

**STATE OF NEW JERSEY**  
**PARTICIPATING ADDENDUM AND STANDARD TERMS AND CONDITIONS**  
Under  
**NASPO ValuePoint Contract for Cloud Solutions**  
**[State of Utah Master Contract Number AR3710]**

This Participating Addendum is made as of the last date of signature below (the "Effective Date"), by and between, Kyndryl, Inc., whose address is One Vanderbilt Avenue, 15th Floor, New York, NY 10017 ("Contractor"), and the State of New Jersey, Department of the Treasury, Division of Purchase and Property ("Participating State" or "State") whose address is 33 West State Street, 8th Floor, P.O. Box 039, Trenton, New Jersey 08625, on behalf of the State of New Jersey and all "Authorized Purchasers" (as defined below). For clarification of references throughout this document, the term "State," in any form, refers to the State and any Authorized Purchaser, unless otherwise indicated. Capitalized terms used but not defined shall have the meaning ascribed to them in the Master Agreement (as defined below).

**WHEREAS**, pursuant to N.J.S.A. 52:34-6.2, the Director of the Division of Purchase and Property the "Director"), within the Department of the Treasury ("DPP") "may enter into cooperative purchasing agreements with one or more states for the purchase of goods and services;" and

**WHEREAS**, the State of Utah ("Lead State") and Contractor have entered into Master Agreement # AR3710 (the "Master Agreement"), which may be found at the following URL: <https://www.naspovaluepoint.org/portfolio/cloud-solutions-2016-2026/kyndryl/>, awarded in accordance with the State of Utah Solicitation CH16012 for Cloud Solutions; and

**WHEREAS**, the State of New Jersey participated in the publicly advertised, competitive bidding process with fifteen other states and evaluated the proposals; and

**WHEREAS**, the Director has determined that entering into a Participating Addendum with Contractor under the Master Agreement to provide cloud solutions is the most cost effective method of procuring the Services available under the Master Agreement, and that it is in the best interest of the State to enter into a Participating Addendum with Contractor; and

**WHEREAS**, the parties seek to enter into this Participating Addendum to memorialize the terms of their contractual relationship;

**NOW THEREFORE**, for good and valuable consideration, receipt of which hereby acknowledged, the parties to this Participating Addendum hereby agree as follows:

**1.0 Term and Extension Option; Order of Precedence; Entire Agreement**

1. The term of this Participating Addendum shall be effective from the Effective Date and shall continue for a period ending on the effective date of a termination of the Master Agreement or when this Participating Addendum is terminated in accordance with the Master Agreement or this Participating Addendum, whichever shall occur first. Notwithstanding anything to the contrary contained in the Master Agreement, the State reserves the right, in its sole discretion, to extend this Participating Addendum upon an extension of the Master Agreement under the same terms and conditions as stated in this Participating Addendum. There shall be no automatic renewals of the Participating Addendum.
2. The entire agreement, and all rights and obligations between the parties, shall consist of the following documents (which shall be collectively referred to as the "Agreement" or "contract"):
  - a. This Participating Addendum;
  - b. The State of New Jersey Participating Addendum Standard Terms and Conditions, attached hereto as Exhibit A;

- c. The Master Agreement terms and conditions, including Exhibits 1 to the Master Agreement, incorporated herein as Exhibit B;
  - d. Kyndryl Ordering Documents or Transaction Documents;
  - e. A Service Level Agreement, Order and/or Statement of Work issued against the Participating Addendum;
  - f. Scope of Services Awarded to Contractor, attached as Attachment B to the Master Agreement;
  - g. Pricing Discounts, attached as Attachment C to the Master Agreement,; and
3. These documents shall be read to be consistent and complimentary. In the event of any conflict between the terms of the documents comprising the Agreement, the conflict shall be resolved by giving priority to these documents in the order listed above.
4. The Agreement sets forth the entire agreement between the parties and supersedes all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. No Contractor terms and conditions shall apply to this Participating Addendum except those that are expressly accepted by the Lead State in the Master Agreement.
5. In the event the Lead State approves Contractor to offer new or additional Services under the Master Agreement after the Effective Date of this Participating Addendum and such Services incorporate any different, inconsistent, or additional terms into the Master Agreement, including, but not limited to any software license agreement or service level agreement, such terms and conditions are subject to this Agreement as set forth below.
6. In the event that Contractor presents terms and conditions, including but not limited to software license agreements or service level agreements, in response to an order by an Authorized Purchaser, through any medium whatsoever, and if accepted by an Authorized Purchaser for an order (such as service specifications described in a Statement of Work), such additional terms and conditions shall become applicable only to that order as set forth in the Ordering Documents with the Authorized Purchaser.
7. References to external documentation; Software License Agreements and Service Level Agreements:
  - a. Any external information incorporated by reference within any of the documents comprising the Agreement, including, without limitation, click-through, shrink-wrap, software license agreements or service level agreements, are subject to the terms and conditions of this Participating Addendum. In the event of a conflict, the terms of this Participating Addendum shall prevail.
  - b. Any changes in the information incorporated by reference by any of the documents that comprise the Agreement, including, without limitation, click-through, shrink-wrap, software license agreements or service level agreements, are subject to the terms and conditions of this Participating Addendum. In the event of a conflict, the terms of this Participating Addendum shall prevail.
  - c. Any reference in Contractor's documents to website URLs that contain additional terms and conditions are subject to the terms and conditions of this Participating Addendum. In the event of a conflict, the terms of this Participating Addendum shall prevail.
8. Amendments – This Participating Addendum may not be amended except in a writing signed by both parties.

## **2.0 Scope of Participating Addendum**

1. The scope of Services that may be procured by Authorized Purchasers defined in Section 6.0(1) of this Participating Addendum (State Agencies) shall be those Services established in the Scope Addendum attached to this Participating Addendum as Attachment 1 as may be amended by the parties in writing from time to time. For all other Authorized Purchasers, the full suite of Service offerings available under the Master Agreement may be procured under this Participating Addendum.
2. Contractor shall only accept orders for Services that are within the scope of the Master Agreement as approved by the Lead State.

## **3.0 Reporting Requirements**

The Contractor shall deliver a copy of the detailed sales data reports described in Section 42 of the Master Agreement ("Reports") to the Procurement Specialist and State Contract Manager within ten (10) days of providing the Reports to the Lead State and NASPO ValuePoint Cooperative Development Team. The Reports may be limited to Sales made to Authorized Purchasers under this Participating Addendum.

## **4.0 Restrictions**

1. Any restrictions or limitations regarding the State's use of this Agreement will be set forth in the State's Method of Operation, as may be amended from time to time and posted on the State's website. The foregoing statement does not impose additional responsibility on the Contractor and is meant as a notification to Authorized Purchasers only.
2. Financing, leasing, and renting is not permitted under this Participating Addendum for State Agencies. Authorized Purchasers, as defined in Section 6.0(2)-(5) may finance their purchase, if permitted under law. If financing is through a lease agreement, that agreement is separate from this Participating Addendum and is between the Contractor and the respective Authorized Purchaser only.

## **5.0 Termination of Contract**

1. For Convenience-
  - A. Notwithstanding any provision or language in the Agreement to the contrary, the Director may terminate at any time, in whole or in part, this Participating Addendum or any contract entered into pursuant to this Participating Addendum, for the convenience of the State, upon no less than forty-five (45) days written notice to the Contractor.
  - B. Contractor shall not have the right to terminate this Participating Addendum for convenience.
2. For Cause-
  - A. Where the Contractor fails to perform or comply with the Agreement or a portion thereof, and/or fails to comply with the complaints procedure in N.J.A.C. 17:12-4.2 et seq., the Director may terminate this Participating Addendum, in whole or in part, upon thirty (30) days' notice to the Contractor with an opportunity to respond and cure within the thirty day period.
  - B. Where in the reasonable opinion of the Director, the Contractor continues to perform poorly under the Agreement as demonstrated by e.g., formal complaints, late delivery, poor performance of service, short-shipping, so that the Director is required to use the complaints procedure in N.J.A.C. 17:12-4.2 et seq., and there has been a failure on the part of the Contractor to make progress towards ameliorating the issue(s) or problem(s) set forth in the complaint the Director may terminate this Participating Addendum, in whole

or in part, upon thirty (30) days' notice to the Contractor with an opportunity to respond prior to termination.

3. In cases of emergency the Director may shorten the time periods of notification and may dispense with an opportunity to respond.
4. In the event of termination of this Participating Addendum or a Statement of Work or Ordering Document, the Contractor will be compensated for work performed or goods supplied in accordance with the Agreement or Statement of Work or Ordering Document, up to the date of termination, as well as any charges associated with such termination as set forth under the applicable document (Statement of Work or Order). Such compensation may be subject to adjustments. In the event of a termination for convenience under Section 5.0(1), or in the event of a termination for cause under Section 5.0(2), (a) the Purchasing Entity or State (as applicable) shall reimburse Contractor for any documented termination fees agreed in writing in the applicable document (Statement of Work or Order); and (b) Contractor shall issue Authorized Purchaser(s) a pro-rata refund of unused, amortized pre-paid fees, if any, to the extent any are remaining, provided such fees have been identified in advance in the Statement of Work or Order as "pre-paid fees".
5. The Contractor shall not have the right to terminate this Participating Addendum. Any provisions in the Agreement regarding the Contractor's right to terminate or cancel this Participating Addendum are superseded by and replaced in their entirety by this Section 5.0 of this Participating Addendum. However, this Participating Addendum shall terminate on the termination or expiration date of the Master Agreement. In addition, in the event that an Authorized Purchaser violates its obligations under the Agreement, Contractor may (a) refuse to accept or process Orders from such Authorized Purchaser immediately upon written notice to the State and such Authorized Purchaser, until such time as Authorized Purchaser submits a plan to correct such violations satisfactory to Contractor, which approval will not be unreasonably withheld; or (b) treat such failure as an event of default under the terms of the Master Agreement. Any action taken as a result an event of default shall be limited to the specific Order. Notwithstanding anything to the contrary, Contractor shall continue to process Orders submitted by other Authorized Purchasers. Section 7, Termination and Suspension of Service, in the applicable Exhibit to the Master Agreement shall apply in the event of a termination or cancellation pursuant to this section.
6. Any termination under this provision shall not affect the rights and obligations attending Orders outstanding at the time of termination, including but not limited to any right of any Authorized Purchaser to indemnification by the Contractor, rights of payment for Services performed or as otherwise agreed to in writing by a Purchasing Entity, data ownership, Contractor obligations regarding Data and Confidential Information, rights attending default in performance in an applicable Order or Ordering Document, Contractor obligations under Section 7, Termination and Suspension of Service, in the applicable Exhibit to the Master Agreement, and any responsibilities arising out of an Incident Security Breach or Data Breach.
7. The following applies only to Professional Services: The State may, for valid reason, issue a stop order directing the Contractor to suspend Professional Services for a specific time. The Contractor shall be paid for Professional Services requested and performed until the effective date of the stop order. The Contractor shall resume work upon the date specified in the stop order (which shall not exceed ninety (90) days from the start of the suspension), or upon such other date as the State Contract Manager and Contractor may agree in writing. The period of suspension shall be deemed added to the Contractor's approved schedule of performance and Contractor's failure to perform its responsibilities under an Order or to meet any agreed upon service levels shall be excused to the extent they are caused by any such suspension. The Parties will make an equitable adjustment, if any is required, to the Statement of Work price to reflect any changes resulting from the suspension. The Contractor shall provide whatever information that Director may require related to the equitable adjustment. In the event Contractor disagrees with the final adjusted contract price, Section 10, paragraph 5 - Defaults and Remedies of the Master Agreement shall apply.

