

**Kyndryl Costa Rica, Sociedad de Responsabilidad Limitada Business (“Kyndryl”)
Procurement Department**

**GENERAL CONDITIONS FOR PURCHASE OF SERVICES AND
MERCHANDISE**

CONTENTS

1.0 ACCEPTANCE OF THESE TERMS:	3
1.1 EXTENSION	3
2.0 SCOPE:	4
3.0 BASIC CONDITIONS:	5
3.1 WORK STATEMENT	5
3.2 PURCHASE ORDERS	9
3.3 PRICE	9
3.4 CONDITIONS FOR THE DELIVERY OF SERVICES AND/OR MERCHANDISE	10
3.5 PAYMENT CONDITIONS	10
3.6 CANCELLATION AND REPROGRAMMING OF PURCHASE ORDERS	11
3.7 EQUIPMENT PROVIDED BY Kyndryl	12
3.8 GUARANTEE OF SERVICE AND/OR MERCHANDISE	12
3.9 CONFIDENTIAL INFORMATION	12
3.10 PUBLIC DISCLOSURE	13
3.11 INTELLECTUAL PROPERTY	13
3.12 ETHICAL DEALINGS	15
3.13 GIFTS / GRATUITIES	16
3.14 ASSIGNMENT; SUBCONTRACTS	16
3.15 REGISTRY AND AUDITS	16
3.16 INDEMNITY AGREEMENT	17
3.17 INSURANCE	17
3.18 SUPPLIER'S EMPLOYEES ARE NOT EMPLOYEES OF Kyndryl	18
3.19 FORMER EMPLOYEES OF Kyndryl	18
3.20 ACCESS TO PREMISES	18
3.21 RISK KNOWLEDGE	19
3.22 PROTECTION AND SAFETY	19
3.23 IMPORTS AND EXPORTS	20
3.24 SOCIAL AND ENVIRONMENTAL MANAGEMENT SYSTEM	21
3.25 RISK OF LOSS; DELIVERY	21
3.26 LIMITATION OF LIABILITY	21
3.27 ADDITIONAL PROVISIONS RELATING TO U.S. FEDERAL AND PUBLIC SECTOR	21
3.28 WARRANTIES	25
4.0 GENERAL SECTIONS:	26
4.1 COMMUNICATIONS / LINKS	26
4.2 GOVERNING LAW AND DISPUTE RESOLUTION	27
4.3 TAXES	27
4.4 PACKAGES/TRANSPORTATION	27
4.5 TERMINATION	28
4.6 FORCE MAJEURE	28
4.7 WAIVER; AMENDMENTS	28
4.8 NOTICES	28

4.9 LAST REVISION BY Kyndryl.....	
28	

1 ACCEPTANCE OF THE TERMS AND CONDITIONS

In accordance to the signature, and after carefully analyzing what is contained in these Terms and Conditions, and remaining no doubt on their interpretation, the undersigned accepts to comply what is indicated in all and each one of its parts until the contracted work is completed. The documents delivered by the Supplier jointly with the quote shall be part of the hiring conditions in the extent these do not contradict the following terms and conditions. These Terms and Conditions comprises 28 pages and is issued in two original copies, one duplicate in possession of Kyndryl and the other in possession of the Supplier; being required that all pages are signed and sealed.

1.1 EXTENSION

These General Conditions is applicable for each one of the contracts agreed between the Supplier and Kyndryl, unless noticed on the contrary by Kyndryl of their amendment or termination. These substitute the previous Terms and Conditions for all the Purchase Orders in force. In case of any contradiction between the former Terms and Conditions and the current ones, the latter ones must prevail.

ACCEPTED AND AGREED UPON:

By:

Supplier's Signature

Date

Printed Name

Position and Organization

Supplier's Address

2.0 SCOPE:

- 1) In order to establish the business needs between the Supplier and Kyndryl, the following Terms and Conditions describe those general and particular aspects necessary as determining condition for quoting and bidding. The Terms and Conditions shall be considered as part of the PURCHASE ORDER, and it shall not be considered as an independent contractual document. The acceptance of quote requirement from the Supplier shall imply for Kyndryl that the next Terms and Conditions have been accepted in all their extent, either if the acceptance is explicit due to the execution of this document, or considered a tacit acceptance due to the sole response to a request for quote.
- 2) It is agreed that this document IS PROPERTY OF Kyndryl and its use is authorized only to respond to a request for quote or for the execution of a work for Kyndryl.

Any enquiry must be filed before Kyndryl's BUY DEPARTMENT between 8:00 and 17:00 hrs.

3.0 BASIC CONDITIONS:

3.1 STATEMENT OF WORK

1. The Supplier shall perform the services hired strictly following the specifications of the particular technical terms and particular commercial conditions corresponding to each contract. In case of contradiction between the Particular Conditions and these Terms and Conditions, the particular conditions shall prevail.
2. The Supplier is an independent contractor and the conditions contained in this Purchase Order does not constitute nor create an Agency, partnership or joint venture relationship between the Supplier and Kyndryl, or with the Supplier's personnel. Kyndryl will not assume any liability or risk whatsoever regarding the Supplier's personnel. Supplier must:
 - a.- Develop all tasks and actions part of these Terms and Conditions in an autonomous manner, with its own organization and hiring its own personnel, under its exclusive responsibility, dependency and direction.
 - b.- To this effect, the Supplier commits to the following conditions:
 - a. ensure it and Supplier personnel, as well as its subcontractors if approve by Kyndryl are in compliance with all laws, regulations, ordinances, and licensing requirements;
 - b. be 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's personnel do not seek to obtain the same from Kyndryl;
 - c. inform Kyndryl if a former employee of Kyndryl will be assigned work under a Purchase Order, such assignment subject to Kyndryl approval;
 - d. upon request, and to the extent permitted by applicable law, provide Kyndryl, for export evaluation purposes (i) the country of citizenship and permanent residence and immigration status of its personnel, (ii) written confirmation that Supplier Personnel are eligible to work in the country where the services are being provided and, 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. Kyndryl retains the right to refuse to accept persons made available by Supplier for export control reasons;
 - e. not discriminate against any employees, applicants for employment, or any entity engaged in its procurement practices because of race, color, religion, sex, age, national origin, or any other legally protected status;
 - f. (i) be solely responsible for, and fully and properly complete and submit to the relevant government immigration authority, all required immigration forms and documents for all Supplier personnel performing services hereunder, maintain such forms and documents as required by law and, subject to applicable laws (in particular laws regarding data privacy), make such forms and documents available to Kyndryl upon request, and
(ii) ensure that Supplier personnel who do not meet all immigration requirements do not perform services under a Purchase Order;
 - g. not assign to work under a Purchase Order any Supplier personnel that are subject to any restrictive covenants that could limit such Supplier personnel from performing services for Kyndryl or customer;
 - h. before assignment of Supplier Personnel to perform Services for which Kyndryl has provided specific education requirements and to the extent permitted by law, Supplier shall review proof of education supplied by Supplier Personnel to confirm the Kyndryl's specific education requirements

are satisfied, shall retain such proof of education and, subject to applicable law, shall make such proof of education available to Kyndryl upon request;

i. remove from any assignment under a Purchase Order, at Kyndryl's request in its sole discretion, any Supplier personnel;

j. comply, at its own expense, with all laws (including Executive Orders), regulations and ordinances relating to verification of employment eligibility for personnel to which it is or becomes subject to, such as participation in the United States Department of Homeland Security's E-Verify program ("E-Verify") in the United States or similar state or other government sponsored programs, and verify employment eligibility of all Supplier personnel performing services for, or providing Deliverables to, Kyndryl and/or its customers through such programs, as applicable;

k. upon Kyndryl's request, provide documentation to verify compliance with this Section, Supplier will obtain the informed consent of such personnel to release the information to Kyndryl and to allow Kyndryl to use, disclose, and transmit such information on a worldwide basis among Kyndryl and its affiliates in connection with a Purchase Order. Supplier will obtain an informed consent with respect to the treatment of data of its personnel, as applicable pursuant to the laws of Costa Rica;

l. obtain from all the assigned Supplier's personnel a photographic registry from an official government source (such as but not limited to a driver's license, passport, or identification card) and maintain a copy of this document;

m. instruct its personnel that employment related issues should be brought forward to the 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;

n. acknowledge that Kyndryl has no responsibility for reviewing or approving timesheets; however, Kyndryl may review such timesheets for billing verification purposes only;

o. be responsible for the actions and inactions of the Supplier's personnel and compliance by Supplier's personnel with the requirements of this Purchase Order, and;

p. agree that Kyndryl retains the right to refuse to accept Supplier's Personnel made available by the Supplier to perform services hereunder and may request the removal of the Supplier's personnel from assignment under this Purchase Order, for any lawful reason at Kyndryl's sole and reasonable discretion.

c. As consequence of this, all the personnel that the Supplier has affected to the compliance of its obligations and due to the execution and termination of the purpose of the present contract, it remains under its exclusive relation of dependency, being the Supplier exclusively liable for all the labor, tax, impositive and/or of social security in force in Costa Rica and its legal framework. The labor relationship described is entirely separated from Kyndryl, which will not have any obligation with those persons, being these the ones derived from the labor contract agreed between the Supplier and this personnel, or the labor obligations, social charges or other related, those which remain totally in charge of the Supplier.

