Kyndryl standard purchase order terms and conditions

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 the Kyndryl entity issuing this PO (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 of the terms of this PO, including those that are additional to, or different from, the terms of Supplier's offer or counter-offer. The terms and conditions of this PO are subject to change without notice.

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

Taxes: 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 Buyer to Supplier for products and/or services provided to Buyer under or pursuant to this PO. The Supplier will indemnify the Buyer against any liability that may arise due to the Supplier not accounting for the applicable taxes. If Buyer 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 Buyer agrees to pay any such tax that is legally owed. 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 will apply the exemption or reduced withholding tax rate provided by the applicable tax treaty only if Supplier has provided a valid certificate of residency before the payment date, subject to the country tax laws. Buyer agrees to remit in a timely manner all taxes withheld to the appropriate government authority in each respective jurisdiction. Supplier's invoices shall state all applicable taxes, if any, by tax jurisdiction and with a proper breakdown between taxable and non-taxable Deliverables and Services.

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 non-conforming products to Supplier at Supplier's expense.

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

Imports and exports: Supplier is the importer and exporter of record, unless Buyer expressly agrees in writing to serve as the importer or exporter. Supplier will comply with all applicable import and export laws, 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 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.

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

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

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

costs and damages Buyer incurs. Supplier will promptly notify Buyer if it is unable to comply with the delivery date specified in this PO.

Warranties: Supplier warrants that:

i. it has the right to enter into this PO;
ii. it is knowledgeable with, and is and will remain in full compliance with (at its own expense) all laws, rules and regulations that are, or may become, applicable in the provision of products and services hereunder including, without limitation,
    1. labor and employment laws,
    2. applicable export and import laws, regulations, orders, and policies, including, but not limited to:
        i. securing all necessary clearance requirements, export and import licenses and exemptions from, and making all proper filings with appropriate governmental bodies and/or disclosures relating to the release or transfer to non-U.S. nationals of technology and software in the U.S., or outside the U.S., release or transfer of technology and software having U.S. content or derived from U.S.-origin software or technology);
        ii. being knowledgeable with applicable supply chain security recommendations issued by applicable governments and industry standards organizations and making best efforts to comply with such recommendations;
        iii. agreeing not to transfer to Kyndryl any hardware, software, technical data or services controlled under the U.S. International Traffic in Arms Regulations ("ITAR");
    3. 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;
    4. anti-corruption laws; and
    5. laws and regulations regarding data privacy and data protection;
iii. its execution of this PO will not result in a breach of any other agreements or contracts to which it is a party;
iv. no claim, lien, or action exists or is threatened against Supplier that would interfere with Buyer's rights under this PO;
v. products and services do not infringe any privacy, publicity, reputation or intellectual property right of a third party;
vi. (A) it has disclosed to Buyer in writing the existence of any third party code, including without limitation open source code, that is included in or is provided in connection with the product(s) and/or services and (B) it and the products and/or services comply fully with all licensing agreements applicable to such third party or open source code;
vii. all authors have agreed not to assert their moral rights in the products and/or services, to the extent permitted by law;
viii. products are free from defects in design and free from defects in material and workmanship;

ix. products are safe for use consistent with and will comply with the warranties, specifications and requirements of this PO;

x. products do not contain harmful code and Supplier will not engage in electronic self-help;

xi. products do not contain (and products are not manufactured using) ozone depleting

xii. 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;

xiii. products are new and do not contain used or reconditioned parts unless Buyer agrees otherwise in writing;

xiv. 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;

xv. 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.

xvi. (A) it will implement and maintain appropriate technical and organizational measures and other protections for Personal Data (including, without limitation, not loading any Personal Data provided to Supplier on (a) any laptop computers or (b) any portable storage media that can be removed from Supplier's premises unless each case (i) such data has been encrypted and (ii) such data is loaded onto portable storage media solely for the purpose of moving such data to off-site storage), (B) it will report to Buyer any breaches of security of Personal Data immediately after discovery ("Security Incident"), (C) it will cooperate fully with Buyer in investigating any Security Incidents, (D) it will cooperate fully with Buyer's requests for access to, correction of, and destruction of Personal Data in Supplier's possession, and (E) it will comply with all instructions or other requirements provided or issued by Buyer from time to time relating to Personal Data;

xvii. 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;