8. Notwithstanding anything to the contrary in any of the documents comprising the Agreement, Orders shall not automatically renew.

### **6.0 Authorized Purchasers**

"Authorized Purchasers" (referred to as "Purchasing Entities" in the Master Agreement) under this Participating Addendum shall mean the State and the following:

1. State Agencies.
2. Quasi-State Agencies - A "Quasi-State Agency" is any agency, commission, board, authority or other such governmental entity which is established and is allocated to a State department or any bi-state governmental entity of which the State of New Jersey is a member, as defined in N.J.S.A. 52:27B-56.1, provided that any sale to any such bi-state governmental entity is for use solely within the State of New Jersey.
3. Political Subdivisions, Volunteer Fire Departments And First Aid Squads, And Independent Institutions Of Higher Education - Counties, municipalities and school districts as defined in N.J.S.A. 52:25-16.1., volunteer fire departments, volunteer first aid squads and rescue squads as defined in N.J.S.A. 52:25-16.2, independent institutions of higher education as defined in N.J.S.A. 52:25-16.5, provided that each purchase by the independent institution of higher education shall have a minimum cost of \$500. The extension to counties, municipalities, school districts, volunteer fire departments, first aid squads and independent institutions of higher education must be under the same terms and conditions, including price, applicable to the State.
4. State Colleges – in accordance with N.J.S.A. 18A:64-60.
5. County Colleges - in accordance with N.J.S.A. 18A:64A- 25.9.

Authorized Purchasers as defined in Section 6.0(2)-(5) are responsible for the full cost of their purchases. The State and Authorized Purchasers as defined in Section 6.0(1) are responsible for the full cost of their purchases. Authorized Purchasers may order Services from Contractor in accordance with the terms and conditions of this Participating Addendum. By placing an order under this Participating Addendum, each Authorized Purchaser agrees to be bound by the terms and conditions of the Agreement, as defined in this Participating Addendum. For the purposes of such Order, the "State" as used in this Participating Addendum, shall be deemed to refer to such Authorized Purchaser, unless indicated otherwise herein. Each Authorized Purchaser shall be responsible for its compliance with and breach(es) of such terms and conditions.

### **7.0 Modified Master Agreement Terms**

1. **Section 8 Confidentiality, Non-Disclosure, and Injunctive Relief**, in the Master Agreement is amended to add the following:
  - e. The State's obligation to maintain the confidentiality of Contractor Confidential Information (as defined below) provided to the State under the Agreement is conditioned upon and subject to the State's obligations under the New Jersey Public Records Act, N.J.S.A. 47:1A-1 et seq. ("OPRA"), the New Jersey common law right to know, and any lawful document request or subpoena.
  - f. Contractor's confidential information, to the extent not expressly prohibited by law, shall consist of all information clearly identified as confidential at the time of disclosure ("Contractor Confidential Information"). Notwithstanding the previous sentence, the Contractor acknowledges the terms and pricing of the contract are subject to disclosure under OPRA, the New Jersey common law right to know, and any other lawful document request or subpoena.

- g. In the event that the State receives a request for Contractor Confidential Information related to the Agreement pursuant to a court order, subpoena, lawful document request or other operation of law, the State agrees, if permitted by law, to provide Contractor with as much notice, in writing, as is reasonably practicable and the State's intended response to such request. Contractor shall take any action it deems appropriate to protect its documents and/or information.
  - h. In addition, in the event Contractor receives a request for Confidential Information (as defined in the Master Agreement and amended by the Participating Addendum) pursuant to a court order, subpoena, or other operation of law, Contractor shall, if permitted by law, provide the State with as much notice, in writing, as is reasonably practicable and Contractor's intended response to such request. The State shall take any action it deems appropriate to protect its documents and/or information. Notice to the State shall not relieve the Contractor of its obligation to take action to protect such information if the Contractor is aware of a legal reason to do so.
  - i. Notwithstanding the requirements of nondisclosure described in this Section either party may release the other party's Confidential Information:
    - (i) if directed to do so by a court or arbitrator of competent jurisdiction,
    - (ii) pursuant to a lawfully issued subpoena or other lawful document request,
      - (a) in the case of the State, if the State determines the documents or information are subject to disclosure and Contractor does not exercise its rights as described in subsection (g) above, or if Contractor is unsuccessful in defending its rights as described in subsection (g), or
      - (b) in the case of Contractor, if Contractor determines the documents or information are subject to disclosure and the State does not exercise its rights as described in subsection (h) above, or if the State is unsuccessful in defending its rights as described in subsection (h).
  - j. Except as permitted above and for confidentiality obligations related to information about a party's intellectual property, which shall never expire, neither party will use or disclose the other's Confidential Information for seven (7) years after the termination of the Agreement or such longer time period as required by applicable law.
2. **Section 13 Indemnification**, in the Master Agreement is amended to delete paragraph (a) and replace with the following:

Indemnification – Other than for Intellectual Property. The Contractor shall indemnify and hold harmless by defending (which includes paying fees and related costs of defense and paying settlement amounts and final judgments relating to the claims for which indemnification was sought) NASPO, NASPO ValuePoint, the Lead State, Participating Entities, and Purchasing Entities, along with their officers, agents, and employees as well as any person or entity for which they may be liable (each, an "Indemnified Party" and collectively, the "Indemnified Parties"), from and against applicable, third-party claims, damages or causes of action brought against an Indemnified Party, for any death, bodily injury, or damage to real or tangible personal property arising directly from act(s), error(s), or omission(s) of the Contractor, its employees or subcontractors or volunteers, at any tier, in the performance under the Master Agreement. As used in this Section 13(a), the term "tangible personal property" shall not include software, documentation, data or data files. Contractor shall have no liability for any claim of bodily injury and/or tangible personal property damage arising from use of software or hardware. This Section 13(a) states Contractor's entire liability and an Indemnified Party's exclusive remedy for bodily injury and property damage.

3. **Section 13 Indemnification**, in the Master Agreement is amended to delete paragraph (b(3)) and replace with the following:

The Contractor's obligations under this section shall not extend to any claims arising from, and Contractor has no responsibility for claims based on, the combination of the Product with any other

product, system or method, unless the Product, system or method is: (a) provided by the Contractor or the Contractor's subsidiaries or affiliates; (b) specified by the Contractor to work with the Product; or (c) reasonably required, in order to use the Product in its intended manner, and the infringement could not have been avoided by substituting another reasonably available product, system or method capable of performing the same function. Contractor has no responsibility for claims based in whole on non-Contractor Products, items not provided by Contractor, or any violation of law or third-party rights caused by Participating Entity's content, materials, designs, specifications, or use of a non-current version or release of a Contractor Product when an infringement claim could have been avoided by using a current version or release. Contractor reserves the right to modify or replace a Service with an equivalent non-infringing one or, if replacement is not reasonably available, to discontinue a Service and provide a credit for any pre-paid unexpired term. The Indemnified Parties are responsible for any violation of law or any third-party rights caused by its content or, except as provided in this paragraph, its use of a Service.

4. **Section 13 Indemnification**, in the Master Agreement is amended to add the following:

- d. Neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of the State of New Jersey or any Authorized Purchaser, nor purport to act as legal representative of the State of New Jersey or any Authorized Purchaser, without having provided notice to the Director of the Division of Law in the New Jersey Department of Law and Public Safety and to the Director of DPP.
- e. Notwithstanding anything to the contrary contained in the Agreement, the State shall not be responsible for the Contractor's attorney fees and/or expenses.
- f. The Contractor's indemnification and liability obligations under the Agreement are not limited by, but are in addition to the insurance obligations contained in the Agreement.
- g. Notwithstanding anything to the contrary in the Agreement or any contract document, under no circumstances will the State indemnify, defend or hold harmless Contractor, and any such provision in the Agreement or any contract document shall be of no force and effect. The State will not pay or reimburse for claims absent compliance with the terms of the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq. and the Contractual Liability Act, N.J.S.A. 59:13-1 et seq. and a determination by the State to pay the claim or a final order of a court of competent jurisdiction.

5. **Section 16 Insurance**, in the Master Agreement is amended as follows:

- a. Subsection 16(b)(3) is amended to state the following:
  - i. Worker's Compensation Insurance applicable to the laws of the State of New Jersey and Employers Liability Insurance with limits not less than:

\$1,000,000 BODILY INJURY, EACH OCCURRENCE  
 \$1,000,000 DISEASE EACH EMPLOYEE  
 \$1,000,000 DISEASE AGGREGATE LIMIT

- b. The following section is added as subparagraph (f):
  - f. New Jersey Requirements:
    - i. The Provider shall provide the State with current certificates of insurance for all coverages and renewals thereof. If the Provider receives a notice of cancellation, the Provider will promptly replace such coverage so that no lapse in insurance occurs.
    - ii. The Provider shall not begin to provide services or goods to the State until evidence of the required insurance is provided.

- iii. The certificates of insurance shall indicate the contract number and title of the contract in the Description of Operations box and shall list the State of New Jersey, Department of the Treasury, Division of Purchase & Property, Contract Compliance & Audit Unit, P.O. Box 236, Trenton, New Jersey 08625 in the Certificate Holder box. The certificates shall be emailed to the State at [ccau.certificate@treas.state.nj.us](mailto:ccau.certificate@treas.state.nj.us).

- 6. **Section 21 Charges, Taxes and Payment** is deleted in its entirety and replaced with the following:

Orders under this Master Agreement are fixed-price or fixed-rate orders, not cost reimbursement contracts. Unless otherwise stipulated in the Participating Addendum, Payment is normally made within 60 days following the date of a correct invoice is received. Purchasing Entities reserve the right to withhold payment of a portion (including all if applicable) of disputed amount of an invoice. Payments may be remitted by mail or electronically. Payments may be made via a State or political subdivision "Purchasing Card" with no additional charge. Purchasing Entity agrees to pay all applicable charges specific for a Service by Contractor. Charges are exclusive of applicable taxes, levies, or fees imposed by any governmental authority resulting from Purchasing Entity's acquisitions under this Master Agreement, and any late payment fees. Charges shall be identified on Contractor's invoice. Prepaid Services must be used within the applicable period. Contractor does not give credits or refunds for any prepaid, one-time charges, or other charges already due or paid unless otherwise permitted in this Participating Addendum.