3. General Business Activity Restrictions

a. - Supplier will ensure that Supplier personnel assigned to work on Kyndryl's or customer's premises will not:

i. conduct any non-Kyndryl or Kyndryl customer's related business activities while assigned to work under this Purchase Order;

ii. conduct Supplier's personnel training on Kyndryl's or customer's premises, except for on-the-job training;

iii. attempt to participate in Kyndryl or customer benefit plans or activities;

iv. send or receive non-Kyndryl or Kyndryl customers' related mail through Kyndryl's or customer's mail systems; and,

v. sell, advertise or market any products or distribute printed, written or graphic materials on Kyndryl's or customer's premises without Kyndryl's written permission.

b. - Supplier shall, for Supplier personnel assigned to work on Kyndryl's or Kyndryl customer's premises:

i. obtain for each person a valid identification badge from Kyndryl or Kyndryl customer and return identification badges upon completion or termination of assignments;

ii. ensure that each person with regular access to Kyndryl's and customer's premises complies with all parking restrictions and with vehicle registration requirements if any;

- iii. ensure that each person remains in authorized areas only (limited to the work locations, cafeterias, rest rooms and parking lots);
- iv. ensure that such personnel access and use for work only the materials, documents, information and data necessary to perform; and,
- v. instruct and ensure that such personnel immediately report to Supplier any accident or security 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.

4. Supplier Access to Kyndryl's or Kyndryl customer's premises; Safety and Security Guidelines

If Supplier personnel will have access to Kyndryl's or Kyndryl customer's premises, Supplier shall conduct orientation sessions with its personnel before placement on an assignment with Kyndryl or Kyndryl customer and identify and provide contact information (which shall be updated by Supplier as necessary) for all supervisor(s) for Supplier personnel. Supplier shall ensure that Supplier personnel assigned to work on Kyndryl's or Kyndryl customer's premises:

- a. do not bring weapons of any kind onto Kyndryl's or Kyndryl customer's premises;
- b. do not manufacture, sell, distribute, possess, use or be under the influence of controlled substances (for nonmedical reasons) or alcoholic beverages;
- c. do not have in their possession hazardous materials of any kind on Kyndryl's or customer's premises without Kyndryl's authorization.

Supplier will immediately notify Kyndryl of any accident or security incidents (such as those involving loss or misuse of, or damage to, Kyndryl's Assets (as defined below), physical altercations, assaults, harassment or inappropriate behavior) and provide Kyndryl with a copy of any accident or security incident report involving the above.

Criminal and other Background Checks

i. 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.

ii. To the extent permitted by local law, Supplier will:

- a. obtain from all 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) and retain copies thereof;
- b. to the extent permitted by local law, Supplier will conduct or otherwise obtain criminal background checks on Supplier personnel as defined in section (c) below, in locations where the Supplier personnel resided for the past seven years, or the maximum term allowed by local laws. Where no criminal convictions within the past seven years or the maximum term allowed by local laws 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.);
- c. 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.
- d. Upon Kyndryl request and subject to applicable law, Supplier will provide documentation to Kyndryl to verify its compliance with this section.

5. Kyndryl's asset control

For purposes of this Subsection, the term "Kyndryl Assets" means Kyndryl's or Kyndryl customer's computer systems and/or networks, Kyndryl's or Kyndryl 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 personnel shall:

- a. not remove Kyndryl Assets from Kyndryl's or customer's premises without Kyndryl's authorization;
- b. use Kyndryl Assets only for purposes of this Purchase Order and reimburse Kyndryl for any unauthorized use;
- c. only connect with, interact with or use programs, tools or routines that Kyndryl agrees are needed to provide services;
- d. not share or disclose user identifiers, passwords, cipher keys or computer dial port telephone numbers;
- e. not copy, disclose or leave such Kyndryl Assets unsecured or unattended; and,
- f. promptly notify Kyndryl of any accident or security incidents (such as those involving loss or misuse of, or damage to, Kyndryl Assets and provide Kyndryl with a copy of any accident or security incident report involving the above.

Kyndryl may periodically audit use of Kyndryl Assets and Supplier's data residing on Kyndryl Assets, in accordance to the applicable law.

6. Supplier's personnel supervision

a. - Supplier will:

- i. provide consistent and effective supervision of its personnel provided under a Purchase Order, at no additional cost to Kyndryl;
- ii. conduct orientation sessions with its personnel before placement on an assignment with Kyndryl and identify and provide contact information (which shall be updated by Supplier as necessary) for all supervisor(s) for its personnel;
- iii. instruct its personnel that employment related issues should be brought forward to Supplier (and not Kyndryl). Where such issues relate to actions which are alleged to have been taken by Kyndryl or Kyndryl personnel, Supplier will notify Kyndryl immediately in order that appropriate investigative action be taken.

b. - Supplier's supervisor(s) shall:

- i. exercise full supervisory authority over all day-to-day employment relationship decisions relating to Supplier's personnel, including those decisions relating to: wages, hours, terms and conditions of employment, hiring, discipline, performance evaluations, termination, counseling and scheduling; and
 - ii. know each work location's planned holiday (and other closing) schedules and the impacts all such schedules have on Supplier personnel.
- c. - Notwithstanding any other language or agreement to the contrary, Supplier agrees that Kyndryl has no responsibility to approve, and that Kyndryl will not approve, timesheets for any Supplier personnel. If Kyndryl should review, sign and/or submit timesheets for Supplier personnel, whether manually or electronically, as part of Kyndryl's billing verification processes, the parties acknowledge and agree that such review, signature and/or submission shall in no way constitute concurrence or approval of such timesheets, nor create any other commitment or obligation on the part of Kyndryl to Supplier or Supplier personnel.

7. The Supplier commits to:

- a.- Assume all responsibilities and obligations inherent or derived from the labor relationship with its personnel, with all consequences, including the pertinent indemnities for labor accidents, death, total or partial disability, dismissals, vacations, previous notice, unpaid wages or any other which correspond or has been established now or are determined in the future, with no exclusion.
- b.- Carry out in a timely manner the contributions which correspond to the personnel under its responsibility, being Kyndryl authorized to request the payment slips when applicable. If Kyndryl

proves the non-payment of such social charges by the Supplier, it can terminate the agreement with no indemnification whatsoever.

- c.- Proceed to purchase integral insurance to insurance companies of acknowledged solvency and at the entire satisfaction of Kyndryl, complying with the Costa Rican legal framework, which covers the eventual risks arising from the obligations referred in section "3.1.3.a.-" being required to show to Kyndryl the pertinent insurance policies. If not, Kyndryl can acquire the pertinent insurance on the account and responsibility of the Supplier, and deduct the primes paid for such insurance from the invoicing payments made Kyndryl.
- d.- Directly respond for the actions or omissions of its personnel if any nature that could cause damage to Kyndryl and/or to third parties.
- e.- Attend all and each one of the claims of the personnel related to this Purchase Order, excluding Kyndryl of all the obligations that might eventually arise, in the cases that such personnel claims directly against Kyndryl, either judicially, administratively or extra judicially. This obligation to keep Kyndryl harmless shall also be applicable to any claim directed to Kyndryl, for any government collecting entity, of social benefit or other authorities and any other third party, by reason of the labor contracts related to this section.
- f.- It is acknowledge that Kyndryl is excluded of the direction and supervision of the personnel assigned by the Supplier to this contract, having the Supplier as consequence the designation, direction and supervision of the personnel that under its orders performs the hired activities.
- g.- Supplier shall not hire personnel in the modality of professional services. If this situation is detected, and is not corrected permanently, this shall be a cause for termination of the contract, with no possibility to the Supplier to claim further indemnities for such cause.

