performance of its obligations under this Agreement, for not less than six (6) years following completion or termination of the relevant Services. All accounting records will be maintained in accordance with generally accepted accounting principles. Upon Kyndryl's notice, Kyndryl may, at no charge to Kyndryl, audit Supplier's compliance with its obligations under this Agreement, including verifying compliance with applicable laws and the protection and integrity of Kyndryl Materials. In connection with an audit, Supplier shall provide Kyndryl (including its auditors and any regulators) access at reasonable times (or in the case of regulators, at any time designated by such regulators), to any facility at which Supplier or any Subcontractor is providing or has provided Services or Deliverables under this Agreement and to all systems, data and business, technical and accounting records relating to Supplier's (and any Subcontractor's) compliance with its obligations. Supplier shall provide its full cooperation in any such audit, including by designating a focal point to support an audit and, if required by Kyndryl, promptly securing the rights for Kyndryl to directly request from any Subcontractor, and for the Subcontractor to promptly provide to Kyndryl, access to such systems, data and records relating to the work performed by such Subcontractors.

**Insurance:** Supplier shall obtain and maintain all applicable and appropriate insurance, (including, without limitation, business, workers' compensation, auto, errors and omissions, professional and commercial general and liability insurance) in an amount consistent with Supplier's industry practice. Each policy shall name Buyer as a loss payee or additional insured, as appropriate.

**Supplier's subcontractor obligations:** Supplier shall enter into a written contract with each subcontractor it is authorized to retain under this PO, if any, with such contract committing each such subcontractor to comply with all of Supplier's obligations and responsibilities under this PO. By way of example but not limitation, those obligations and responsibilities include those contained in the Ethical Dealings and Record Keeping and Audit Rights provisions of this PO. In addition, in such written contract, Supplier shall identify Buyer as a direct and intended thirdparty beneficiary of the Record Keeping and Audit Rights provision, with the effect that Buyer shall have all of the same rights under that provision as Supplier has with subcontractor. Notwithstanding the foregoing, Supplier's use of a subcontractor will not relieve Supplier of its obligations under this PO or its responsibilities for the subcontractor's performance.

**Applicable laws:** This PO is governed by the laws of the country where the Buyer is located, except: (i) in Australia, this PO will be governed by the laws of the State or Territory in which the transaction occurs; (ii) in the United Kingdom, this PO will be governed by the laws of England; (iii) in Bulgaria, Croatia, Czech Republic, Hungary, Poland, Romania, Slovakia and Slovenia, this PO will be governed by the laws of Austria; (iv) in Estonia, Latvia, and Lithuania, Finnish law will apply; (v) in Canada, the laws of the Province of Ontario govern this PO; and (vi) in the United States (including if any part of the transaction occurs within the United States), Puerto Rico, and People's Republic of China, the laws of the State of New York applicable to contracts executed in and performed entirely within that State govern this PO.

**General:** Any reproduction of this PO by reliable means will be considered an original of this PO. The United Nations Convention on Contracts for the International Sale of Goods does not apply. The parties expressly waive any right to a jury trial regarding disputes related to this PO. Unless otherwise provided by local law without the possibility of contractual waiver or limitation, any legal or other action related to this PO must be commenced no later than two (2) years from the date on which the cause of action arose. No modification, amendment, supplement to, or waiver of this PO by Buyer shall be binding upon the parties



unless made in writing duly signed by both parties and specifically referencing his PO. Buyer's failure to exercise any right hereunder shall not operate as a waiver thereof. Both shrinkwrap and clickwrap licenses accompanying any product consisting of software and online Terms of Use or Terms of Service relating to services provided online are null and void, and the terms and conditions of this PO prevail. Any services performed by Supplier shall be performed as an independent contractor, and Supplier is solely liable for applicable payroll or income taxes. Supplier shall not use the name or trademarks of Buyer or its affiliates or refer to or identify Buyer or its affiliates in any marketing materials (including without limitation testimonials or customer listings) or press releases without the prior written consent of Buyer.

**Supplier and supplier personnel:** Supplier is as an independent contractor, and this PO does not create an agency, partnership, or joint venture relationship between Buyer and Supplier or Supplier personnel. Buyer assumes no liability or responsibility for Supplier personnel.