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

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

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

Indemnification: Supplier agrees to defend, hold harmless, and indemnify Buyer and its affiliates from any claim (including without limitation costs, expenses and attorneys fees) arising from (a)

claims that any product infringes any intellectual property rights, (b) the failure of Supplier to comply with its warranties and obligations under this PO or (c) a Security Incident. If a claim of infringement is made, Supplier will, at its own expense, exercise the first of the following remedies that is practicable: (i) obtain for Buyer the rights granted under this PO; (ii) modify the product so it is non-infringing and in compliance with this PO; (iii) replace the product with non-infringing ones that comply with this PO; or (iv) accept the return or cancellation of the infringing product and refund any amount paid.

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

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

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

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

Record Keeping and Audit rights: Supplier will maintain (and subject to applicable law provide to Buyer upon request) relevant business, technical and accounting records i) to support Supplier's invoices; ii) show proof of required permits and professional licenses and iii) to demonstrate compliance with Supplier's performance of its obligations under this 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 shall obtain and maintain all applicable and appropriate insurance, (including, without limitation, business, workers' compensation, auto, errors and omissions, professional and commercial general and liability insurance) in an amount consistent with Supplier's industry practice. Each policy shall name Buyer as a loss payee or additional insured, as appropriate.

Supplier's subcontractor obligations: Supplier shall enter into a written contract with each subcontractor it is authorized to retain under this PO, if any, with such contract committing each such subcontractor to comply with all of Supplier's obligations and responsibilities under this PO. By way of example but not limitation, those obligations and responsibilities include those contained in the Ethical Dealings and Record Keeping and Audit Rights provisions of this PO. In addition, in such written contract, Supplier shall identify Buyer as a direct and intended 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.

Applicable laws: This PO is governed by the laws of the country where the Buyer is located, except: (i) in Australia, this PO will be governed by the laws of the State or Territory in which the transaction occurs; (ii) in the United Kingdom, this PO will be governed by the laws of England; (iii) in Albania, Armenia, Bosnia-Herzegovina, Former Yugoslav Republic of Macedonia, Georgia, Kyrgyzstan, Moldova, Montenegro, Tajikistan, Turkmenistan, and Uzbekistan, this PO will be governed by the laws of Austria; (iv) in Russia, Azerbaijan, Belarus, and Kazakhstan this PO will be governed by the laws of Russia; (v) in Canada, the laws of the Province of Ontario govern this PO; (vi) in the United States (including if any part of the transaction occurs within the United States), Puerto Rico, and People's Republic of China, the laws of the State of New York applicable to contracts executed in and performed entirely within that State govern this PO (vii) in Algeria, Andorra, Benin, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo Republic, Djibouti, Democratic Republic of Congo, Equatorial Guinea, French Guinea, French Polynesia, Gabon, Guinea, Guinea-Bissau, Ivory Coast, Lebanon, Madagascar, Mali, Mauritania, Mauritius, Mayotte, Morocco, New Caledonia, Niger, Reunion, Senegal, Seychelles, Togo, Tunisia, Vanuatu, and Wallis and Futuna, the laws of France; (viii) in Angola, Bahrain, Botswana, Egypt, Eritrea, Ethiopia, Gambia, Ghana, Jordan, Kenya, Kuwait, Liberia, Malawi, Malta, Mozambique, Nigeria, Oman, Pakistan, Qatar, Rwanda, Sao Tome and Principe, Saudi Arabia, Sierra Leone, Somalia, Tanzania, Uganda, United Arab Emirates, West Bank/Gaza, Yemen, Zambia, and Zimbabwe, the laws of England and; (ix) in South Africa, Namibia, Lesotho and Swaziland the laws of the Republic of South Africa.

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

Supplier:

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

shall instruct its Personnel that employment related issues should be brought forward to Supplier (and not Buyer) and shall notify Buyer promptly where such issues relate to actions which are alleged to have been taken by Buyer or its Personnel to enable Buyer to investigate as necessary;

is and shall remain responsible for the day to day supervision, control, terms and conditions, hiring, verification of eligibility to work, discipline, performance management, termination, counseling, scheduling, compensation, benefits and other activities, withholdings, health and safety of Supplier Personnel, and shall ensure Supplier Personnel do not seek to obtain the same from Buyer.