8. - Kyndryl can request that the Supplier uses specific materials or elements for the delivery of the services, even after Kyndryl has issued the PURCHASE ORDER, and within the delivery terms of such PURCHASE ORDER.

3.2 PURCHASE ORDERS

The specifications, terms, conditions and prices detailed in the Purchase Orders, its exhibits and any document or clause incorporated by reference to those Purchase Orders, shall prevail over other document part of the contract. The Purchase Order and therefore this Terms and Conditions shall be considered as accepted if the Supplier does not reject it clearly within the 24 hours after having received it or if it begins the delivery of the hired services.

Terms contained in the Supplier's response to, or acknowledgment or acceptance of, a Purchase Order, 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 Kyndryl. Kyndryl's offer to purchase as provided in a Purchase Order may not be modified by Supplier counter-offers. Notwithstanding the foregoing, if a Purchase Order is deemed an acceptance by Kyndryl of a Supplier offer or counter-offer, then such acceptance is expressly made conditional on Supplier's assent to all of the terms of a Purchase Order.

In exceptional cases, Kyndryl can request the Supplier to delivery services outside the time agreed as normal. In such cases the Supplier and Kyndryl shall establish the conditions in which the extraordinary provision shall take place.

The PURCHASE ORDER is not transferrable and the rights contained therein shall not be assigned by the Supplier.

3.3 PRICE

The unitary Price that Kyndryl shall pay for the provided services will be based on the forms established in the quote requests.

The final Price is the one contained in the PURCHASE ORDER. If for any exceptional reason there appears any cause for its modification, it shall be filed to Kyndryl for its analysis. This filing and analysis does not represent, in any way, a commitment to accept it. Such filing shall be done within the time of validity of the PURCHASE ORDER.

If the Purchase Order does not include pricing, the price for the products or services provided hereunder will be Supplier's lowest prevailing market price for such products or services. Supplier is not entitled to reimbursement of expenses incurred in connection with fulfilling the PURCHASE ORDER, except as otherwise agreed in writing by Kyndryl.

3.4 CONDITIONS FOR THE DELIVERY OF SERVICES AND / OR MERCHANDISE

The delivery conditions are the following:

1. No service and/or merchandise unaccompanied by its corresponding delivery document, in which it should be included the PURCHASE ORDER number, line order, Kyndryl identification number, quantity and description of what is being delivered. This information shall be indicated in the delivery document and the corresponding invoice issued by the Supplier.
2. Kyndryl reserves its right to cancel the PURCHASE ORDER, totally or partially, due to breach by the Supplier.
3. The merchandise and/or service shall be considered as accepted, only after the Project Manager or Coordinator/Responsible from Kyndryl verifies that it adjusts to the specifications. If not, it will be rejected or considered not delivered.
4. Kyndryl reserves the right to return merchandise or considered a service as not delivered, even after having accepted it or considered to have been accepted by the Project Manager and/or the Coordinator appointed, if it is determined that it does not comply with the conditions specified in the PURCHASE ORDER and other adjoining documents.
5. The payment of the Merchandise or Services shall not be interpreted as an acceptance from Kyndryl of the services provided or delivered goods.
6. The Supplier shall consider that if Kyndryl does not cancel the PURCHASE ORDER for expiration of the delivery term, the service shall be provided and/or the merchandise delivered in accordance to the conditions of it, in the material quantity as specified and Price, being the damages cause by the delay its full responsibility.
7. Kyndryl can establish that the Supplier delivers or receives from a third party, products, parts or materials related to the request note. In this case, the Supplier commits to follow the instructions that Kyndryl shall deliver regarding the documents of the shipping, transportation and storage of such elements.

8. Kyndryl can also establish delivery sequences in accordance to its operational requirements, the Supplier commits to adapt its obligations as a consequence of it.

3.5 PAYMENT CONDITIONS

The payment conditions are the ones that appear in this Purchase Order:

1. The term stipulated will be from the moment that Kyndryl receives an acceptable invoice (without errors, and containing the requested data and formalities at Kyndryl's satisfaction) or after receipt of the products or services, whichever is later.
 2. The invoices shall be sent in duplicates for every delivery. The address and responsible person shall appear in the PURCHASE ORDER.
 3. No payments shall be made to invoices of, or against third parties. No credit assignments shall be accepted by Kyndryl over invoices of the Supplier.
 4. Unless otherwise mandated by local law, the terms of payment are net 90 (ninety) days after receipt of Supplier's valid invoice or after the 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 Kyndryl's option, Kyndryl may reject products and/or services that do not comply with Kyndryl'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. Kyndryl may return non-conforming products to Supplier at Supplier's expense.
 5. In the case that there may be a discount for payment in a shorter term or condition for early payment (minimum of 15 days), it shall be indicated as an alternative indicating the percentage of discount over the price for 90 (ninety) days. Kyndryl reserves its right to accept or reject the proposals received over this matter.
 6. Kyndryl will compensate the credit that the Supplier has on its favor in relationship to any contract with it, if the Supplier may have incurred in default of payment or lateness regarding any obligation in favor of Kyndryl.
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3.6 CANCELLATION AND REPROGRAMMING OF PURCHASE ORDERS

3.6.1. CANCELLATION

Kyndryl can cancel and terminate, totally or partially a PURCHASE ORDER, with or without cause, by giving a written notice to the Supplier, previous to the programmed date for the delivery of the merchandise or supply of the service.

The cancellation shall be effective with the receipt by the Supplier of the corresponding notice. The supplier shall cease the work over the affected Purchase Order (s), in accordance to the cancelation notice. The date of an effective notice will be valid when it has been delivered at the address for notices indicated by the Supplier in the quote or in the Purchase Order.

In case of a termination in accordance to the previous paragraph, Kyndryl will pay to the Supplier the Price of the supplied services until the date that the cancelation notice was received. Kyndryl will pay the Supplier for the used materials and real handwork labor expenses incurred previously to the effective date of cancellation of the Purchase Orders of Kyndryl.

The amounts for specific elements acquired by the Supplier in accordance to the indicated in SUBSECTION 3.1, STATEMENT OF WORK, shall be paid after the analysis and verification by Kyndryl of the purchase evidence and the delivery of any excess material. Kyndryl, before issuing any payment, will review the Supplier's records at the moment, or request that the Supplier delivers documents and reasonable invoices to sustain all and each one of the charges made to Kyndryl in accordance to this chapter.

The Supplier shall provide a notice immediately and in writing to Kyndryl in the case that for any reason shall be prevented to, or refuses to comply with its obligations as per these terms and conditions, and/or purchase orders.

These obligations include, but are not necessarily limited to the delivery chronograms of the Purchase Orders, Service Specifications and the Supplier's assured quality requirements.

If for any reason, the Supplier could not provide the services as it is required by the corresponding purchase orders, or if the Supplier is in breach of these Terms and Conditions and does not correct the situation within 5 calendar days after having received a written notice from Kyndryl, the latter shall have the right to terminate the Purchase Order (s), independently of the corresponding legal actions. The foregoing will be except in cases of force majeure, which must be previously notified within 24 hours after the occurrence of the event that caused it for analysis by Kyndryl, said notification should include a detail of the link between the event and the breach, as well as its irresistible and inevitable nature and the efforts made by the Supplier to comply, for which it must provide the corresponding evidence.

If Kyndryl cancels the Purchase Orders due to the previously indicated reason, it shall have the sole obligation to pay for the services supplied up to the moment of the termination notice.