- 7. **Section 26 Records Administration and Audit**, subsection b, is deleted and replaced with the following:

Without limiting any other remedy available to any governmental entity, the Contractor shall reimburse the applicable Lead State, Participating Entity, or Purchasing Entity for any overpayments inconsistent with the terms of the Master Agreement or orders or underpayment of fees found as a result of the examination of the Contractor's records. For Contractor Services in which provisioning and access for Purchasing Entity's end users is not handled directly by Contractor, Contractor may verify, using an independent auditor, Purchasing Entity's compliance with the Purchasing Order and the terms of the Master Agreement and Purchasing Entity will provide upon request, records, system tool outputs, and access to Purchasing Entity's premise, as reasonably necessary, for Contractor and its independent auditor to verify Purchasing Entity's use of the Services is in compliance with the Purchasing Order and the terms of the Master Agreement. The Purchasing Entity agrees to cooperate with Contractor's audit and provide to Contractor and the independent auditor reasonable assistance. Any such audit shall not unreasonably interfere with the Purchasing Entity's normal business operations. The Purchasing Entity agrees to pay within 60 days of written notification any fees applicable to the Purchasing Entity's use of the Services in excess of the Purchasing Entity's rights at Contractor's then-current prices. If the Purchasing Entity does not pay, Contractor can end the Purchasing Entity's Services and/or the Purchasing Entity's Order. The Purchasing Entity agrees that Contractor shall not be responsible for any of the Purchasing Entity's costs incurred in cooperating with the audit.

- 8. **Section 32 Transition Assistance**, subsection c, is deleted and replaced with the following:

The Contractor must maintain the confidentiality and security of a Purchasing Entity's Data during the transition services, and thereafter as required in the Participating Addendum or as required by law.

- 9. **Section 34 Assignment of Antitrust Rights**, in the Master Agreement is amended to add the following:

In connection with this assignment, the following are the express obligations of the Contractor:

1. It will take no action which will in any way diminish the value of the rights conveyed or assigned hereunder.
2. It will advise the Attorney General of New Jersey:
  - a. in advance of its intention to commence any action on its own behalf regarding any such claim or cause(s) of action;
  - b. immediately upon becoming aware of the fact that an action has been commenced on its behalf by some other person(s) of the pendency of such action.
3. It shall notify the defendants in any antitrust suit of the fact of the within assignment at the earliest practicable opportunity after the Contractor has initiated an action on its own behalf or becomes aware that such an action has been filed on its behalf by another person. A copy of such notice will be sent to the Attorney General of New Jersey.

Furthermore, it is understood and agreed that in the event any payment under any such claim or cause of action is made to the Contractor, it shall promptly pay over to the State of New Jersey the allotted share thereof, if any, assigned to the State hereunder.

10. **Section 40 Contract Provisions for Order Utilizing Federal Funds**, in the Master Agreement is deleted and replaced with the following:

Pursuant to Section 40 of the Master Agreement, the Participating Entity has included federal terms as Section 7 in Exhibit A, State of New Jersey Participating Addendum Standard Terms and Conditions. These federal terms are applicable to any order subject to Appendix II to 2 Code of Federal Regulations (CFR) Part 200, Contract Provisions for Non-Federal Entity Contracts Under Federal Awards.

To the extent United States federal grant or federal financial assistance rules as identified in Section 7 of Exhibit A are applicable to any such Order as required by 2 CFR Part 200, they are applicable only to the extent they apply to Contractor as a contractor or vendor of the goods and services being provided under the Order. When fulfilling an Order, Contractor will at all times act as a contractor or vendor and not as a sub-recipient or sub-grantee, as those terms are defined in federal financial assistance regulations.

11. **Section 44(f) Limitation of Liability**, in the Master Agreement is deleted and replaced with the following:

f. Limitation of Liability:

Unless otherwise agreed in writing and signed by the Director, the following limitation of liability shall apply:

A. Contractor's aggregate liability for all damages arising out of or related to this Master Agreement or a Purchasing Entity's Order, whether in contract or tort, or otherwise, shall in no event exceed the greater of (i) two (2) times the total amounts actually paid to Contractor in the twelve (12) month period immediately preceding the event giving rise to such liability less any refunds or credits received by the Purchasing Entity from Contractor under such order, or (ii) one million dollars ( u.s.\$1,000,000).

B. Notwithstanding the above, neither the Contractor nor the Purchasing Entity shall be liable for any consequential, indirect, incidental, punitive or special damages of any kind arising directly or indirectly out of this Master Agreement or a Purchasing Entity's Order, including, without limitation, damages resulting from loss of use or loss of profit or revenue (excluding fees under this Master Agreement), data, or data use by the Purchasing Entity, the Contractor, or by others.

C. Notwithstanding the language in sub-sections 44(f)(A) and (B) above, Contractor's obligation to indemnify for (i) infringement claims or damages under Sections 13(b), or (ii) claim(s) of bodily injury and tangible personal property damage under Section 13(a) shall apply without regard to whether the damages under such claim(s), (y) are classified as direct, indirect, or otherwise, or (z) exceed the limits on liability under this Section 44(f) (Additional Terms and Conditions: Limitation of Liability). In addition, Contractor's liability for claims or damages brought by the State or an Authorized Purchaser due to Contractor's misappropriation, Contractor's misuse, or Contractor's unauthorized use of Confidential Information shall not be subject to the limits of liability under this Section 44(f) provided that for the purposes of this section, "Confidential Information" does not include any (a) Data (including but not limited to Personal Protected Data); (b) Purchasing Entity's records, (c) personnel records, or (4) information concerning individuals.

D. Notwithstanding the foregoing exclusions, if a Purchasing Entity retained Contractor to encrypt Personal Data in accordance with an applicable Transaction Document, and Contractor's breach of its contractual obligation to encrypt Personal Data directly resulted in a Data Breach, the Contractor shall, subject to the conditions set forth at the end of this subsection (D), bear the costs associated with (1) the investigation and resolution of the Data Breach; (2) notifications to individuals, regulators or others required by federal and state laws or as otherwise agreed to; (3) a credit monitoring service required by state or federal law or as otherwise agreed to; (4) a website or a toll-free number and call center for affected individuals as required by federal and state laws — all not to exceed the average per record per person cost calculated for data breaches in the United States (currently \$217 per record/person) in the most recent Cost of Data Breach Study: Global Analysis published by the Ponemon Institute at the time of the Data Breach; and (5) completing all corrective actions as reasonably determined by Contractor based on root cause of the Data Breach, provided that:

- (a) Contractor's entire obligation for all damages and expenses related to a Data Breach shall be subject to the limitation set forth in sub-section (A) above, which shall be modified as follows solely in the event of a Data Breach: (i) in connection with Orders received in aggregate value between one million dollars (u.s.\$1,000,000) and five million dollars (u.s.\$5,000,000), subsection (A)(ii) shall be modified to read "two million, five hundred thousand dollars (u.s. \$2,500,000)"; and (ii) in connection with Orders received in aggregate value that exceeds five million dollars (u.s.\$5,000,000), subsection (A)(ii) shall be modified to read "three million dollars (u.s.\$3,000,000)";
- (b) this section 11(D) sets forth Contractor's entire obligation and, when applicable, shall constitute Purchasing Entity's sole and exclusive remedy for all damages and expenses related to a Data Breach.

E. Where Contractor, Authorized Purchaser, and the Director agree in writing to a different limitation of liability than that established in this Section 7.0(11) ("Negotiated LOL"), the Negotiated LOL shall only apply to the specific Order for that Authorized Purchaser. The Negotiated LOL shall not be deemed an amendment to this Participating Addendum. For the avoidance of doubt, all other terms of the Order shall be subject to the order of precedence established in Section 1.0 of this Participating Addendum.

## **8.0 Contractor Business Models; Roles and Responsibilities**

1. Certain Contractor-authorized resellers ("Fulfillment Partners") are eligible to resell Contractor's Services to Authorized Purchasers under this Participating Addendum. Such Fulfillment Partners, if any, are authorized to take Orders under this Participating Addendum and invoice and receive payment from such Authorized Purchasers. Contractor is responsible for any reports and/or fees that are required per the terms and conditions of the Master Agreement and/or this Participating Addendum, unless expressly stated otherwise herein. Participation of such Fulfillment Partners, if any, will be in accordance with the terms and conditions set forth in the Master Agreement and this Participating Addendum.

2. In the event Contractor offers Fulfillment Partner Services to Authorized Purchasers, each Fulfillment Partner must be approved by the State. A Fulfillment Partner has no authority to amend this Agreement or to bind Contractor, State, or Authorized Purchasers to any additional terms and conditions. Contractor may add Fulfillment Partners to its Participating Addendum at any time during the contract term, upon agreement of the parties.
3. Fulfillment Partners will be required to supply the State of New Jersey with all required forms outlined in Section 14.0 of this Participating Addendum.

## **9.0 Ordering and Compensation**

1. Pricing shall be in accordance with the terms set forth in the Master Agreement, as amended by this Participating Addendum.
2. The State of New Jersey Contract number and the Master Agreement number (AR3710) MUST be shown on all Ordering Documents issued against this Participating Addendum.
3. All Orders and Payments will be issued to either the Contractor or the Fulfillment Partner and shall be in accordance with the terms set forth in the Agreement, as amended by this Section 9.0 of this Participating Addendum.
4. Orders shall not automatically renew.
5. The State of New Jersey's obligation to make payment under the Agreement is contingent upon the availability of appropriated funds and receipt of revenues from which payment for contract purposes can be made. No legal liability on the part of the State of New Jersey for payment of any money shall arise unless and until funds are appropriated each fiscal year to the using agency which is an Authorized Purchaser by the New Jersey State Legislature and made available through receipt of revenues. Notwithstanding the foregoing, the parties agree that performance under this Agreement is contingent upon the appropriation of funds. Therefore, the Authorized Purchaser's issuance of an Order under the Participating Addendum shall signify to Contractor that all funds for such Order have been appropriated at the time of the purchase order.
6. [Reserved]
7. Payments shall be made to the Contractor or Fulfillment Partners pursuant to the provisions of the New Jersey Prompt Payment Act, N.J.S.A. 52:32-32 et seq. The Act requires State Agencies to pay for goods and services within sixty (60) days of the State Agency's receipt of a properly executed State Payment Voucher. Interest will be paid on delinquent accounts at a rate established by the New Jersey State Treasurer (the "State Treasurer"). Interest will not be paid until it exceeds \$5.00 per properly executed invoice.
8. Cash discounts and other payment terms included as part of the Agreement are not affected by the New Jersey Prompt Payment Act.
9. Contractor and Fulfillment Partners are encouraged to offer cash discounts based on expedited payment by the State. The State will make efforts to take advantage of discounts, but discounts will not be considered in determining the lowest quote.

Discount periods shall be calculated starting from the next business day after the recipient has accepted the goods or services received a properly signed and executed State Payment Voucher form and, when required, a properly executed performance security, whichever is latest.

Contractor does not offer cash discounts based on expedited payment.

10. The date on the check issued by the State in payment of that Voucher shall be deemed the date of the State's response to that Voucher.

## **10.0 Additions to the State of New Jersey Compliance Terms and Conditions**

### ***1. Compliance With State Laws-***

It is agreed and understood that any contracts and/or Orders placed under this Participating Addendum and any claims and any and all litigation arising there from or related thereto shall be governed and construed and the rights and obligations of the parties hereto and of the Authorized Purchasers shall be determined in accordance with the laws of the State of New Jersey, including without limitation, by the New Jersey Tort Claims Act, N.J.S.A. 59:1-1, et seq., the New Jersey Contractual Liability Act, N.J.S.A., 59:13-1, et seq., and governed by the applicable laws, regulations and rules of evidence of the State of New Jersey without reference to conflict of laws principles, and any and all litigation arising therefrom or related thereto shall be filed in the appropriate Division of the New Jersey Superior Court. Notwithstanding the preceding sentence, the parties agree that venue and jurisdiction for any action involving prospective injunctive relief may be brought in any federal or state court located in New Jersey. For the avoidance of doubt, no actions for monetary damages may be brought in a federal court.

