kyndryl

Kyndryl standard purchase order terms and conditions

October 2026

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 Kyndryl (Buyer) and supplier (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 the terms of this PO, including those that are additional to, or different from, the terms of Supplier's offer or counteroffer. 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: Buyer is responsible for and will pay any and all applicable taxes, charges, fees, levies, or other assessments, including sales, use, value added, goods and services and other similar taxes imposed or collected by any governmental entity (or political subdivision thereof) worldwide on sales of products or services under or pursuant to this PO, exclusive, however, of any taxes imposed upon the income or capital of Supplier, any taxes in lieu of such income taxes and any other taxes which are to be borne by the Supplier under law ("Taxes"). Prices are exclusive of Taxes. Supplier shall invoice any applicable Taxes by tax jurisdiction and with a proper breakdown between taxable and non-taxable products and services and such invoice shall comply with applicable invoicing and tax laws. Supplier shall also bear sole responsibility for all taxes, assessments or other levies on its own income, leased or purchased property, equipment or employment taxes and corporate costs related to Supplier's personnel regardless of the jurisdiction in which it is due. If Buyer provides a certification of exemption from Tax, then Supplier agrees not to invoice or pay any such Tax. Buyer shall withhold taxes as required under applicable law on payments made to Supplier hereunder and shall be required to remit to Supplier only the net proceeds thereof. Buyer agrees to timely remit all taxes withheld to the appropriate government authority in each respective

jurisdiction. Upon Supplier request, Buyer will deliver the appropriate documentation as required by the corresponding jurisdictional tax laws, within a reasonable time from such request.

Terms of payment and acceptance: Unless otherwise mandated by local law, the terms of payment are net 90 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 re-perform such services without charge and in a timely manner. Buyer may return nonconforming products to Supplier at Supplier's expense. Kyndryl is not obligated to pay any amount in any invoice that was submitted more than three (3) months from Kyndryl's receipt of Services or Deliverables, when the fees became due or when the expenses were incurred. Subject to applicable law, Kyndryl is not obligated to pay Supplier any amount above the funding authorized by Kyndryl in the applicable PO.

Termination: This PO may be terminated by Buyer with or without cause. Supplier's breach of the import/export or shipping requirements set forth in this or 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, regulations, and administrative requirements, including but not limited to all responsibility and liability for customs clearance, import and export compliance, licenses, permits, the payment of all associated duties, taxes and, maintenance of all required certifications and registrations associated with the import or export of Supplier's products, and satisfaction of all requirements related to product safety, electromagnetic compatibility, telecommunications, product take-back/recycling and environmental safety. 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, tariff classifications, certifications and test results relating to the products or services. Supplier will notify Buyer in writing of any changes to the information provided by Supplier to export and import products. Supplier's billing invoice must be consistent with the invoice used by Supplier to clear goods for importation. When Buyer agrees to serve as the importer or exporter, Supplier will provide promptly to Buyer any information, documentation, certification, and test results required for Buyer to comply with applicable import and export laws, regulations 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: (a) all applicable country of origin marking requirements and all Buyer instructions for exports to Buyer; (b) all packaging and labeling requirements set out in this PO; and (c) the transportation routing guidelines in this PO and the Shipping transportation guidelines. Default minimum requirements for (a) and (b) are found under Instructions for cross-border shipments to Kyndryl.

Social and environmental management system: Supplier will comply with https://www.kyndryl.com/us/en/procurement/supplier-responsibility.

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. Supplier shall be responsible for the damage, destruction, loss or theft ("**Loss**") of it respective tangible property (whether owned or leased)and shall look to their own insuring arrangements regarding such Loss.

Warranties: Supplier warrants that:

(a) it has the right to enter into this PO and its execution of this PO will not result in a breach of any other agreements or contracts to which it is a party;

(b) 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,

  (i) labor and employment laws,

  (ii) applicable export and import laws, regulations, orders, and policies, including, but not limited to: (1) 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); (2) 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; and (3) agreeing not to transfer to Kyndryl any hardware, software, technical data or services controlled under the U.S. International Traffic in Arms Regulations ("ITAR");

(iii) 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; and

(iv) laws and regulations regarding data privacy and data protection;

(c) no claim, lien, or action exists or is threatened against Supplier that would interfere with Buyer's rights under this PO;

(d) products and services do not infringe any privacy, publicity, reputation, or intellectual property right of a third party;

(e) 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 it and the products and/or services comply fully with all licensing agreements applicable to such third party or open source code;

(f) all authors have agreed not to assert their moral rights in the products and/or services, to the extent permitted by law;

(g) products are free from defects in design and free from defects in material and workmanship;

(h) products are safe for use consistent with and will comply with the warranties, specifications and requirements of this PO;

(i) products do not contain harmful code and Supplier will not engage in electronic self-help;

(j) 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;

(k) products are new and do not contain used or reconditioned parts unless Buyer agrees otherwise in writing;

(l) 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. The Parties acknowledge and agree that, to the best of their knowledge, Supplier will neither (i) process personal data on behalf of Kyndryl or its customers to provide the products and/or services, nor (ii) act as a data processor (or its equivalent under the applicable privacy laws). Supplier shall inform Kyndryl if Supplier will have access to personal data on behalf of Kyndryl, and if so, the Parties shall enter into a separate agreement for the processing of such personal data;
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;

(m) 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;

(n) 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 and its affiliates a worldwide right and license to use, make backups of , perform, display 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, including legal fees, Buyer and its affiliates, employees, agents, customer from any claim (including without limitation costs, expenses and attorney's fees) arising from (a) claims that any product infringes any intellectual property rights, or (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.