The cancellation or termination of a PURCHASE ORDER will imply the termination of any contractual relationship between Kyndryl and the Supplier regarding the service described in the PURCHASE ORDER, or consider it cancelled even when the Supplier have quoted other services for a more extended period of time or quantity.

3.6.2. REPROGRAMMING PURCHASE ORDERS

Besides what has been previously described, Kyndryl can reprogram the delivery date specified for the services in the purchase orders issued, with further responsibility.

It is understood as reprogramming any amendment to a PURCHASE ORDER, in date or quantity or one reprogramming combining both elements.

3.7 EQUIPMENT PROVIDED BY Kyndryl

The equipment delivered by Kyndryl to the Suppliers in order to comply with the content of a PURCHASE ORDER, shall be returned at the termination of the work or at the moment that Kyndryl indicates it, in a good conservation condition; on the contrary, the expenses of replacement or repair shall be charged to the Supplier. The refusal by the Supplier to return such equipment shall be considered as an illegal retention. For each PURCHASE ORDER it shall be defined which one of the parties will assume the costs of delivery of such equipment to Kyndryl.

These shall only be used for the supply of the services contained in the PURCHASE ORDER. Independently of its responsibility, the Supplier shall purchase insurances that cover the risks related to the delivered assets, in satisfaction of Kyndryl.

Kyndryl, at its discretion, can implement periodical audits of the conditions and control that the Supplier has over the equipment delivered by Kyndryl as a loan for the service.

3.8 GUARANTEE OF SERVICES AND/OR MERCHANDISE

The Supplier guarantees that the services and/or merchandise provided to Kyndryl adjust entirely to the technical requirements contained in the quote request(s) (including the applicable regulations of the legal framework, including but not limited to the labor law and anti-corruption laws) and that are free of defects for a twelve (12) months term from the date of delivery, unless other express indication in the PURCHASE ORDER, and its exhibits.

3.9 CONFIDENTIAL INFORMATION

Confidential Information means all information classified as such, and:

1. Disclosed to the Supplier or obtained by it regarding a hired task and during the extension of the corresponding PURCHASE ORDER, or,
2. Such referring to the commercial activities, of development or research of Kyndryl or of the related companies, either past, present or future.

Also will mean all the elements prepared for Kyndryl, or delivered to Kyndryl in relation with tasks carried out in accordance to the contract (classified or not).

The term Confidential Information will not mean information known previously by the Supplier, or, the one which not in breach of these Terms and Conditions, was revealed publicly, before or after the Supplier received the information or was received in a legitimate manner by the Supplier from a third party without the obligation to maintain the confidentiality.

When supplying the services, the Supplier understands that Kyndryl does not wish to receive from the Supplier any information which may be considered to be confidential, and/or reserved for itself or a third party. The Supplier declares and guarantees that all information disclosed to Kyndryl is not confidential or reserved for itself and/or a third party and therefore Kyndryl shall not treat it as such.

The Supplier cannot, even after the compliance with a PURCHASE ORDER, use and/or disclose confidential information received from Kyndryl, except information which is or is considered to be public, or received by it from third parties. On request of Kyndryl the Supplier must return all documents and/or materials which are or contain confidential information.

The Supplier shall not disclose information and parts received from Kyndryl in connection to these Terms and Conditions to sites or persons domiciled outside the territory of the Republic of Costa Rica.

Kyndryl, at its sole discretion, can carry out periodical audits in order to evaluate the control that the Supplier has over the Confidential Information delivered for the performance of the PURCHASE ORDER.

All Confidential Information of Kyndryl delivered to the Supplier, work results by the Supplier and the information delivered to Kyndryl in accordance to these Terms and Conditions shall be treated by the Supplier in compliance to the clauses of the **Delivery of Confidential Information Agreement** that the Supplier acknowledges.

3.10 PUBLIC DISCLOSURE

The Supplier shall not in any way, publish, and/or use as advertising means the fact that it supplies products or services to Kyndryl, unless express authorization of Kyndryl. The Supplier shall not use the name or trademarks of Kyndryl or its affiliates or refer to or identify Kyndryl or its affiliates in any marketing materials (including without limitation testimonials or customer listings) or press releases without the prior written consent of Kyndryl.

3.11 INTELLECTUAL PROPERTY

3.11.1 RIGHTS OVER THE PROGRAMS, ELEMENTS AND DATA.

All work product developed by the Supplier and provided to Kyndryl under this Purchase Order is and shall exclusively remain the personal property of Kyndryl.

The Supplier declares and guarantees the originality of the information delivered according to the PURCHASE ORDER and that no part of such information or its use and/or its distribution breaches or is protected by any third party's rights.

The Supplier is not granted any license or right whatsoever, neither implicitly nor explicitly, by exclusion or any other manner, to publish, reproduce, prepare derived works based on the mentioned elements, nor to distribute copies of it, to exhibit in public, except for pre-existing services of the Supplier, either during the term of this Purchase Order, or after its termination.

The Supplier, by means of these Terms and Conditions, grants and assigns to Kyndryl the intellectual property of the elements to be delivered to Kyndryl, and Kyndryl have the right to obtain over them the intellectual property rights and to maintain these on its name or assign them at its sole discretion. Furthermore, Supplier grants Kyndryl all rights and licenses necessary for Kyndryl and its affiliates to use, transfer, pass-through, and sell the products and/or services and to exercise the rights granted under this Purchase Order.

Non-Kyndryl programs delivered by the Supplier are excluded from this section.

3.11.2 NON-Kyndryl PROGRAMS PROVIDED BY THE SUPPLIER

The Supplier shall grant Kyndryl a license, exclusive and transferrable, which authorizes Kyndryl to:

1. Use the Programs in its own activities in accordance to the usage conditions included in each program.
2. Transfer the license, in a non-transferable condition and under the terms, conditions and guarantees describe in each program.

The Supplier guarantees that:

1. It has the intellectual rights duly registered and/or the license to supply the Programs in accordance with the previous section.
2. The Programs do not breach any copyright, patent, registered trademark and/or any other third party's right.

The Supplier guarantees that the Programs supplied under these Terms and Conditions are adequate to be commercialized, without defects in their materials or in their manufacturing, and that they adjust to any applicable specification, included in these Terms and Conditions, as well as to any express guarantee of the Supplier, herein contained, being this guarantee independent from the cancellation of this service.

Any Program which does not comply with what is specified in the previous guarantees will be considered as defective.

The Supplier shall repair or substitute, with no charge, any program found to be defective, during the term of 1 (one) year from the implementation of the first pack of Programs. In case that this is not possible, it will reimburse the total price paid for such Program and independently of the legal actions which Kyndryl decides to implement.

If the number of defects or its nature in a Program is such to induce Kyndryl to cease its commercialization, the Supplier, from the date of the written notice sent by Kyndryl, will immediately provide to Kyndryl and at Kyndryl's discretion, a substitute of the program with a non –defective one, or will reimburse Kyndryl from all the amounts paid in relation to it and the damages and losses caused.

3.11.3 RESPONSIBILITY OF THE SUPPLIER

The Supplier, at its own risk, shall pay any damage, court costs, attorneys' fees and fines resulting from all the procedures or claims from third parties against Kyndryl, for alleged violation of intellectual rights or industrial secrets of third parties, related to the products and/or manufacturing processes supplied and/or designed by the Supplier.

In the case that the Supplier serves Kyndryl, or that Kyndryl knows by its own means of a patent breach (either of the products or manufacturing processes) of third parties, Kyndryl shall have the right to terminate the Purchase Order with no cost or liability, and to begin the legal actions that considers necessary unless the Supplier achieves: a) settle with third parties the use of patents which allows Kyndryl to use such products or manufacturing processes, b) modify the manufacturing processes of such products so that these do not breach third parties' rights, c) replace the product with non-infringing ones.

3.11.4 PATENTS AND INVENTIONS

Invention means any idea, design, concept, technique, discovery or improvement, being able to be patented or not, either prepared jointly with the Supplier or only by it and/or the Supplier's employees and/or the Supplier's employees and one or more employees of Kyndryl during the term of this Purchase Order, if and when the idea and/or its implementation occurs during the term of the Purchase Order and in the execution of the services related.