### ***2. Open Public Records Act-***

All documents and information submitted by Contractor to the State under this Participating Addendum are considered public information, notwithstanding any disclaimers to the contrary submitted by a Contractor, except as may be exempted from public disclosure by the New Jersey Open Public Records Act, N.J.S.A. 47:1A-1 et seq., and the common law.

### ***3. Maintenance of Records-***

The Contractor shall maintain records for Services directly related to sales Orders and corresponding invoices, including product specifications at time of shipping, issued in accordance with this Participating Addendum for a period of five (5) years from the date of final payment. Such records shall be made available to the State, including the State of New Jersey, Office of the State Comptroller, for audit and review.

### ***4. Organ and Tissue Donation –***

As required by N.J.S.A. 52:32-33.1, the State encourages Contractors to disseminate information relative to organ donation and to notify its employees, through information and materials or through an organ and tissue awareness program, of organ donation options. The information provided to employees should be prepared in collaboration with the organ procurement organizations designated pursuant to 42 U.S.C. §1320b-8 to serve in this State.

### ***5. Tax Exemption-***

The State of New Jersey is exempt from State sales or use taxes and Federal excise taxes. Therefore, price quotations must not include such taxes. The State's Federal Excise Tax Exemption number is 22-75-0050K.

## **11.0 RESERVED**

## **12.0 Miscellaneous**

### ***1. Mergers, Acquisitions and Dissolutions-***

#### ***Merger or Acquisition:***

If, during the term of this Participating Addendum, the Contractor shall merge with or be acquired by another firm, the Contractor shall give notice to the Director as soon as practicable and in no event longer than thirty (30) days after said merger or acquisition. Any such merger or acquisition will require the assignment of the Agreement, as amended by this Participating Addendum, pursuant to the provisions related thereto set forth therein. The Contractor shall provide such documents as may be requested by the Director, which may include but need not be limited to the following: corporate resolutions prepared by the Contractor and new entity ratifying acceptance of the original contract, terms, conditions and prices; updated information including ownership disclosure and Federal Employer Identification Number. The documents shall be

submitted within thirty (30) days of the request. Failure to do so may result in termination of this Participating Addendum for cause.

***Dissolution:***

If, during the term of this Participating Addendum, the Contractor's partnership, joint venture or corporation shall dissolve, the Director must be so notified. All responsible parties of the dissolved business entity must submit to the Director, in writing, the names of the parties proposed to perform under this Participating Addendum and the names of the parties to whom payment should be made. No payment will be made until all parties to the dissolved business entity submit the required documents to the Director.

**2. *Announcements and/or Advertisements-***

All publicity and/or public announcements pertaining to this Participating Addendum shall be approved in writing by each party prior to release.

Contractor must obtain prior written (email) approval, no less than seven (7) business days before release for any and all advertisements pertaining to this Participating Addendum during its effective term.

**3. *Contractor and/or Fulfillment Partner Audit-***

The State and Authorized Purchasers reserve the right to audit the Contractor and/or Fulfillment Partner's compliance with the Agreement. Such audit shall be in accordance with Section 26, Records Administration and Audit, in the Master Agreement. The State or Authorized Purchaser shall provide Contractor and/or Fulfillment Partner thirty (30) days written notice of intent to audit and such audit such be conducted during normal business hours.

**4. *Reserved***

**5. *Audit of Authorized Purchaser use of Intellectual Property-***

1. Notwithstanding anything to the contrary in the Agreement, in the event that the Contractor seeks to exercise a right in the Agreement to audit the State's use of Contractor's intellectual property, the Contractor shall deliver simultaneous written notice, no less than thirty (30) days in advance of the audit start date (unless the Contractor's notice provides a longer notice period), to:
  - a. the Director of the New Jersey Department of Treasury, Division of Purchase and Property:  
Procurement Bureau, Technology Unit  
P.O. Box 230  
Trenton, NJ 08625-0230
  - b. the Chief Data Officer of the New Jersey Office of Information Technology:  
Office of the Chief Technology Officer  
300 Riverview Plaza  
Trenton, NJ 08625
  - c. and the State Contract Manager for this contract.
2. The notice shall reference the specific audit provision(s) in the Agreement being exercised and include copies of same, specify the means by which the Contractor will conduct the audit, and shall require the audit to be conducted in accordance with generally accepted standards in the field of such audits.
3. To the extent the Agreement permits Contractor to conduct periodic audits of the State's usage of the Products and/or Services provided thereunder, such provision is amended to include the following dispute resolution process:

If the State, in good faith, provides Contractor with written notice of an alleged error in the amount of underpaid fees due Contractor as a result of an audit (the "dispute"), then the parties will endeavor to resolve the dispute in accordance with this paragraph. Each party will appoint a Vice President, Assistant Director, or the equivalent (hereinafter referred to as "Representative") to discuss the dispute and no formal proceedings for the judicial resolution of such dispute, except for the seeking of equitable relief or those required to avoid non-compliance with the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq., may begin until either such Representative concludes, after a good faith effort to resolve the dispute, that resolution through continued discussion is unlikely. In addition, the parties shall refrain from exercising any termination right related to the dispute being considered under this paragraph and shall continue to perform their respective obligations under the Agreement, while they endeavor to resolve the dispute under this paragraph.

4. Notwithstanding anything to the contrary in the Agreement, the State will not pay or reimburse Contractor for costs or expenses associated with the performance of an audit.
5. In the event that the Agreement does not permit audits of the State's usage of the Contractor's Intellectual Property this provision shall not be interpreted to provide such an audit right.

#### **6. *Dispute Resolution*–**

The State and Contractor will attempt to resolve any dispute through face-to-face negotiation with persons fully authorized to resolve the dispute or through non-binding mediation utilizing a mediator agreed to by the parties, rather than through litigation. No formal proceedings for the judicial resolution of such dispute, except for the seeking of equitable relief or those required to avoid non-compliance with the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq., may begin until either such persons conclude, after a good faith effort to resolve the dispute, that resolution through continued discussion is unlikely.

The State and Contractor will attempt to resolve any dispute through face-to-face negotiation with persons fully authorized to resolve the dispute or through non-binding mediation utilizing a mediator agreed to by the parties, rather than through litigation. No formal proceedings for the judicial resolution of such dispute, except for the seeking of equitable relief or those required to avoid non-compliance with the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq., may begin until either such persons conclude, after a good faith effort to resolve the dispute, that resolution through continued discussion is unlikely.

#### **7. *Arbitration or Mediation*–**

Any provision regarding arbitration or binding mediation within the Agreement is deleted in its entirety.

#### **13.0 Waiver**

No term or provision of this Participating Addendum shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by an individual authorized to so waive or consent. Any consent by either party to, or waiver of, a breach by the other, whether expressed or implied, shall not constitute a consent to, waiver of, or excuse for, any other breach or any subsequent breach, except as may be expressly provided in the waiver or consent.

#### **14.0 The State of New Jersey Mandatory Certification Requirements**

The following are New Jersey procurement requirements that Contractor agrees to fulfill prior to the Effective Date. Some Authorized Purchasers may have additional requirements when placing an Order and Contractor shall consider such requirements and will advise the Authorized Purchaser if unable to comply. Contractor shall not unreasonably refuse to comply with the additional requirements of the Authorized Purchaser.

1. New Jersey Business Registration (N.J.S.A. 52:32-44);
2. Ownership Disclosure (N.J.S.A. 52:25-24.2);
3. Disclosure of Investment Activities in Iran (N.J.S.A. 52:32-55 et seq.)
4. Executed MacBride Principles (N.J.S.A. 52:34-12.2);
5. Completed Contractor Certification and Disclosure of Political Contributions (N.J.S.A. 19:44A-20:13 et. seq.);
6. Disclosure of Investigations and Actions Involving Bidder
7. Vendor Certification (P.L. 2005, c.271);
8. Proof of insurance as specified herein;
9. Proof of compliance with New Jersey Affirmative Action requirements (N.J.A.C. 17:27-1.1 et. seq.):
  - a. New Jersey Form AA-302 Affirmative Action Employee Information Report; or
  - b. New Jersey Affirmative Action Certificate; or
  - c. Federal Affirmative Action Approval Letter.

### **15.0 Primary Contacts**

The Division of Purchase and Property contact for this Participating Addendum is as follows:

|                            |                                                                                             |
|----------------------------|---------------------------------------------------------------------------------------------|
| Name:                      | Angelica Morales                                                                            |
| Title:                     | Procurement Specialist                                                                      |
| Participating Entity Name: | Division of Purchase and Property,<br>Department of the Treasury<br>State of New Jersey     |
| Address:                   | 33 West State Street, 8 <sup>th</sup> Floor<br>PO Box 230<br>Trenton, New Jersey 08625-0230 |
| Telephone:                 | (609) 292-6839                                                                              |
| E-mail:                    | Angelica.Morales@treas.nj.gov                                                               |

The State Contract Manager for this Participating Addendum is as follows:

|                            |                                                          |
|----------------------------|----------------------------------------------------------|
| Name:                      | Lynne Gash                                               |
| Title:                     | State Contract Manager                                   |
| Participating Entity Name: | Office of Information Technology,<br>State of New Jersey |
| Address:                   | 300 Riverview Plaza<br>Trenton, New Jersey 08625         |
| Telephone:                 | (609) 376-0888                                           |
| E-mail:                    | Lynne.Gash@tech.nj.gov                                   |

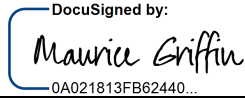
The primary Contractor contact for this Participating Addendum is as follows:

|             |                                                                      |
|-------------|----------------------------------------------------------------------|
| Name:       | Dari Desilva                                                         |
| Title:      | NASPO Program Manager                                                |
| Contractor: | Kyndryl, Inc.                                                        |
| Address:    | Once Vanderbilt Avenue, 15 <sup>th</sup> Floor<br>New York, NY 10017 |
| Telephone:  | 720-233-4280                                                         |
| E-mail:     | dari.desilva@kyndryl.com                                             |

The parties hereto agree that this Participating Addendum may be executed in counterpart, each original signed page to become part of the original document.

**IN WITNESS WHEREOF**, authorized representatives of Contractor and the State have executed this Participating Addendum to be effective on the Effective Date.

**State of New Jersey  
Department of the Treasury  
Division of Purchase and Property**

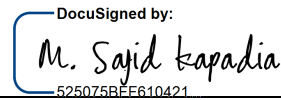
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Maurice A. Griffin, Acting Director

11/3/2021

\_\_\_\_\_  
Date

**Kyndryl, Inc.**

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\_\_\_\_\_  
M. Sajid Kapadia, Client Partner Executive

10/19/2021

\_\_\_\_\_  
Date

**EXHIBIT A**

**STATE OF NEW JERSEY PARTICIPATING ADDENDUM STANDARD TERMS AND CONDITIONS**

**State of New Jersey Participating Addendum Standard Terms and Conditions**

(Rev: 4/30/2021)

**1. RESERVED****2. STATE LAW REQUIRING MANDATORY COMPLIANCE BY ALL CONTRACTORS**

The statutes, laws or codes cited herein are available for review at the New Jersey State Library, 185 West State Street, Trenton, New Jersey 08625. The Contractor will comply with all laws to the extent that such laws, by their terms, are applicable to Contractor's provision of Services under this Participating Addendum and impose obligations directly upon Contractor in its role as an information technology services provider with respect to the Services. The Authorized Purchaser may not provide Contractor access to any health, payment card or other sensitive personal information that requires the application of specific regulatory, legal or industry data security obligations unless the applicable obligations are specified in the applicable Order.