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 information 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 Buyer upon request) relevant business, technical and accounting records: (a) to support Supplier's invoices; (b) show proof of required permits and professional licenses; and (c) to demonstrate compliance with Supplier's performance of its obligations under this PO, 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 Buyer's notice, Buyer may, at no charge to Buyer, audit Supplier's compliance with its obligations under this PO, including verifying compliance with applicable laws and the protection and integrity of Buyer Materials. In connection with an audit, Supplier shall provide Buyer (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 PO 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 Buyer, promptly securing the rights for Buyer to directly request from any subcontractor, and for the subcontractor to promptly provide to Buyer, access to such systems, data and records relating to the work performed by such subcontractors.

Insurance: Supplier will maintain at its expense (and provide certificates of insurance at Kyndryl's request) (a) all statutory mandated insurance such as workers' compensation and employer's liability; (b) commercial general liability insurance including products liability and completed operations with a minimum per occurrence limit of 5,000,000 USD (or local currency equivalent); and (c) automobile liability insurance (if a vehicle is to be used in performance of the Agreement) of at least 5,000,000 USD (or local currency equivalent). Professional Liability with a minimum per occurrence limit of 10,000,0000 USD (or local currency equivalent)._Commercial general liability insurance and automobile insurance policy limits may be met through a combination of primary and umbrella/excess liability insurance and must name Kyndryl as an additional insured. Insurance required under a SOW, WA or Attachment must be purchased either from insurers with an AM Best Rating of A- or better, or with a Standard & Poor's rating of BBB and 50,000,000 USD (or local currency equivalent) in policy holder's surplus or greater.

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 third party 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.

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

Applicable laws: The parties agree to (a) the application of the laws of the State of New York for all POs issued by Kyndryl or its Affiliates located in the U.S. (collectively, Kyndryl US) or (b) for Kyndryl Affiliates not located in the U.S., the laws of the country where such Affiliate is located, without regard to conflict of law principles. Any disputes with respect to POs issued by Kyndryl US will be brought before a federal court within New York State. If any provision of the PO is invalid or unenforceable, the remaining provisions remain in full force and effect. Nothing in the PO affects statutory rights that cannot be waived or limited by contract. The United Nations Convention on Contracts for the International Sale of Goods does not apply to transactions under the PO. The parties waive the right to a jury trial regarding disputes related to the PO.

General: Any reproduction of this PO by reliable means will be considered an original of 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 right or cause of action for any third party is created by the PO or any transaction under it. 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 shrink-wrap and clickwrap licenses accompanying any product consisting of software and online end user agreements, 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. Kyndryl may process and store business contact information of Supplier Personnel in connection with the performance of the Services wherever Kyndryl does business.

Supplier and supplier personnel: Supplier is 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 Buyer and to the extent permitted by applicable law, provide to Buyer (a) for export evaluation purposes, the country of citizenship and permanent residence and immigration status of its Personnel, (b) 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 (c) if specific education requirements are required by Buyer, proof of education for Supplier Personnel.
Supplier is responsible for the actions and inactions of Supplier Personnel and compliance by Supplier Personnel with the requirements of this PO. Supplier agrees that Buyer 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 PO, for any lawful reason at Buyer's sole and reasonable discretion.

Additional provisions relating to U.S. Federal and public sector: In accepting these terms on behalf of Supplier, you, or you on behalf of a Third Party Supplier/sub-tier, represent and warrant that you have full authority to bind Supplier to these terms.

Compliance with equal opportunity clauses: Seller shall abide by the requirements of 41 CFR 60-300.5(a), 41 CFR 60-300.5(d), 41 CFR 60-741.5(a) and (d).

Notification of debarment/suspension: Pursuant to F.A.R. 52.209-6, Supplier certifies through acceptance of this P.O. in writing that as of the date of issuance of this P.O., neither Supplier, nor any of the Supplier's principals, is debarred, suspended, or proposed for debarment by the Federal Government or any State Government. Further, Supplier shall provide immediate written notice (via E-mail) to Buyer in the event that during the performance of this P.O., Supplier or any of Supplier's principals is debarred, suspended, or proposed for debarment by the Federal Government or any State Government. If Supplier or any of Supplier's principals are currently debarred, suspended, or proposed for Debarment, **do not accept this P.O., and contact buyer immediately**. Notwithstanding anything to the contrary contained in this P.O., if, for any reason, Supplier or any of Supplier's principals have accepted this P.O. and are currently debarred, suspended or proposed for debarment, this P.O. shall not be effective, and Buyer shall not have any liability to Supplier in connection with this P.O.

Conflicts of interest: In the performance of this PO, it is Supplier's responsibility to avoid: (1) any actual or apparent conflict between Supplier's duties or obligations to other parties, including the Federal Government, and such duties and obligations assumed under this PO and (2) disclosure of information which would, or would appear to, violate such duties and obligations to third parties. In the performance of this PO, Supplier shall not make or participate in any marketing calls or contacts with the Federal Government or others which might create the possibility or appearance of a conflict of interest or an actual conflict of interest. Supplier also agrees that, if subsequent to the issuance of this PO, Supplier finds that a conflict, or what may appear to be a conflict, develops because of a relationship created or intended to be created between Supplier or Supplier's agents, or employees and any third party or with an agency or other representative of the Federal Government or any other Government, Supplier shall immediately notify Buyer, and Buyer shall have the right, at its sole discretion, to terminate this PO on notice. Upon exercise of such right of

termination, Buyer's only obligation to Supplier shall be to reimburse Supplier for proper services satisfactorily completed as of the date of termination.