The Supplier shall report to Kyndryl of any of the inventions, with specific detail of the characteristics or concepts that the Supplier considers to be different or new from the previous ones.

By these means the Supplier transfers to Kyndryl all inventions together with the right to obtain the patent rights over it and to claim the priority rights over it, and the corresponding rights will remain being such, either if the protection has been requested or not, over those products or manufacturing processes included in the Purchase Order. In addition, Supplier is obligated to sign all documents or agreements necessary for the transfer of each invention in particular, as established in these Terms and Conditions.

3.11.5 TRADEMARKS

To the effects of these Terms and Conditions, none of the parties shall have the right to use the trademarks, commercial names, or products' names of the other party, directly or indirectly, in relation with any product, promotion or publication, without the previous written consent of the other party, unless that its use is authorized by law and /or the customs regarding its public use in general.

3.12 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 Kyndryl 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. Kyndryl shall not reimburse Supplier for any such political contributions, payments or gifts. Supplier's breach (or Kyndryl's reasonable belief that Supplier has breached or is likely to breach) of this Ethical Dealings provision constitutes a material breach of this Purchase Order and, in such event, Kyndryl may terminate this Purchase Order immediately on written notice to Supplier.

3.13 GIFTS / GRATUITIES

The Supplier shall not grant or offer gifts or gratuities of any nature to Kyndryl's employees and/or its relatives that may be construed as related to a commercial relationship in process, or a potential one with Kyndryl. The term gift is considered as: entertainment, personal services, favors, discounts and preferential treatment of any kind. Kyndryl will interpret actions of this nature as an inadequate intention to influence its personnel, therefore putting in risk the commercial relationship with the Supplier.

3.14 ASSIGNMENT; SUBCONTRACTS

The Supplier cannot assign its rights or subcontract its duties under the PURCHASE ORDER without the written authorization of Kyndryl. Any unauthorized assignment is void. Every contract that the Supplier is authorized to execute with a Sub-Supplier must be in written and subject to the same Supplier's obligations and responsibilities under a Purchase Order.

No agreement between the Supplier and Sub-Supplier shall be interpreted as an agreement between Kyndryl and the Sub-Supplier. The Supplier will file a list of the proposed Sub-Suppliers with the corresponding offer for the work to be sub-hired. The knowledge or acceptance by Kyndryl of the Sub-Suppliers of the Supplier will not release it of its full responsibility over the works assigned and will not create any relationship whatsoever between Kyndryl and the Sub-Supplier.

It is established by these Terms and Conditions that such sub-contracts established by the Supplier with third parties remain ruled by the terms, conditions and scope of these Terms and Conditions, being these extensive on its contents and format to those third parties and under the Supplier's responsibility. Supplier shall enter into a written contract with each Sub-Supplier it is authorized to retain under a Purchase Order, if any, with such contract committing each such Sub-Supplier to comply with all of Supplier's obligations and responsibilities under a Purchase Order. 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 Purchase Order. In addition, in such written contract, Supplier shall identify Kyndryl as a direct and intended third-party beneficiary of the Record Keeping and Audit Rights provision, with the effect that Kyndryl shall have all of the same rights under that provision as Supplier has with Sub-Supplier.

Notwithstanding the foregoing, Supplier's use of a subcontractor will not relieve Supplier of its obligations under this Purchase Order or its responsibilities for the Sub-Supplier's performance.

The purchase of goods and/or services that the Supplier does for the performance of its regular work is assumed as not included in this section.

3.15 REGISTRIES AND AUDIT

3.15.1 REGISTRIES

Supplier will maintain (and subject to applicable law provide to Kyndryl upon request) relevant business, technical and accounting records to support Supplier's invoices and to demonstrate compliance with Supplier's performance of its obligations under a Purchase Order, and show proof of required permits and professional licenses, for a period of time as required by applicable local law, but not for less than six (6) years following completion or termination of a Purchase Order. All accounting records will be maintained in accordance with generally accepted accounting principles

3.15.2 AUDITS

Upon Kyndryl's notice to Supplier and at no additional charge to Kyndryl, 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 Purchase Order and to all systems, data and business, technical and accounting records relating to Supplier's (and any subcontractor's) for purposes of auditing the performance of the obligations under this Purchase Order, including to verify compliance with applicable laws and the protection and integrity of Kyndryl, Kyndryl's customer data and Kyndryl's Materials. 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.

3.15.3 LEGAL, EMPLOYER'S AND SOCIAL CHARGES OBLIGATIONS RELATED TO THE SUPPLIER

1. Kyndryl reserves its right to verify that the Supplier complies with the legal, employer's and social charges' obligations. For such matter, when considered appropriate, Kyndryl can request the Supplier verification to be made by a duly incorporated Public Accountant in a professional association, regarding the compliance of such obligations by the Supplier.
 2. If from the verification a breach of the Supplier's obligations arises, Kyndryl can consider it as a reason for termination of the PURCHASE ORDER, with no right of the Supplier to any kind of indemnity.
 3. The Supplier shall deliver the certificate of compliance within the 10 (ten) days after Kyndryl has formulated the corresponding requirement.
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3.16 INDEMNITY AGREEMENT

The Supplier shall indemnify and hold harmless Kyndryl from any and all liabilities and/or losses caused for injuries (even death) of any person, or of property damages which may have been alleged derived as direct or indirect consequence of defects or negligence of the Supplier or Sub-Supplier or its personnel, agents, or employees; unless such injuries or damages were attributable to the proven fault or negligence of Kyndryl.

Supplier agrees to defend, hold harmless, and indemnify Kyndryl 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 Purchase Order 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 Kyndryl the rights granted under this Purchase Order; (ii) modify the product so it is non-infringing and in compliance with this Purchase Order; (iii) replace the product with non-infringing ones that comply with this Purchase Order; or (iv) accept the return or cancellation of the infringing product and refund any amount paid.

The Supplier shall defend on its own charge all trials or claims filed for such damage or injuries and shall pay all attorneys' fees, court costs and all the rest of expenses related to them.

3.17 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 Kyndryl as a loss payee or additional insured, as appropriate.

In the case that the Supplier's personnel works on Kyndryl's or Kyndryl client's premises it shall acquire insurance and deliver a copy of the corresponding policies to Kyndryl before initiating the works and covering the following risks:

1. Regarding the Supplier's personnel:

- a. Labor risk insurance policy.
- b. Vehicle insurance policy for vehicles entering Kyndryl, with coverages for Civil Liability "A" death and injury of third parties for an amount of € 80.000.000 per person and € 150.000.000 per accident and "C" for damage to third party's property, for the amount of € 25.000.000.

Any other corresponding to legal or labor conventions and dispositions.

The conditions previously indicated shall be considered met by the delivery of copies of the policies by the Supplier.

- c. Civil Liability to third parties. It shall be specifically contemplated in the policy of the activity to be developed. The amount of such coverage shall be in accordance to Kyndryl's satisfaction.

The certificates must indicate that the Insurance Company shall grant Kyndryl at least 30 (thirty) days previous notice in writing, regarding important changes on or related to the cancellation of such insurance.

The fact of acquiring the indicated insurance, in no way shall be deemed as to release the Supplier of all responsibility, and it can take the additional insurance estimated necessary, on its own charge.

In the exceptional case that Kyndryl accepts a contract including a cash advance, the Supplier must acquire insurance or guarantee bond, as Kyndryl may require. These cases must be previously informed to and approved by Kyndryl.

3.18 THE SUPPLIER'S EMPLOYEES ARE NOT CONSIDERED EMPLOYEES OF Kyndryl

The Supplier assumes all responsibility for the actions of its personnel while it is performing services in accordance to one or more purchase orders issued in accordance to these Terms and Conditions, and shall be integrally responsible as employer of the compliance with the labor and other legal provisions.

None of the contents of these Terms and Conditions shall be interpreted as if the Supplier or its employees have any right regarding any benefit plans for Kyndryl employees.

3.19 FORMER EMPLOYEES OF Kyndryl and/or Kyndryl

The Supplier shall report to Kyndryl when intending to assign a former employee of Kyndryl and or Kyndryl to work in Kyndryl's or Kyndryl client's premises. Kyndryl reserves its right to approve or not such assignment.