Note that Purchasing Entity Content and Purchasing Entity Applications may be maintained in one of Contractor's Data Center Regions. The location of such Purchasing Entity Content and Purchasing Entity Applications may be indicated on an Ordering Document. Pursuant to the Master Agreement, Purchasing Entity must select a location within the U.S. for its Data Center Region.

**2.1 BUSINESS REGISTRATION**

Pursuant to N.J.S.A. 52:32-44, the State is prohibited from entering into a contract with an entity unless the bidder and each subcontractor named in the proposal have a valid Business Registration Certificate on file with the Division of Revenue and Enterprise Services. A subcontractor named in a bid or other proposal shall provide a copy of its business registration to the bidder who shall provide it to the State.

The Contractor and any subcontractor providing goods or performing services under the contract, and each of their affiliates, shall, during the term of the contract, collect and remit to the Director of the Division of Taxation in the Department of the Treasury, the Use Tax due pursuant to the "Sales and Use Tax Act, P.L. 1966, c. 30 (N.J.S.A. 54:32B-1 et seq.) on all sales of tangible personal property delivered into the State. Any questions in this regard can be directed to the Division of Revenue at (609) 292-1730. Form NJ-REG can be filed online at <http://www.state.nj.us/treasury/revenue/busregcert.shtml>.

**2.2 ANTI-DISCRIMINATION**

All parties to any contract with the State agree not to discriminate in employment and agree to abide by all anti-discrimination laws including those contained within N.J.S.A. 10:2-1 through N.J.S.A. 10:2-4, N.J.S.A. 10:5-1 et seq. and N.J.S.A. 10:5-31 through 10:5-38, and all rules and regulations issued thereunder are hereby incorporated by reference. The agreement to abide by the provisions of N.J.S.A. 10:5-31 through 10:5-38 include those provisions indicated for Goods, Professional Service and General Service Contracts (Exhibit A, attached) as appropriate.

The Contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time.

**2.3 PREVAILING WAGE ACT**

The New Jersey Prevailing Wage Act, N.J.S.A. 34: 11-56.25 et seq. is hereby made part of every contract entered into on behalf of the State of New Jersey through the Division of Purchase and Property, except those contracts which are not within the contemplation of the Act. The Contractor's signature on this Participating Addendum is its guarantee that neither it nor any subcontractors it might employ to perform the work covered by this Participating Addendum has been suspended or debarred by the Commissioner, Department of Labor and Workforce Development for violation of the provisions of the Prevailing Wage Act and/or the Public Works Contractor Registration Acts; the Contractor's signature on this Participating Addendum is also its guarantee that it and any subcontractors it might employ to perform the work covered by this Participating Addendum shall comply with the provisions of the Prevailing Wage and Public Works Contractor Registration Acts, where required.

**2.4 AMERICANS WITH DISABILITIES ACT**

The Contractor must comply with all provisions of the Americans with Disabilities Act (ADA), P.L. 101-336, in accordance with 42 U.S.C. 12101, et seq.

**2.5 MACBRIDE PRINCIPLES**

Contractor must certify pursuant to N.J.S.A. 52:34-12.2 that it either has no ongoing business activities in Northern Ireland and does not maintain a physical presence therein or that it will take lawful steps in good faith to conduct any business operations it has in Northern Ireland in accordance with the MacBride principles of nondiscrimination in employment as set forth in N.J.S.A. 52:18A-89.5 and in conformance with the United Kingdom's Fair Employment (Northern Ireland) Act of 1989, and permit independent monitoring of their compliance with those principles.

**2.6 PAY TO PLAY PROHIBITIONS**

Pursuant to N.J.S.A. 19:44A-20.13 et seq. (P.L. 2005, c. 51), and specifically, N.J.S.A. 19:44A-20.21, it shall be a breach of the terms of the contract for Contractor to:

- A. Make or solicit a contribution in violation of the statute;
- B. Knowingly conceal or misrepresent a contribution given or received;
- C. Make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution;
- D. Make or solicit any contribution on the condition or with the agreement that it will be contributed to a campaign committee or any candidate of holder of the public office of Governor or Lieutenant Governor, or to any State or county party committee;
- E. Engage or employ a lobbyist or consultant with the intent or understanding that such lobbyist or consultant would make or solicit any contribution, which if made or solicited by the business entity itself, would subject that entity to the restrictions of the Legislation;
- F. Fund contributions made by third parties, including consultants, attorneys, family members, and employees;
- G. Engage in any exchange of contributions to circumvent the intent of the Legislation; or
- H. Directly or indirectly through or by any other person or means, do any act which would subject that entity to the restrictions of the Legislation.

## **2.7 POLITICAL CONTRIBUTION DISCLOSURE**

Contractor is advised of its responsibility to file an annual disclosure statement on political contributions with the New Jersey Election Law Enforcement Commission (ELEC), pursuant to N.J.S.A. 19:44A-20.27 (P.L. 2005, c. 271, §3 as amended) if in a calendar year the Contractor receives one (1) or more contracts valued at \$50,000.00 or more. It is the Contractor's responsibility to determine if filing is necessary. Failure to file can result in the imposition of penalties by ELEC. Additional information about this requirement is available from ELEC by calling 1(888)313-3532 or on the internet at <http://www.elec.state.nj.us/>.

## **2.8 STANDARDS PROHIBITING CONFLICTS OF INTEREST**

The following prohibitions on Contractor activities shall apply to all contracts or purchase agreements made with the State of New Jersey, pursuant to Executive Order No. 189 (1988).

As used below, "vendor" means any person, firm, corporation, or other entity which provides or offers or proposes to provide goods or services to or perform any contract for any State agency. As used below, "State agency" means any of the principal departments in the Executive Branch of the State Government, and any division, board, bureau, office, commission or other instrumentality within or created by such department, the Legislature of the State and any office, board, bureau or commission within or created by the Legislative Branch, and, to the extent consistent with law, any interstate agency to which New Jersey is a party and any independent State authority, commission, instrumentality or agency. A county or municipality shall not be deemed an agency or instrumentality of the State.

No vendor shall pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any State officer or employee or special State officer or employee, as defined by N.J.S.A. 52:13D-13b. and e., in the Department of the Treasury or any other agency with which such vendor transacts or offers or proposes to transact business, or to any member of the immediate family, as defined by N.J.S.A. 52:13D-13i., of any such officer or employee, or partnership, firm or corporation with which they are employed or associated, or in which such officer or employee has an interest within the meaning of N.J.S.A. 52:13D-13g;

The solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any State officer or employee or special State officer or employee from any State vendor shall be reported in writing forthwith by the vendor to the New Jersey Office of the Attorney General and the Executive Commission on Ethical Standards, now known as the State Ethics Commission;

No vendor may, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such vendor to, any State officer or employee or special State officer or employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to any State agency or any instrumentality thereof, or with any person, firm or entity with which he/she is employed or associated or in which he/she has an interest within the meaning of N.J.S.A. 52:13D-13g. Any relationships subject to this provision shall be reported in writing forthwith to the Executive Commission on Ethical Standards, now known as the State Ethics Commission, which may grant a waiver of this restriction upon application of the State officer or employee or special State officer or employee upon a finding that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest;

No vendor shall influence, or attempt to influence or cause to be influenced, any State officer or employee or special State officer or employee in his/her official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee;

No vendor shall cause or influence, or attempt to cause or influence, any State officer or employee or special State officer or employee to use, or attempt to use, his/her official position to secure unwarranted privileges or advantages for the vendor or any other person; and

The provisions cited above shall not be construed to prohibit a State officer or employee or Special State officer or employee from receiving gifts from or contracting with vendors under the same terms and conditions as are offered or

made available to members of the general public subject to any guidelines the Executive Commission on Ethical Standards, now known as the State Ethics Commission may promulgate under paragraph 3c of Executive Order No. 189.

## **2.9 NOTICE TO ALL CONTRACTORS SET-OFF FOR STATE TAX NOTICE**

Pursuant to N.J.S.A. 54:49-19, effective January 1, 1996, and notwithstanding any provision of the law to the contrary, whenever any taxpayer, partnership or S corporation under contract to provide goods or services or construction projects to the State of New Jersey or its agencies or instrumentalities, including the legislative and judicial branches of State government, is entitled to payment for those goods or services at the same time a taxpayer, partner or shareholder of that entity is indebted for any State tax, the Director of the Division of Taxation shall seek to set off that taxpayer's or shareholder's share of the payment due the taxpayer, partnership, or S corporation. The amount set off shall not allow for the deduction of any expenses or other deductions which might be attributable to the taxpayer, partner or shareholder subject to set-off under this act.

The Director of the Division of Taxation shall give notice to the set-off to the taxpayer and provide an opportunity for a hearing within 30 days of such notice under the procedures for protests established under R.S. 54:49-18. No requests for conference, protest, or subsequent appeal to the Tax Court from any protest under this section shall stay the collection of the indebtedness. Interest that may be payable by the State, pursuant to P.L. 1987, c.184 (c.52:32-32 et seq.), to the taxpayer shall be stayed.

## **2.10 COMPLIANCE - LAWS**

The Contractor must comply with all local, State and Federal laws, rules and regulations applicable to this contract and to the goods delivered and/or services performed hereunder.

## **2.11 COMPLIANCE - STATE LAWS**

It is agreed and understood that any contracts and/or orders placed as a result of [this proposal] shall be governed and construed and the rights and obligations of the parties hereto and of the Authorized Purchasers shall be determined in accordance with the laws of the State of New Jersey, including without limitation, by the New Jersey Tort Claims Act, N.J.S.A. 59:1-1, et seq., the New Jersey Contractual Liability Act, N.J.S.A., 59:13-1, et seq., without reference to conflict of laws principles, and any and all litigation arising therefrom or related thereto shall be filed in the appropriate Division of the New Jersey Superior Court. Notwithstanding the preceding sentence, the Parties agree that venue and jurisdiction for any action involving prospective injunctive relief may be brought in any federal or state court located in New Jersey. For the avoidance of doubt, no actions for monetary damages may be brought in a federal court.

## **2.12 WARRANTY OF NO SOLICITATION ON COMMISSION OR CONTINGENT FEE BASIS**

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. If a breach or violation of this section occurs, the State shall have the right to terminate the contract without liability or in its discretion to deduct from the contract price or consideration the full amount of such commission, percentage, brokerage or contingent fee.

## **2.13 OWNERSHIP DISCLOSURE**

Pursuant to N.J.S.A. 52:25-24.2, in the event the bidder is a corporation, partnership or limited liability company, the bidder must complete an Ownership Disclosure Form.

A current completed Ownership Disclosure Form must be received prior to execution of the Participating Addendum. In the alternative, to comply with this section, a bidder with any direct or indirect parent entity which is publicly traded may submit the name and address of each publicly traded entity and the name and address of each person that holds a 10 percent or greater beneficial interest in the publicly traded entity as of the last annual filing with the federal Securities and Exchange Commission or the foreign equivalent, and, if there is any person that holds a 10 percent or greater beneficial interest, also shall submit links to the websites containing the last annual filings with the federal Securities and Exchange Commission or the foreign equivalent and the relevant page numbers of the filings that contain the information on each person that holds a 10 percent or greater beneficial interest. N.J.S.A. 52:25-24.2.