Supplier:

shall, upon request of Kyndryl and to the extent permitted by applicable law, provide to Kyndryl (I) for export evaluation purposes, the country of citizenship and permanent residence and immigration status of its Personnel, (II) written confirmation (i) that Supplier Personnel are eligible to work in the country where the Services are being provided and (ii) to the extent required by applicable law, that Supplier participates in eVerify pursuant to applicable Executive Order(s) and United States Department of Homeland Security, and (III) if specific education requirements are required by Kyndryl, proof of education for Supplier Personnel;

shall instruct its Personnel that employment related issues should be brought forward to Supplier (and not Kyndryl) and shall notify Kyndryl promptly where such issues relate to actions which are alleged to have been taken by Kyndryl or its Personnel to enable Kyndryl to investigate as necessary; is and shall remain responsible for the day to day supervision, control, terms and conditions, hiring, verification of eligibility to work, discipline, performance management, termination, counseling, scheduling, compensation, benefits and other activities, withholdings, health and safety of Supplier Personnel, and shall ensure Supplier Personnel do not seek to obtain the same from Kyndryl; acknowledges that Kyndryl has no responsibility for reviewing or approving timesheets; however, Kyndryl may review such timesheets for billing verification purposes only; is responsible for the actions and inactions of Supplier Personnel and compliance by Supplier Personnel with the requirements of this Agreement;

agrees that Kyndryl retains the right to refuse to accept Supplier Personnel made available by Supplier to perform Services hereunder and may request the removal of Supplier Personnel from assignment under this Agreement, for any lawful reason at Kyndryl's sole and reasonable discretion. Kyndryl Assets

Supplier shall instruct Supplier Personnel to:

use Kyndryl Assets only for purposes of this Agreement and Supplier will reimburse Kyndryl for any unauthorized use;

only connect with, interact with or use programs, tools or routines that Kyndryl agrees are needed to provide Services;

not copy, disclose or leave Kyndryl Assets unsecured or unattended;

promptly notify Kyndryl of any accident or security incidents (such as those involving loss or misuse of, or damage to, Kyndryl Assets (as defined below), and Supplier will provide Kyndryl with a copy of any accident or security incident report involving the above.

Kyndryl may periodically audit Supplier's use of Kyndryl Assets. "Kyndryl Assets" means Kyndryl's or Customer's computer systems and/or networks, Kyndryl's or Customer's property that is accessed or used by Supplier Personnel or materials, data, documents or information provided to Supplier Personnel by (or on behalf of) Kyndryl.

Supplier Access to Kyndryl or Customer Premises



i). If Supplier Personnel will have access to Kyndryl or Customer premises, Supplier shall conduct orientation sessions with its Personnel before placement on an assignment with Kyndryl or Customer and identify and provide contact information (which shall be updated by Supplier as necessary) for all supervisor(s) for Supplier Personnel.

ii). Supplier shall instruct Supplier Personnel as follows:

(a) Supplier Personnel on Kyndryl's or Customer's premises may not (i) bring weapons of any kind onto such premises; (ii) possess, use or be under the influence of controlled substances or alcoholic beverages; (iii) have in their possession hazardous materials of any kind without Kyndryl's authorization; (iv) send or receive non-Kyndryl or Customer email through Kyndryl's or Customer's mail systems; (v) sell, advertise or market any products or distribute printed, written or graphic materials without Kyndryl's written permission; or (vi) conduct any non-Kyndryl or Customer related business activities while assigned to work under this Agreement. (b) Supplier Personnel on Kyndryl's or Customer's premises must (i) obtain a valid identification badge from Kyndryl or Customer and return identification badges upon completion or termination of assignments; (ii) remain in authorized areas only (limited to work locations, cafeterias, restrooms and parking lots); (iii) access and use for work only the materials, documents, information and data necessary to perform and (iv) immediately report to Supplier any incidents (such as actual or alleged physical alterations, assaults, harassment and/or inappropriate behavior) so that Supplier can promptly notify Kyndryl and provide Kyndryl with a copy of any incident report.