3.20 ACCESS TO PREMISES

Kyndryl reserves its right to deny the access to its premises to the Supplier and/or its personnel at any moment. The exercise of this right shall not affect the Supplier's obligation to carry out what is stipulated in this Purchase Order, as long that Kyndryl allows the Supplier to have enough time to access in order to execute the corresponding tasks. Moreover, the Supplier shall not allow its employees to enter Kyndryl's or Kyndryl client's premises without previous notice and identification.

All of the Supplier's employees shall enter and exit Kyndryl's buildings through the security verification areas which are opportunely identified.

Detection systems, such as but not limited to metal detectors (fixed or manual), and x-ray machines can be used in Kyndryl's buildings. Kyndryl reserves its right to review personal belongings or other objects of the Supplier's employees, such as but not limited to portfolios, purses, luggage and vehicles.

The Supplier must obtain and maintain in files the written consent of each one of its employees that will enter to Kyndryl's property, in which appears the employee's agreement to comply with the Security Rules of Kyndryl, including these security check rules.

The Supplier shall indemnify and release Kyndryl of all liability related to any person or for damages to the property which could be claimed as caused as direct or indirect consequence of obligations or guarantees contained in this document. The Supplier must defend on its own all the trials or claims that invoked such damages or injuries and shall pay all attorney's fees, court costs and other related expenses.

3.21 KNOWLEDGE OF RISK

The Supplier declares that before providing its quote, it has carefully examined all the specifications, drawings and indications related to the product or service, that it has performed all the essential research for a complete understanding of the difficulties that may face during the execution of the corresponding PURCHASE ORDER and that assumes all and complete responsibility for all the risks related to it, including penalties for non-compliance that will be indicated in each individual contract.

3.22 PROTECTION AND SECURITY

The supplier shall be responsible for any injury, loss, or damage caused by it or its employees, agents or any sub-Supplier, in case of such injuries, losses or damages it shall immediately make the repairs or substitutions with no additional cost to Kyndryl in accordance to what has been requested by Kyndryl's representative.

The Supplier shall comply with the national, provincial and municipal law related to **“Industrial Safety and Hygiene”**. This corresponds to the internal industrial regulations, lighting, safety elements for the machines and premises, and the ones of personal use, safety signals, fire protection installations, first aid elements, environmental pollution, etc.

The Supplier is also responsible for the risks and damages caused by polluting chemical products, poisons, toxics, explosives, etc., which are handled or used in occasion of the PURCHASE ORDER, and even when such chemical products have been supplied by Kyndryl.

In the event the work is performed in Kyndryl’s premises, the Supplier must cooperate with Kyndryl Security Officer in matters related to security measures.

1. If Kyndryl’s specifications require that the Supplier employs chemical materials or substances that are not of the regular use in its operations or activities, before initiating to work in the process or elaboration of the final product, it shall indicate to Kyndryl, in writing that it has the necessary knowledge to use, control, and dispose of any of such materials or their wastes generated in the production process, if any, in accordance to the law and regulations applicable and pertinent regarding the environment.

2. If Kyndryl provides any chemical material or substance for the Supplier to employ it in the processes, the Supplier agrees on the following:

a. To show, at the entire satisfaction of Kyndryl, before accepting such chemical materials or substances, that it has the adequate programs, such as training for responding at emergencies and personnel safety, to manipulate, use, store, treat and/or eliminate in an adequate manner the chemical substances or dangerous materials and the wastes generated by these.

b. The Supplier agrees that in case of spill, liberation or other kind of discharge of chemical material or substance in the environment will inform Kyndryl immediately on such spill, or liberation and on the measures taken to rectify and/or repair such spill or liberation and the damage caused to the environment. The Supplier agrees that Kyndryl inspects its premises and reviews the corresponding registries regarding spill incidents and any other registry regarding the environmental obligations contained in this section.

c. The Supplier shall use, store and/or eliminate in adequate manner all the chemical materials and substances consigned and the wastes generated by the corresponding processes. The Supplier is the only responsible for the correct manipulation and elimination of all the materials, chemical substances and wastes generated by the respective processes or for the manipulation or use of chemical materials and substances. The Supplier is the only responsible to select, on its sole criteria, any process to eliminate the waste. Also, the Supplier accepts that the processes or services to eliminate selected wastes shall integrate the list of suppliers of such services approved by the Environment and Human Resources Secretariat of Kyndryl.

d. The Supplier certifies that it complies and shall comply with all the local laws, rules, dispositions and regulations in force for the protection of the environment and related matters. The Supplier is acknowledged as the sole responsible for the adequate handling, use, storage, treatment and elimination of any chemical substance, material or wastes used or caused as a result of the pertinent procedures, in accordance to the laws and regulations on the environment previously indicated. The Supplier accepts to deliver to Kyndryl as soon as possible, when Kyndryl requests it, any information regarding the compliance by the Supplier of the laws and regulations on the environment applicable, including the copies of the pertinent permits, declarations of wastes as well as any other documentation required by the state or municipal authorities. The Supplier commits also to allow the inspection of its premises and pertinent registries by Kyndryl, within work hours and when a notice has been made in reasonable terms, in order to determine the compliance by the Supplier of all the laws and regulations applicable for environmental purposes.

3.23 IMPORTS AND EXPORTS

Supplier is the importer and exporter of record, unless Kyndryl 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 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 Kyndryl 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 Kyndryl 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 Kyndryl agrees to serve as the importer or exporter, Supplier will provide promptly to Kyndryl any information, documentation, certification and test results required for Kyndryl 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 Kyndryl as a party to such shipments.

3.24 SOCIAL AND ENVIRONMENTAL MANAGEMENT SYSTEM

Supplier will comply with the [Social and environmental management system supplier requirements contained in the following link: https://www.kyndryl.com/procurement/sems](https://www.kyndryl.com/procurement/sems).

3.25 RISK OF LOSS; DELIVERY

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

3.26 LIMITATION OF LIABILITY

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

3.27 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.

3.27.1 DEFENSE PRIORITIES AND ALLOCATIONS SYSTEM (DPAS) - 15 C.F.R. 700

In accordance with 15 C.F.R. Part 700, 13(d), Supplier must accept or reject a rated order and transmit its acceptance or rejection, in writing (via E-mail), within fifteen (15) working days after receipt of a DO rated order and within ten (10) working days after receipt of a DX rated order. **If you reject this order, you must provide, in writing (via E-mail), your reasons for the rejection to Kyndryl, in accordance with paragraphs (B) and (C) of the above-referenced C.F.R.**

If an order is placed that contains the notice for emergency preparedness under 15 C.F.R. 700, 12(b), Supplier must accept or reject in writing (via E-mail) within the time period stated in such order.

If you have accepted a rated order and subsequently find that shipment or performance will be delayed, you must notify Buyer immediately, provide the reasons for the delay, and inform Buyer of a new shipment or performance date. If you provide such notification verbally, you must give written notice (via E-mail) within one working day of the verbal notification.

3.27.2 COMPLIANCE WITH LAWS UNIQUE TO GOVERNMENT CONTRACTS

For work performed under specific U.S. government procurement contracts the following provisions apply: 48 C.F.R. 52.222-26, Equal Opportunity (Apr. 1984); 48 C.F.R. 52.222-35, Affirmative Action for Special Disabled and Vietnam ERA Veterans (Apr. 1984) (If for \$10,000 or more); 48 C.F.R. 52.222-36, Affirmative Actions for Handicapped Workers (Apr. 1984) (if in excess of \$2,500); and 48 C.F.R. 52.222-37, Employment Reports on Special Disabled Veterans of the Vietnam Era (Jan. 1988) (If \$10,000 or more). These provisions have the same force and effect as if they were stated in their full text. Supplier agrees that it and its employees who work under this Purchase Order will comply, and assist Kyndryl in complying with, the laws unique to performing on government contracts, including without limitation, the following statutes and regulations: 31 U.S.C. 1352, relating to the limitation on the use of appropriated funds to influence certain Federal contracts; 41 U.S.C. 51-58, Anti-Kickback Act of 1986; 41 U.S.C. 423, Procurement Integrity Act; 48 C.F.R. Subpart 9.5, relating to conflicts of interest; and 29 CFR Part 471, including the posting of the employee notice prescribed at 29 CFR Part 471, Appendix A to Subpart A. Supplier also agrees not to offer or give gifts on behalf of Kyndryl to third parties, including without limitation, U.S. government employees and officials.