## **2.14 PROHIBITED INVESTMENT IN IRAN**

Pursuant to N.J.S.A. 52:32-55, the Contractor must utilize the Disclosure of Investment Activities in Iran form to certify that neither the Contractor, nor one of its parents, subsidiaries, and/or affiliates (as defined in N.J.S.A. 52:32-56(e)(3)), is listed on the Department of the Treasury's List of Persons or Entities Engaging in Prohibited Investment Activities in Iran and that neither the Contractor, nor one of its parents, subsidiaries, and/or affiliates, is involved in any of the investment activities set forth in N.J.S.A. 52:32-56(f). If the Contractor is unable to so certify, the Contractor shall provide a detailed and precise description of such activities as directed on the form.

## **2.15 RESERVED**

## **2.16 STATE'S RIGHT TO REQUEST FURTHER INFORMATION**

The Director reserves the right to request relevant information from the Contractor which may assist him or her in making a contract award, including factors necessary to evaluate the Contractor's financial capabilities to perform the contract. Further, the Director reserves the right to request a Contractor to explain to the Director's reasonable satisfaction, how the bid price was determined.

**2.17 DELIVERY TIME AND COSTS**

Unless otherwise noted in the Participating Addendum, all delivery times are 30 calendar days after receipt of order (AR) and prices for items in proposals shall be submitted Freight On Board (F.O.B.) Destination (30 calendar days AFO/F.O.B.). The Contractor shall assume all costs, liability and responsibility for the delivery of merchandise in good condition to the State's Authorized Purchaser. Thirty calendar days ARO/F.O.B. does not cover "spotting" but does include delivery on the receiving platform of the Authorized Purchaser at any destination in the State of New Jersey unless otherwise specified.

No additional charges will be allowed for any additional transportation costs resulting from partial shipments made at the Contractor's convenience when a single shipment is ordered.

The weights and measures of the Authorized Purchaser receiving the shipment shall govern.

**2.18 COLLECT ON DELIVERY (C.O.D.) TERMS**

C.O.D. terms will not be accepted.

**2.19 CASH DISCOUNTS**

The Contractor is encouraged to offer cash discounts based on expedited payment by the State or Authorized Purchaser. The State or Authorized Purchaser will make efforts to take advantage of cash discounts.

Should the Contractor choose to offer cash discounts the following shall apply:

- A. Discount period shall be calculated starting from the next business day after the State or Authorized Purchaser has accepted the goods or services, received a properly signed and executed invoice and, when required, a properly executed performance security, whichever is latest; and
- B. The date on the check issued by the State or Authorized Purchaser in payment of that invoice shall be deemed the date of the State or Authorized Purchaser's response to that invoice.
- C.

**2.20 CLAIMS AND REMEDIES**

- A. All claims asserted against the State by the Contractor shall be subject to the New Jersey Tort Claims Act, N.J.S.A. 59:1-1, et seq., and/or the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1, et seq.
- B. Nothing in this Participating Addendum shall be construed to be a waiver by the State of any warranty, expressed or implied, of any remedy at law or equity, except as specifically and expressly stated in a writing executed by the Director.
- C. In the event that the contractor fails to comply with any material contract requirements, the Director may take steps to terminate this Participating Addendum in accordance with the provisions of this Participating Addendum, after providing Contractor with written notice of default and a period of time to cure such default as the parties agree at the time the Director issues the notice of default. If Contractor does not cure such default with the cure period, the Director may terminate the Agreement, authorize the delivery of contract items by any available means, with the difference between the price paid and the defaulting Contractor's price either being deducted from any monies due the defaulting Contractor or being an obligation owed the State by the defaulting Contractor, as provided for in the State administrative code, or take any other action or seek any other remedies available at law or in equity.

**2.21 NEWS RELEASES & ADVERTISING**

- A. Contractor is not permitted to issue news releases pertaining to any aspect of the products and services being provided under this Participating Addendum without the prior written consent of the Director.
- B. Contractor shall not use the State's name, logos, images, or any data or results arising from this contract as a part of any commercial advertising without first obtaining the prior written consent of the Director.

**2.22 ORGAN DONATION**

As required by N.J.S.A. 52:32-33.1, the State encourages Contractor to disseminate and notify its employees, through information and materials or through an organ and tissue awareness program, of organ donation options. The information provided to employees should be prepared in collaboration with the organ procurement organizations designated pursuant to 42 U.S.C. 1320b-8 to serve in this State.

**2.23 OPEN PUBLIC RECORDS ACT**

All documents and information submitted by Contractor to the State under this contract are considered public information, notwithstanding any disclaimers to the contrary submitted by the Contractor, except as may be exempted from public disclosure by the New Jersey Open Public Records Act, N.J.S.A. 47:1A-1 et seq., and the common law.

**2.24 COMPLIANCE WITH ACCESSIBILITY STANDARDS** – The Contractor acknowledges that the State is required to comply with the accessibility standards of Section 508 of the Rehabilitation Act of 1973, 29 U.S.C. §794. The extent to which a Contractor product is, prior to any customizations, capable of providing comparable access to individuals with disabilities, consistent with the applicable provisions of Section 508, is indicated by the dependencies, comments and exceptions (some of which may be significant, if any) noted on the applicable Voluntary Product Accessibility Templates (VPAT), which shall be provided up request, for each product, when such products are used in accordance with Contractor's associated documents and other written information, and provided that any assistive technologies and any other products used with them properly interoperate with the product. For purposes of the preceding sentence, Section

508 means Architectural and Transportation Barriers Compliance Board standards set out in 36 CFR Part 1194 (known as 'Section 508'), effective as of June, 2001, or the Revised version in Appendix A (known as 'Revised Section 508') effective as of January, 2018, and the Web Content Accessibility Guidelines rMCAG) version 2.0 level AA.

The Contractor agrees that any information that it provides to the State or to an Authorized Purchaser in the form of a VPAT about the accessibility of its Services is accurate to a commercially reasonable standard and the Contractor agrees to provide the State or Authorized Purchaser with the Service Specifications in the event that the State or an Authorized Purchaser relied on any of Contractor's VPAT information to comply with the accessibility standards of Section 508 of the Rehabilitation Act, 29 U.S.C. §794.

### **3. STATE LAW REQUIRING MANDATORY COMPLIANCE BY CONTRACTORS UNDER CIRCUMSTANCES SET FORTH IN LAW OR BASED ON THE TYPE OF CONTRACT**

#### **3.1 COMPLIANCE - CODES**

The Contractor must comply with NJUCC and the latest NEC70, B.O.C.A. Basic Building code, OSHA and all applicable codes for this requirement. The Contractor shall be responsible for securing and paying all necessary permits, where applicable.

#### **3.2 PUBLIC WORKS CONTRACTOR REGISTRATION ACT**

The New Jersey Public Works Contractor Registration Act requires all contractors, subcontractors and lower tier subcontractor(s) who engage in any contract for public work as defined in N.J.S.A. 34:11-56.26 be first registered with the New Jersey Department of Labor and Workforce Development pursuant to N.J.S.A. 34:11-56.51. Any questions regarding the registration process should be directed to the Division of Wage and Hour Compliance at (609) 292-9464.

3.3 Reserved

#### **3.5 THE WORKER AND COMMUNITY RIGHT TO KNOW ACT**

The provisions of N.J.S.A. 34:5A-1 et seq. which require the labeling of all containers of hazardous substances are applicable to this contract. Therefore, all goods offered for purchase to the State must be labeled by the Contractor in compliance with the provisions of the statute.

#### **3.6 SERVICE PERFORMANCE WITHIN U.S.**

Under N.J.S.A. 52:34-13.2, all contracts primarily for services awarded by the Director shall be performed within the United States, except when the Director certifies in writing a finding that a required service cannot be provided by a contractor or subcontractor within the United States and the certification is approved by the State Treasurer.

A shift to performance of services outside the United States during the term of the contract shall be deemed a breach of contract. If, during the term of the contract, the Contractor or subcontractor, proceeds to shift the performance of any of the services outside the United States, the Contractor shall be deemed to be in breach of its contract, which contract shall be subject to termination for cause pursuant to Section 5.7(b)(1) of the Standard Terms and Conditions, unless previously approved by the Director and the Treasurer.

#### **3.7 BUY AMERICAN**

Pursuant to N.J.S.A. 52:32-1, if manufactured items or farm products will be provided under this contract to be used in a public work, they shall be manufactured or produced in the United States and the Contractor shall be required to so certify.

#### **3.8 DOMESTIC MATERIALS**

Pursuant to N.J.S.A. 52:33-2 et seq., if the contract is for the construction, alteration or repair of any public work, the contractor and all subcontractors shall use only domestic materials in the performance of the work unless otherwise noted in the specifications.

#### **3.9 DIANE B. ALLEN EQUAL PAY ACT**

Pursuant to N.J.S.A. 34:11-56.14 and N.J.A.C. 12:10-1.1 et seq., a contractor performing "qualifying services" or "public work" to the State or any agency or instrumentality of the State shall provide the Commissioner of Labor and Workforce Development a report regarding the compensation and hours worked by employees categorized by gender, race, ethnicity, and job category. For more information and report templates see <https://nj.gov/labor/equalpay/equalpay.html>.

#### **3.10 EMPLOYEE MISCLASSIFICATION**

In accordance with [Governor Murphy's Executive Order #25](#) and the [Task Force's July 2019 Report](#), employers are required to properly classify their employees. Workers are presumed to be employees and not independent contractors, unless the employer can demonstrate all three factors of the "ABC Test" below:

- A. Such individual has been and will continue to be free from control or direction of the performance of such service, but under his or her contract of service and in fact; and
- B. Such service is either outside the usual course of business for which such service is performed, or that such service is performed outside of all places of business of the enterprise for which such service is performed; and
- C. Such individual is customarily engaged in an independently established trade, occupation, profession or business.

This test has been adopted by New Jersey under its Wage & Hour, Wage Payment and Unemployment Insurance Laws to determine whether a worker is properly classified. Under N.J.S.A. 34:1A-1.17-1.19, the Department of Labor and Workforce Development has the authority to investigate potential violations of these laws and issue penalties and stop work order to employers found to be in violation of the laws.

#### **4. RESERVED**

#### **5. TERMS GOVERNING ALL CONTRACTS**

##### **5.1 CONTRACTOR IS INDEPENDENT CONTRACTOR**

The Contractor's status shall be that of any independent contractor and not as an employee of the State.