To avoid any confusion, Supplier remains the employer of Supplier Personnel at all times. Further, this Agreement does not create an employment relationship between Buyer and Supplier Personnel; shall provide written confirmation to each Supplier Personnel that Supplier remains the employer of Supplier Personnel, assignment to Buyer does not create an employer/employee relationship, Buyer is not their employer, and they are not entitled to Buyer benefits. Supplier is obligated to provide such notice upon request by Buyer.;

acknowledges that Buyer has no responsibility for reviewing or approving timesheets; however, Buyer may review such timesheets for billing verification purposes only;

is responsible for the actions and inactions of Supplier Personnel and compliance by Supplier Personnel with the requirements of this PO;

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.

Buyer Assets: Supplier shall instruct Supplier Personnel to: use Buyer Assets only for purposes of this PO and Supplier will reimburse Buyer for any unauthorized use; only connect with, interact with or use programs, tools or routines that Buyer agrees are needed to provide services; not copy, disclose or leave Buyer Assets unsecured or unattended; promptly notify Buyer of any accident or security incidents (such as those involving loss or misuse of, or damage to, Buyer Assets (as defined below), and Supplier will provide Buyer with a copy of any accident or security incident report involving the above. Buyer may periodically audit Supplier's use of Buyer Assets. "Buyer Assets" means Buyer's or Customer's computer systems and/or networks, Buyer's or Customer's property that is accessed or used by Supplier Personnel or materials, data, documents or information provided to Supplier Personnel by (or on behalf of) Buyer.

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

Criminal and other Background Checks

(a) Supplier shall inform Buyer if any Supplier Personnel to be assigned to perform services hereunder are former employees of Buyer, which assignment is subject to Buyer's approval.

(b) To the extent permitted by local law, Supplier will obtain from Supplier Personnel photographic proof of identity from an official government source (including but not limited to documentation such as a valid driver's license or government issued passport).

(c) To the extent permitted by local law, Supplier will conduct or otherwise obtain criminal background checks on Supplier Personnel as defined in section (d) below, in locations where the Supplier Personnel resided for the past seven years. Where no criminal convictions within the past seven years are identified, Supplier Personnel may be assigned to perform services. Where a criminal conviction is identified, Supplier may not assign Supplier Personnel where Supplier Personnel is disqualified from performing services based on Supplier's individualized assessment of the conviction against the services to be performed in accordance with applicable law and guidance, which may include but is not limited to the Equal Employment Opportunity Commission's promulgated guidance in the United States or similar state or other government promulgated guidance, as applicable. If, after such assessment, Supplier still recommends assigning a Supplier Personnel with a criminal conviction to perform services, Buyer must first be informed of such decision. Buyer 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, Buyer will not receive any personally identifiable information (e.g., Supplier Personnel name, social security number, etc.).

(d) For Supplier Personnel in the United States, a Federal background check must be conducted as well as a county or state background check, whichever is more comprehensive. In other countries, background checks may be at the county, state, province and/or country level, whichever is most comprehensive.

(e) Upon Buyer request and subject to applicable law, Supplier will provide documentation to Buyer to verify its compliance with this section.

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.

Ownership of products: "To the extent that the work or services being acquired by Buyer hereunder are for ultimate sale to the United States Government, then the Government shall have unlimited or government purpose rights in associated works of authorship to the extent required under the relevant federal prime contract."

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

No modification, amendment, supplement to, or waiver of this PO by Buyer shall be binding upon the parties unless made in writing duly signed by both parties and specifically referencing this PO. Buyer's failure to exercise any right hereunder shall not operate as a waiver thereof.

Both shrinkwrap and clickwrap licenses accompanying any product consisting of software and online Terms of Use or Terms of Service relating to services provided online are null and void, and the terms and conditions of this PO prevail.

Supplier shall not use the name or trademarks of Buyer or its affiliates or refer to or identify Buyer or its affiliates in any marketing materials (including without limitation testimonials or customer listings) or press releases without the prior written consent of Buyer.

To the extent the work or services Buyer acquires hereunder are for ultimate sale to the United States Government, Supplier may bring an associated claim against the Government only if sponsored by Buyer, which sponsorship shall be granted solely by Buyer at its discretion.