Supplier shall include in each lower-tier subcontract the appropriate flow down clauses as required by FAR and DFAR. In the event of a conflict between language in a purchase order and incorporated federal flow down clauses, including FAR and DFAR provisions, the latter take precedence.

3.27.3 PROHIBITION ON CONTRACTING WITH KASPERSKY LAB

Pursuant to F.A.R. 52.204-23 – Prohibition on Contracting for Hardware, Software, and services Developed by Kaspersky Lab and Other Covered Entities

1. Definitions. As used in this clause--

Covered article means any hardware, software, or service that--

(a) Is developed or provided by a covered entity;

(b) Includes any hardware, software, or service developed or provided in whole or in part by a covered entity; or

(c) Contains components using any hardware or software developed in whole or in part by a covered entity.

Covered entity means--

- (a) Kaspersky Lab;
- (b) Any successor entity to Kaspersky Lab;
- (c) Any entity that controls, is controlled by, or is under common control with Kaspersky Lab; or
- (d) Any entity of which Kaspersky Lab has a majority ownership.

2. Prohibition. Section 1634 of Division A of the National Defense Authorization Act for Fiscal Year 2018 (Pub. L. 115-91) prohibits Government use of any covered article. The Supplier is prohibited from--

- (a) Providing any covered article that the Government will use on or after October 1, 2018; and
- (b) Using any covered article on or after October 1, 2018, in the development of data or deliverables first produced in the performance of the contract.

3. Reporting requirement.

(a) In the event the Supplier identifies a covered article provided to the Government during contract performance, or the Supplier is notified of such by a subcontractor at any tier or any other source, the Supplier shall report, in writing, to the Contracting Officer or, in the case of the Department of Defense, to the website at <https://dibnet.dod.mil/>. For indefinite delivery contracts, the Supplier shall report to the Contracting Officer for the indefinite delivery contract and the Contracting Officer(s) for any affected order or, in the case of the Department of Defense, identify both the indefinite delivery contract and any affected orders in the report provided at <https://dibnet.dod.mil/>.

(b) The Supplier shall report the following information pursuant to paragraph (c)(1) of this clause:

(i) Within 1 business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; brand; model number (Original Equipment Manufacturer (OEM) number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the report pursuant to paragraph (c)(1) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the Supplier shall describe the efforts it undertook to prevent use or submission of a covered article, any reasons that led to the use or submission of the covered article, and any additional efforts that will be incorporated to prevent future use or submission of covered articles.

(d) Subcontracts. The Supplier shall insert the substance of this clause, including this paragraph (d), in all subcontracts, including subcontracts for the acquisition of commercial items.

3.27.4 COMPLIANCE WITH EQUAL OPPORTUNITY CLAUSES

This Supplier and any authorized subcontractor shall abide by the requirements of 41 CFR 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and sub-contractors to employ and advance in employment qualified protected veterans. 41 CFR 300.5(d)

This Supplier and any subcontractor shall abide by the requirements of 41 CFR 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities. 60-741.5(d)

3.27.5 NOTIFICATION OF DEBARMENT/SUSPENSION

Pursuant to F.A.R. 52.209-6, Supplier certifies through acceptance of this Purchase Order in writing that as of the date of issuance of this Purchase Order, 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 Kyndryl in the event that during the performance of this Purchase Order, 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 Purchase Order, and contact Kyndryl immediately.** Notwithstanding anything to the contrary contained in this Purchase Order, if, for any reason, Supplier or any of Supplier's principals have accepted this Purchase Order and are currently debarred, suspended or proposed for debarment, this Purchase Order shall not be effective, and Kyndryl shall not have any liability to Supplier in connection with this Purchase Order.

3.27.6 COMPLIANCE WITH PAID SICK LEAVE CLAUSES

To the extent applicable, this Supplier and any subcontractor shall abide by the requirements of F.A.R 52.222-62, Executive Order 13706, and the regulations contained at 29 CFR part 13. To the extent required by these authorities, subcontractor shall include this clause in any subcontract with lower-tier subcontractors.

3.27.7 COMPLIANCE WITH PRIVACY TRAINING CLAUSES

To the extent applicable, this Supplier and any subcontractor shall abide by the requirements of F.A.R 52.224-3. To the extent required by law, subcontractor shall include this clause in any subcontract with lower-tier subcontractors.

3.27.8 CONFLICTS OF INTEREST

In the performance of this Purchase Order, 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 Purchase Order and (2) disclosure of information which would, or would appear to, violate such duties and obligations to third parties. In the performance of this Purchase Order, 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 Purchase Order, 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 Kyndryl, and Kyndryl shall have the right, at its sole discretion, to terminate this Purchase Order on notice. Upon exercise of such right of termination, Kyndryl's only obligation to Supplier shall be to reimburse Supplier for proper services satisfactorily completed as of the date of termination.

3.27.9 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.

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.

3.27.10 ADDITIONAL WARRANTIES

Supplier warrants that:

1. Any information it discloses to Kyndryl does not violate any law, regulation or ordinance of any U.S. Federal, 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;

2. it is not now employed by the Federal or any other 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 Purchase Order;
3. (a) no individual who is a former officer or employee of the U.S. Government shall be employed or compensated for services rendered under this Purchase Order within one year after conveying a benefit to Buyer in excess of \$10 million within the meaning of the Procurement Integrity Act, 41 USC, 423, and its implementing regulations; (b) it shall pay no compensation hereunder to any covered U.S. Department of Defense official within the meaning of section 847 of the National Defense Authorization Act for Fiscal Year 2008, Pub. L. No. 110-181, unless that individual has first obtained a written ethics opinion from the appropriate DoD ethics counselor; and (c) it shall immediately, at Kyndryl's request and sole discretion, remove any specified employee(s), subcontractor(s) and/or agent(s) of Suppliers from Kyndryl's premises, and agree that they will not be reassigned to any Kyndryl premises under this Purchase Order;
4. it will require that each individual working for Supplier hereunder obtains a copy of Kyndryl's Business Conduct Guidelines and Public Sector Guidelines for the United States (collectively, the "Guidelines"), and Supplier and Supplier's employees working hereunder will review the Guidelines and assist Kyndryl in complying with the Guidelines;
5. (a) neither Supplier, nor any of Supplier's employees or others whom Supplier will employ (as authorized by Kyndryl), will make any communication with any employee of a Federal Agency, a Member of Congress or any employee of with the intent to influence or attempt to influence the award of contracts to Kyndryl; (b) it will not engage in lobbying for Kyndryl within the meaning of the Lobbying Disclosure Act of 1995, 2 U.S.C. 1601 e seq.; (c) it, and all of its employees or others engaged by Supplier are authorized by Kyndryl to perform services under this Purchase Order, are familiar with, and agree to comply with and assist Kyndryl in complying with, the following, (including any reporting obligations Kyndryl or Supplier may have relating to):
 - i. The Procurement Integrity Act, 41 U.S.C. 423 and Government implementing regulations (Federal Acquisition Regulations/FAR 3.104 et. Seq.);
 - ii. Government regulations implementing organizational and consultant conflicts of interest, section 8141 of the 1989 Department of Defense Appropriation Act, Public law 100-463 (1988) and Conflict of Interest Policies Applicable to Consultants (FAR Subpart 9.5);
 - iii. Limitations on the use of appropriated funds to influence certain federal contracting and financial transactions (the Byrd Amendment), 31 U.S.C. 1352 and Government implementing regulations (FAR Subpart 3.8);
 - iv. The policies and procedures restricting contingent fee arrangements for soliciting or obtaining Government contracts, see 48 C.F.R. Subpart 3.4;
 - v. The revolving-door restrictions set out in 18 U.S.C. Section 207 and its implementing regulations.
 - vi. In accordance with F.A.R. 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions and F.A.R. 52.203-12, Limitation on Payments to Influence Certain Federal Transactions, Supplier **certifies** to the best of its knowledge and belief that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on its behalf in connection with the awarding of this contract.
If any registrants under the Lobbying Disclosure Act of 1995 have made a lobbying contact on behalf of Supplier with respect to this contract, Supplier shall complete and submit to Kyndryl, OMB Standard Form LLL, Disclosure of Lobbying Activities, to provide the name of the registrants, found [here](#).
6. Federal Acquisition Regulation clauses or specific agency acquisition regulation clauses (collectively, "F.A.R. Clauses") incorporated by reference into this Purchase Order or in attachments or documents made part of this Purchase Order, including Statements of Work, shall be effective as of the effective date of Prime Contract. If a Prime Contract is not cited, the effective date of the F.A.R. Clauses shall be the effective date of this Purchase Order.