##### **5.2 RESERVED**

##### **5.3 RESERVED**

##### **5.4 STATE'S OPTION TO REDUCE SCOPE OF WORK**

The State has the option, in its sole discretion, to reduce the scope of work for any deliverable, task or subtask called for under the Agreement. In such an event, the Director shall provide to the Contractor advance written notice of the change in scope of work and what the Director believes should be the corresponding adjusted contract price. Within five (5) business days of receipt of such written notice, if either is applicable:

- A. If the Contractor does not agree with the Director's proposed adjusted contract price, the Contractor shall submit to the Director any additional information that the Contractor believes impacts the adjusted contract price with a request that the Director reconsider the proposed adjusted contract price. The parties shall negotiate the adjusted contract price. If the parties are unable to agree on an adjusted contract price, the Director shall make a prompt decision taking all such information into account, and shall notify the Contractor of the final adjusted contract price; and
- B. If the Contractor has undertaken any work effort toward a deliverable, task or subtask that is being changed or eliminated such that it would not be compensated under the adjusted contract, the Contractor shall be compensated for such work effort according to the applicable portions of its price schedule and the Contractor shall submit to the Director an itemization of the work effort already completed by deliverable, task or subtask within the scope of work, and any additional information the Director may request. The Director shall make a prompt decision taking all such information into account, and shall notify the Contractor of the compensation to be paid for such work effort.

##### **5.5 CHANGE IN LAW**

If, after award, a change in applicable law or regulation occurs which affects the Agreement, the parties may amend the Agreement, including pricing, in order to provide equitable relief for the party disadvantaged by the change in law. The parties shall negotiate in good faith, however if agreement is not possible after reasonable efforts, the Director shall make a prompt decision as to an equitable adjustment, taking all relevant information into account, and shall notify the Contractor of the final adjusted contract price.

##### **5.6 SUSPENSION OF WORK**

The State may, for valid reason, issue a stop order directing the Contractor to suspend work under the Agreement for a specific time. The Contractor shall be paid for goods ordered, goods delivered, or services requested and performed until the effective date of the stop order. The Contractor shall resume work upon the date specified in the stop order, or upon such other date as the State Contract Manager may thereafter direct in writing. The period of suspension shall be deemed added to the Contractor's approved schedule of performance. The Director shall make an equitable adjustment, if any is required, to the contract price. The contractor shall provide whatever information that Director may require related to the equitable adjustment.

##### **5.7 RESERVED.**

##### **5.8 SUBCONTRACTING OR ASSIGNMENT**

- A. Subcontracting: The Contractor may not subcontract without the prior written consent of the Director. Such consent, if granted in part, shall not relieve the Contractor of any of his/her responsibilities under the Agreement, nor shall it create privity of contract between the State and any subcontractor. If the Contractor uses a subcontractor to fulfill any of its obligations, the Contractor shall be responsible for the subcontractor's: (a) performance; (b) compliance with all of the terms and conditions of the contract; and (c) compliance with the requirements of all applicable laws; and
- B. Assignment: The Contractor may not assign its responsibilities under the contract, in whole or in part, without the prior written consent of the Director.

##### **5.9 NO CONTRACTUAL RELATIONSHIP BETWEEN SUBCONTRACTORS AND STATE**

Nothing contained in any of the contract documents, including the RFP and vendor's bid or proposal shall be construed as creating any contractual relationship between any subcontractor and the State.

**5.10 RESERVED**

**5.11 RESERVED**

**5.12 DELIVERY REQUIREMENTS**

- A. Deliveries shall be made at such time and in such quantities as ordered in strict accordance with conditions contained in the Agreement;
- B. The Contractor shall be responsible for the delivery of material in first class condition to the State or Authorized Purchaser under the Agreement and in accordance with good commercial practice;
- C. Items delivered must be strictly in accordance with the Agreement; and
- D. In the event delivery of goods or services is not made within the number of days stipulated or under the schedule defined in the Agreement, the State or Authorized Purchaser shall be authorized to obtain the material or service from any available source, the difference in price, if any, to be paid by the Contractor.

**5.13 APPLICABLE LAW AND JURISDICTION**

Any claims under this Participating Addendum and any and all litigation arising there from or related thereto shall be brought in State court in the State of New Jersey and governed by the applicable laws, regulations and rules of evidence of the State of New Jersey without reference to conflict of laws principles. The State of New Jersey's obligations under this Participating Addendum are subject to the New Jersey Tort Claims Act (N.J.S.A. 59:1-1 et seq.), the New Jersey Contractual Liability Act (N.J.S.A. 59:13-1 et seq.) and the availability of funds.

**5.14 CONTRACT AMENDMENT**

Except as provided herein, the contract may only be amended by written agreement of the State and the Contractor.

**5.15 MAINTENANCE OF RECORDS**

In accordance with N.J.A.C. 17:44-2.2, the Contractor shall maintain all documentation related to products, transactions or services under this contract for a period of five years from the date of final payment. Such records shall be made available to the New Jersey Office of the State Comptroller upon request.

**6. RESERVED**

**7. TERMS RELATING TO ALL CONTRACTS FUNDED, IN WHOLE OR IN PART, BY FEDERAL FUNDS**

The provisions set forth in this Section of the Standard Terms and Conditions apply to all contracts funded, in whole or in part, by Federal funds as required by 2 CFR 200.317.

**7.1 CONTRACTING WITH SMALL AND MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS**

Pursuant to 2 CFR 200.321, the State must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Accordingly, if subawards are to be made the Contractor shall:

- (1) Include qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and,
- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

**7.2 DOMESTIC PREFERENCE FOR PROCUREMENTS**

Pursuant to 2 CFR 200.322, where appropriate, the State has a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). If subawards are to be made the Contractor shall include a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). For purposes of this section:

- (1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- (2) "Manufactured products" means items and construction materials composed in whole or in part of nonferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

**7.3 PROCUREMENT OF RECOVERED MATERIALS**

Where applicable, in the performance of contract, pursuant to 2 CFR 200.323, the contractor must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at

40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$ 10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$ 10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

To the extent that the scope of work or specifications in the contract requires the contractor to provide recovered materials the scope of work or specifications are modified to require that as follows.

- i. In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—
  1. Competitively within a timeframe providing for compliance with the contract performance schedule;
  2. Meeting contract performance requirements; or
  3. At a reasonable price.
- ii. Information about this requirement, along with the list of EPA- designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
- iii. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act."

#### **7.4 EQUAL EMPLOYMENT OPPORTUNITY**

Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor." See, 2 CFR Part 200, Appendix II, para. C.

During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:
 

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- (4) The contractor will send to each labor union or representative of workers with which he/she has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his/her books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

- (8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

#### **7.5 DAVIS-BACON ACT, 40 U.S.C. 3141-3148, AS AMENDED**

When required by Federal program legislation, all prime construction contracts in excess of \$ 2,000 shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable. Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. Additionally, contractors are required to pay wages not less than once a week.

#### **7.6 COPELAND ANTI KICK-BACK ACT**

Where applicable, the Contractor must comply with Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States").

- a. Contractor. The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into the OGS centralized contract.
- b. Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- c. Breach. A breach of the clauses above may be grounds for termination of the OGS centralized contract, and for debarment as a Contractor and subcontractor as provided in 29 C.F.R. § 5.12.

#### **7.7 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT, 40 U.S.C. 3701-3708**

Where applicable, all contracts awarded by the non-Federal entity in excess of \$ 100,000 that involve the employment of mechanics or laborers must comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5).

- (1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work

in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

- (3) Withholding for unpaid wages and liquidated damages. The unauthorized user shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.
- (4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

#### **7.8 RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT**

If the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

#### **7.9 CLEAN AIR ACT, 42 U.S.C. 7401-7671Q, AND THE FEDERAL WATER POLLUTION CONTROL ACT, 33 U.S.C. 1251-1387, AS AMENDED**

Where applicable, Contract and subgrants of amounts in excess of \$150,000, must comply with the following:

##### **Clean Air Act**

1. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
2. The contractor agrees to report each violation to the Division of Purchase and Property and understands and agrees that the Division of Purchase and Property will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

##### **Federal Water Pollution Control Act**

1. The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
2. The contractor agrees to report each violation to the Division of Purchase and Property and understands and agrees that the Division of Purchase and Property will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

#### **7.10 DEBARMENT AND SUSPENSION (EXECUTIVE ORDERS 12549 AND 12689)**

##### **Suspension and Debarment**

- (1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- (2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- (3) This certification is a material representation of fact relied upon by the State or authorized user. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State or authorized user, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- (4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

#### **7.11 BYRD ANTI-LOBBYING AMENDMENT, 31 U.S.C. 1352**

Contractors that apply or bid for an award exceeding \$ 100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in

connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

**7.12 PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT**

- (a) Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:
- (1) Procure or obtain;
  - (2) Extend or renew a contract to procure or obtain; or
  - (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in *Public Law 115–232*, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
    - (i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
    - (ii) Telecommunications or video surveillance services provided by such entities or using such equipment.
    - (iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

EXHIBIT A  
To State of New Jersey Participating Addendum Standard Terms and Conditions  
MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE  
N.J.S.A. 10:5-31 et seq. (P.L. 1975, c. 127)  
N.J.A.C. 17:27 et seq.  
GOODS, GENERAL SERVICE AND PROFESSIONAL SERVICES CONTRACTS

During the performance of this contract, the contractor agrees as follows:

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

The contractor or subcontractor will send to each labor union, with which it has a collective bargaining agreement, a notice, to be provided by the agency contracting officer, advising the labor union of the contractor's commitments under this chapter and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.

The contractor or subcontractor agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2.

The contractor or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, and labor unions, that it does not discriminate on the basis of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.

In conforming with the targeted employment goals, the contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

The contractor shall submit to the public agency, after notification of award but prior to execution of a goods and services contract, one of the following three documents:

Letter of Federal Affirmative Action Plan Approval;  
Certificate of Employee Information Report; or

Employee Information Report Form AA302 (electronically provided by the Division and distributed to the public agency through the Division's website at [http://www.state.nj.us/treasury/contract\\_compliance](http://www.state.nj.us/treasury/contract_compliance)).

The contractor and its subcontractors shall furnish such reports or other documents to the Division of Purchase and Property, CCAU, EEO Monitoring Program as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Division of Purchase and Property, CCAU, EEO Monitoring Program for conducting a compliance investigation pursuant to N.J.A.C. 17:27-1 et seq.

**EXHIBIT B**  
**KYNDRYL MASTER AGREEMENT**



Contract #: AR3710

## STATE OF UTAH COOPERATIVE CONTRACT

1. CONTRACTING PARTIES: This contract is between the Utah Division of Purchasing and the following Contractor:

Kyndryl, Inc.

Name

One Vanderbilt Avenue, 15<sup>th</sup> Floor

Street Address

New York

NY

10017

City

State

Zip

Vendor # VC249766 Commodity Code #: 920-05 Legal Status of Contractor: For-Profit Corporation

Contact Name: Dari Desilva Phone Number: 720-233-4280 Email: dari.desilva@kyndryl.com

2. CONTRACT PORTFOLIO NAME: Cloud Solutions.
3. GENERAL PURPOSE OF CONTRACT: Provide Cloud Solutions under the service models awarded in Attachment B.
4. PROCUREMENT: This contract is entered into as a result of the contract assignment from International Business Machines Corp (IBM) under master agreement # AR3107 that resulted from the procurement process on FY2018, Solicitation# SK18008
5. CONTRACT PERIOD: Effective Date: Wednesday, September 01, 2021. Termination Date: Tuesday, September 15, 2026 unless terminated early or extended in accordance with the terms and conditions of this contract.
6. Administrative Fee: Contractor shall pay to NASPO ValuePoint, or its assignee, a NASPO ValuePoint Administrative Fee of one-quarter of one percent (0.25% or 0.0025) of contract sales no later than 60 days following the end of each calendar quarter. The NASPO ValuePoint Administrative Fee shall be submitted quarterly and is based on sales of the Services.
7. ATTACHMENT A: NASPO ValuePoint Master Terms and Conditions, including the attached Exhibits  
 ATTACHMENT B: Scope of Services Awarded to Contractor  
 ATTACHMENT C: Pricing Discounts and Schedule  
 ATTACHMENT D: Assignment from IBM Contract # AR3107  
 ATTACHMENT E: Service Offering EULAs, SLAs
- Any conflicts between Attachment A and the other Attachments will be resolved in favor of Attachment A.**
9. DOCUMENTS INCORPORATED INTO THIS CONTRACT BY REFERENCE BUT NOT ATTACHED:
- All other governmental laws, regulations, or actions applicable to the goods and/or services authorized by this contract.
  - Utah Procurement Code, Procurement Rules, and Contractor's response to solicitation #SK18008.
10. Each signatory below represents that he or she has the requisite authority to enter into this contract.