**Criminal and other Background Checks**

(a) Supplier shall inform Kyndryl if any Supplier Personnel to be assigned to perform Services hereunder are former employees of Kyndryl, which assignment is subject to Kyndryl's approval. (b) To the extent permitted by local law, Supplier will obtain from Supplier Personnel photographic proof of identity from an official government source (including but not limited to documentation such as a valid driver's license or government issued passport). (c) To the extent permitted by local law, Supplier will conduct or otherwise obtain criminal background checks on Supplier Personnel as defined in section (d) below, in locations where the Supplier Personnel resided for the past seven years. Where no criminal convictions within the past seven years are identified, Supplier Personnel may be assigned to perform Services. Where a criminal conviction is identified, Supplier may not assign Supplier Personnel where Supplier Personnel is disqualified from performing Services based on Supplier's individualized assessment of the conviction against the Services to be performed in accordance with applicable law and guidance, which may include but is not limited to the Equal Employment Opportunity Commission's promulgated guidance in the United States or similar state or other government promulgated guidance, as applicable. If, after such assessment, Supplier still recommends assigning a Supplier Personnel with a criminal conviction to perform Services, Kyndryl must first be informed of such decision. Kyndryl will thereafter review the criminal conviction and Services which will be performed and/or access that the Supplier Personnel will have. Unless otherwise required for this review, Kyndryl will not receive any personally identifiable information (e.g., Supplier Personnel name, social security number, etc.)

(d) For Supplier Personnel in the United States, a Federal background check must be conducted as well as a county or state background check, whichever is more comprehensive. In other countries, background checks may be at the county, state, province and/or country level, whichever is most comprehensive. (e) Upon Kyndryl request and subject to applicable law, Supplier will provide documentation to Kyndryl to verify its compliance with this section.

**Ownership of products:** "To the extent that the work or services being acquired by Kyndryl hereunder are for ultimate sale to the United States Government, then the Government shall have unlimited or government





purpose rights in associated works of authorship to the extent required under the relevant federal prime contract."

**General:** Any reproduction of this PO by reliable means will be considered an original of this PO. The United Nations Convention on Contracts for the International Sale of Goods does not apply. The parties expressly waive any right to a jury trial regarding disputes related to this PO. Unless otherwise provided by local law without the possibility of contractual waiver or limitation, any legal or other action related to this PO must be commenced no later than two (2) years from the date on which the cause of action arose. No modification, amendment, supplement to, or waiver of this PO by Buyer shall be binding upon the parties unless made in writing duly signed by both parties and specifically referencing this PO. Buyer's failure to exercise any right hereunder shall not operate as a waiver thereof. Both shrinkwrap and clickwrap licenses accompanying any product consisting of software and online Terms of Use or Terms of Service relating to services provided online are null and void, and the terms and conditions of this PO prevail. Supplier shall not use the name or trademarks of Buyer or its affiliates or refer to or identify Buyer or its affiliates in any marketing materials (including without limitation testimonials or customer listings) or press releases without the prior written consent of Buyer. To the extent the work or services Kyndryl acquires hereunder are for ultimate sale to the United States Government, Supplier may bring an associated claim against the Government only if sponsored by Kyndryl, which sponsorship shall be granted solely by Kyndryl at its discretion.

**Additional warranties:** Supplier warrants that:

- i. any information it discloses to Kyndryl does not violate any law, regulation or ordinance of any applicable national, state or local governmental authority regarding the integrity of the procurement process and has not been obtained from any Government classified documents or other classified information sources;
- ii. it is not now employed by Government, and further, it is not consulting with any agency or other representative of the Federal Government, or with any other third party, on matters which conflict or appear to conflict with the subject matter of this PO;
- iii. it shall immediately, at Buyer's request and sole discretion, remove any specified employee(s), subcontractor(s) and/or agent(s) of Suppliers from Buyer's premises, and agree that they will not be reassigned to any Buyer premises under this PO;
- iv. it will require that each individual working for Supplier hereunder obtains a copy of Kyndryl's Business Conduct Guidelines and Public Sector Guidelines (collectively, the "Guidelines"), and Supplier and Supplier's employees working hereunder will review the Guidelines and assist Kyndryl in complying with the Guidelines;
- v. (A) neither Supplier, nor any of Supplier's employees or others whom Supplier will employ (as authorized by Buyer), will make any communication with any with the intent to influence or attempt to influence the award of contracts to Buyer; (B) it will not engage in lobbying for Buyer 0318 Where statutory requirements do not exist, all IT products supplied to Kyndryl must meet IEC60950 or equivalent product safety standard. For non-IT products, appropriate IEC standards for product safety must be met.