3.28 WARRANTIES

Supplier warrants that:

1. it has the right and legal capacity to enter into this Terms and Conditions and this Purchase Order;
2. 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, labor and employment laws, data and personal data privacy, applicable export and import laws, regulations, orders, and policies, including, but not limited to: (a) 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), and; (b) agreeing not to transfer to Kyndryl any hardware, software, technical data or services controlled under the U.S. International Traffic in Arms Regulations ("ITAR");
3. it is knowledgeable with applicable supply chain security recommendations issued by applicable governments and industry standards organizations and making best efforts to comply with such recommendations;
4. it is knowledgeable with 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 Kyndryl's transport, import, export, distribution, sale and/or use of Supplier's products as, or as part of, a Kyndryl product;
5. it is knowledgeable with anti-corruption laws;
6. it is knowledgeable with laws and regulations regarding data privacy and data protection;
7. its execution of these Terms and Conditions and Purchase Order will not result in a breach of any agreement or contract to which it is a party;
8. no claim, lien, or action exists or is threatened against Supplier that would interfere with Kyndryl rights under a Purchase Order;
9. products and services do not infringe any privacy, publicity, reputation or intellectual property right of a third party;
10. (a) it has disclosed to Kyndryl 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) or services; and (b) it and the products and services comply fully with all licensing agreements applicable to such third party or open source code;
11. all authors have agreed not to assert their moral rights in the products and services, to the extent permitted by law;
12. products are free from defects in design and free from defects in material and workmanship;
13. products are safe for use consistent with and will comply with the warranties, specifications and requirements established;
14. products do not contain harmful code and Supplier will not engage in electronic self-help;
15. 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 Kyndryl in writing;
16. products are new and do not contain used or reconditioned parts unless Kyndryl agrees otherwise in writing;
17. 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 Kyndryl, except to the extent necessary to perform under a Purchase Order;
18. 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;
19. (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 Kyndryl any breaches of security of Personal Data immediately after discovery ("Security Incident"), (C) it will cooperate fully with Kyndryl in investigating any Security Incidents, (D) it will cooperate fully with Kyndryl'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 Kyndryl from time to time relating to Personal Data;²⁰ it will not export, directly or indirectly, any technology, software or commodities of U.S. origin or having U.S. content provided by Kyndryl 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, and;

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

4.0 GENERAL SECTIONS:

4.1 COMMUNICATIONS/ LINKS

The communications between Kyndryl and the Supplier shall be made through Kyndryl's Buy Department, unless the PURCHASE ORDER may indicate another communication channel.

Kyndryl can request that the Supplier installs in its premises a communication and data transfer equipment, such as a tele facsimile, telex, terminal, modem, etc., in order to reach efficiency levels which allow the progressive elimination of the exchange of technical and commercial documentations in hard copy.

All exchanges of information between the parties pursuant to this Purchase Order 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 Kyndryl, Supplier will obtain the informed consent of such personnel to release the information to Kyndryl and to allow Kyndryl to use, disclose, and transmit such information on a worldwide basis among Kyndryl and its affiliates in connection with this Purchase Order.

4.2 GOVERNING LAW AND DISPUTE RESOLUTION

Except where otherwise indicated for a specific matter, this document is governed under the laws of Costa Rica. Any and all disputes, claims, differences, disputes or controversies arising out of or in relation to any aspect of this document, its business matter, performance, liquidation, interpretation, validity or any breach thereof, shall be resolved by arbitration in accordance with the bylaws of the International Center for Conciliation and Arbitration of the Costa Rican-American Chamber of Commerce ("CICA"). The parties hereby agree to submit voluntarily and unconditionally to its rules and bylaws and claim knowledge thereof.

Any reproduction of this Purchase Order by reliable means will be considered an original of this Purchase Order. The United Nations Convention on Contracts for the International Sale of Goods does not apply. Unless otherwise provided by local law without the possibility of contractual waiver or limitation, any legal or other action related to this Purchase Order must be commenced no later than two (2) years from the date on which the cause of action arose.

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 Purchase Order shall prevail.

4.3 TAXES

Supplier is responsible for and will pay all applicable taxes, charges, fees, levies, or other assessments imposed or collected by any governmental entity (or political subdivision thereof) worldwide on sales of products or services, or sales, use, transfer, goods, and services or value added tax or any other duties or fees related to any payment by Kyndryl to Supplier for products and/or services provided to Buyer under or pursuant to this Purchase Order. If Kyndryl provides a direct pay certificate, certification of an exemption from tax, or reduced rate of tax imposed by an applicable taxing authority, then Supplier agrees not to invoice, nor pay, any such tax unless and until the applicable taxing authority assesses such tax, at which time Supplier shall invoice and Kyndryl agrees to pay any such tax that is legally owed. Kyndryl 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.

4.4 PACKAGES/TRANSPORTATION

Supplier will comply with: (i) all applicable country of origin marking requirements and all Kyndryl instructions for exports to Kyndryl (ii) all packaging and labeling requirements set out in this Purchase Order; and (iii) the transportation routing guidelines in this Purchase Order and the [Shipping transportation guidelines contained in the following link: https://www.kyndryl.com/procurement/shtrg](https://www.kyndryl.com/procurement/shtrg). Default minimum requirements for (i) and (ii) are found under [Instructions for cross-border shipments to Kyndryl Corporation contained in the following link: https://www.kyndryl.com/procurement/shtrg](https://www.kyndryl.com/procurement/shtrg).

4.5 TERMINATION

Kyndryl can terminate the PURCHASE ORDER in case of bankruptcy or another declaration of insolvency of the Supplier, including the designation of judicial administration officers or liquidators by judicial or administrative decision.

Notwithstanding, Kyndryl may early terminate these Terms and Conditions or any PURCHASE ORDER with a prior notice delivered 5 calendar days and the parties agree that Kyndryl will not have to indemnify Supplier regarding an eventual early termination.

Kyndryl will pay a proportional part of the total of the PURCHASE ORDER equal to the percentage of complied work in a satisfactory manner at the date of the termination which has not been paid yet, and Kyndryl will be able to carry out the legal actions considered necessary.

All the Purchase Orders shall be automatically cancelled with such termination, being extensive to all the agreements executed until that moment.

4.6 FORCE MAJEURE

Any case of Force Majeure shall be assumed by the Supplier, being of its complete responsibility the compliance of what was agreed in the PURCHASE ORDER.

The situations shall be contemplated in an individual manner and at Kyndryl 's discretion, if the Supplier noticed Kyndryl within the five (5) days after the occurrence of the situation or potential event and in the terms indicated in clause 3.6.1.

4.7 WAIVER; AMENDMENTS

Kyndryl's failure to exercise any right hereunder shall not operate as a waiver thereof. If Kyndryl does not insist in the strict compliance of the terms of this document or the omission of Kyndryl to act in case of breach will not be considered as an acceptance or waiver of rights to claim over these faults or any other condition of this document.

No modification, amendment, supplement to, or waiver of this Purchase Order by Kyndryl shall be binding upon the parties unless made in writing duly signed by both parties and specifically referencing this Purchase Order.

4.8 NOTICES

Any notice which may be required or allowed to be made or delivered to the other party shall be considered as effectively done or delivered in the date stamped by prepaid certified mail, to the address indicated in this document or in the PURCHASE ORDER.