IN WITNESS WHEREOF, the parties sign and cause this contract to be executed. Notwithstanding verbal or other representations by the parties, the "Effective Date" of this Contract shall be the date provided within Section 5 above.

CONTRACTOR

DIVISION OF PURCHASING

Contractor's signature

Date

Director, Division of Purchasing

Date

Dari Desilva, Director, SLED Market

Type or Print Name and Title



## **Attachment A: NASPO ValuePoint Master Agreement Terms and Conditions**

### **1. Master Agreement Order of Precedence**

a. Any Order placed under this Master Agreement shall consist of the following documents:

- (i) A Participating Entity's Participating Addendum ("PA") <sup>1</sup>.
- (ii) NASPO ValuePoint Master Agreement Terms & Conditions, including the following Exhibits: <sup>2</sup>

(1) Exhibit 1: Infrastructure-as-a-Service

(iii) Kyndryl Ordering Documents (also known as Transaction Documents, or TDs), to the extent these Transaction Documents are specifically relevant to Exhibit 1, incorporate the applicable hosting and delivery policies, Kyndryl's Cloud Services Agreement (CSA), Data Processing Agreement (DPA) and Data Security and Privacy Principles for Kyndryl Cloud Services (DSP), as well any other applicable service documentation. Copies of the Kyndryl CSA, DPA, and DSP current as of the effective date of this Master Agreement, are attached hereto as Addendums 1 - 3. These documents may also be found at [www.kyndryl.com](http://www.kyndryl.com).

Online versions are for reference only, and the official versions for purposes of this Agreement and an Order are the ones posted to the NASPO ValuePoint website (<https://www.naspovaluepoint.org/portfolio/cloud-solutions-2016-2026/>) or at such other site as agreed to by NASPO and Kyndryl.

The Lead State agrees that this Master Agreement and the information which is incorporated into this Master Agreement by written reference together with the applicable Order and Participating Addendum, is the complete agreement for the Services ordered by the Purchasing Entity and supersedes all prior or contemporaneous agreements or representations, written or oral, regarding such Services.

It is expressly agreed that the documents in the order of precedence above shall supersede the terms in any purchase order, procurement internet portal, or other similar non-Kyndryl document and no terms included in any such purchase order, portal, or other non-Kyndryl document shall apply to the Services ordered. In the event of any

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<sup>1</sup> A Sample Participating Addendum will be published after the contracts have been awarded.

<sup>2</sup> The Exhibits comprise the terms and conditions for the service model IaaS.

inconsistencies between the terms of an Order and the Master Agreement, the Master Agreement shall take precedence; however, unless expressly stated otherwise in an Order, the terms of the Data Processing Agreement and Data Security and Privacy Principles for Kyndryl Cloud Services shall take precedence over the Order. No third party beneficiary relationships are created by this Master Agreement.

The parties agree to review any updates and or changes to the Kyndryl documents in a timely manner.

**2. Definitions** - Unless otherwise provided in this Master Agreement, capitalized terms will have the meanings given to those terms in this Section.

**Ancillary Software** means any software agent or tool that Kyndryl makes available to the Purchasing Entity for download for purposes of facilitating the Purchasing Entity's access to, operation of, and/or use with, the Services Environment.

**Cloud Services** means, collectively, the Kyndryl Infrastructure as a Service offering listed in Purchasing Entity's Order and defined in the Service Specifications. The term "Cloud Services" does not include Professional Services.

**Confidential Information** means any and all information of any form that is marked as confidential or would by its nature be deemed confidential, that is disclosed or otherwise made available in the performance of this Master Agreement by either party to the other party, including by a Participating Entity or Purchasing Entity or each of their respective employees or agents, including, but not necessarily limited to (1) any Purchasing Entity's records, (2) personnel records, and (3) information concerning individuals.

**Contractor** means the person or entity providing solutions under the terms and conditions set forth in this Master Agreement. Contractor also includes its employees, subcontractors, agents and affiliates who are providing the services agreed to under the Master Agreement.

**Data** means all information following the risk assessment process receiving a Data Categorization as "High Risk Data", "Moderate Risk Data", or "Low Risk Data", whether in oral or written (including electronic) form, created by or in any way originating with a Participating Entity or Purchasing Entity, and all information that is the output of any computer processing, or other electronic manipulation, of any information that was created by or in any way originating with a Participating Entity or Purchasing Entity, in the course of using and configuring the Services provided under this Agreement.

**Data Breach** means any actual non-authorized access to or acquisition of computerized Non-Public Data or Personal Data that compromises the security, confidentiality, integrity or ability to access the Non-Public Data or Personal Data, or the ability of Purchasing Entity to access the Non-Public Data or Personal Data.

**Data Categorization** means the process of risk assessment of Data. See also "High Risk Data", "Moderate Risk Data" and "Low Risk Data". For purposes of clarity, the categorization of the data is the responsibility of the Purchasing Entity.

**Data Center Region** refers to the geographic region in which the Services Environment is physically located. The Data Center Region applicable to the Cloud Services is set forth in the Purchasing Entity's Order.

**Fulfillment Partner** means a third-party contractor qualified and authorized by Contractor and approved by the Participating State under a Participating Addendum, who may, to the extent authorized by Contractor, fulfill remarketing requirements of this Master Agreement and billing customers directly for such services. Contractor may, upon written notice to the Participating State, add or delete authorized Fulfillment Partners as necessary at any time during the contract term. Fulfillment Partner has no authority to amend this Master Agreement or to bind Contractor to any additional terms and conditions.

**High Risk Data** is as defined in FIPS PUB 199, Standards for Security Categorization of Federal Information and Information Systems.

**Incident** means an incident that creates suspicion of unauthorized access to or handling of Personal Data.

**Infrastructure as a Service (IaaS)** as used in this Master Agreement is defined the capability provided to the consumer to provision processing, storage, networks, and other fundamental computing resources where the consumer is able to deploy and run arbitrary software, which can include operating systems and applications. The consumer does not manage or control the underlying cloud infrastructure but has control over operating systems, storage, deployed applications; and possibly limited control of select networking components (e.g., host firewalls).

**Intellectual Property** means any and all patents, copyrights, service marks, trademarks, trade secrets, trade names, patentable inventions, or other similar proprietary rights, in tangible or intangible form, and all rights, title, and interest therein.

**Kyndryl** means the Contractor.

**Lead State** means the State of Utah.

**Low Risk Data** is as defined in FIPS PUB 199, Standards for Security Categorization of Federal Information and Information Systems.

**Master Agreement** means this agreement executed by and between the Lead State, acting on behalf of NASPO ValuePoint, and the Contractor, together Exhibit 1 (Infrastructure-as-a-Service), each of which is attached hereto and incorporated herein, as now or hereafter amended.

**Moderate Risk Data** is as defined in FIPS PUB 199, Standards for Security Categorization of Federal Information and Information Systems.

**NASPO ValuePoint** is the NASPO ValuePoint Cooperative Purchasing Program, facilitated by the NASPO Cooperative Purchasing Organization LLC, a 501(c)(3) limited liability company (doing business as NASPO ValuePoint) is a subsidiary organization the

National Association of State Procurement Officials (NASPO), the sole member of NASPO ValuePoint. The NASPO ValuePoint Cooperative Purchasing Organization facilitates administration of the cooperative group contracting consortium of state chief procurement officials for the benefit of state departments, institutions, agencies, and political subdivisions and other eligible entities (i.e., colleges, school districts, counties, cities, some nonprofit organizations, etc.) for all states and the District of Columbia. The NASPO ValuePoint Cooperative Development Team is identified in the Master Agreement as the recipient of reports and may be performing contract administration functions as assigned by the Lead State.

**Non-Public Data** means High Risk Data and Moderate Risk Data that is not subject to distribution to the public as public information. It is deemed to be sensitive and confidential by the Purchasing Entity because it contains information that is exempt by statute, ordinance or administrative rule from access by the general public as public information. For purposes of clarity, it is the responsibility of the Purchasing Entity to inform Contractor of such classification.

**Order or Ordering Document** means the Contractor's or Contractor's authorized reseller's standard ordering document signed by Purchasing Entity when placing an order for Service pursuant to the Master Agreement.

**Participating Addendum** means a bilateral agreement executed by a Contractor and a Participating Entity incorporating this Master Agreement and any other additional Participating Entity specific language or other requirements, e.g. ordering procedures specific to the Participating Entity, other terms and conditions.

**Participating Entity** means a state, or other legal entity, properly authorized to enter into a Participating Addendum.

**Participating State** means a state, the District of Columbia, or one of the territories of the United States that is listed in the Request for Proposal as intending to participate. Upon execution of the Participating Addendum, a Participating State becomes a Participating Entity.

**Personal Protected Data** means data alone or in combination that includes information relating to an individual that identifies the individual by name, identifying number, mark or description can be readily associated with a particular individual and which is not a public record. Personal Information may include the following personally identifiable information (PII): government-issued identification numbers (e.g., Social Security, driver's license, passport); financial account information, including account number, credit or debit card numbers; or Protected Health Information (PHI) relating to a person.

**Professional Services** means, collectively, the Cloud Services-related consulting and other professional services which Purchasing Entity has ordered. Professional Services include any deliverables described in Purchasing Entity's Order and delivered by Kyndryl to Purchasing Entity under the Order. The term "Professional Services" does not include Cloud Services.

**Program Documentation** refers to the user manuals referenced within the Service Specifications for Cloud Services as well as any help windows and readme files for the Kyndryl Programs that are accessible from within the Services. The Program Documentation describes technical and functional aspects of the Kyndryl Programs. Purchasing Entity may access the documentation online at <https://www.ibm.com/cloud> or such other address specified by IBM.

**Protected Health Information** or (PHI). Protected Health Information, as defined at 45 C.F.R. § 160.103) that is subject to protection under the privacy and security requirements of the Health Insurance Portability and Accountability Act of 1996, as amended, including by the Health Information Technology for Economic & Clinical Health Act of the American Recovery and Reinvestment Act of 2009 (“HITECH Act”).

**Purchasing Entity** means a state, city, county, district, or other political subdivision of a State, and a nonprofit organization under the laws of some states if authorized by a Participating Addendum, who issues a Purchase Order against the Master Agreement and becoming financially committed to the purchase.

**Purchasing Entity Applications** means all software programs, including any source code for such programs, that the Purchasing Entity or the Purchasing Entity’s Users provide and load onto, or creating using, any Kyndryl “infrastructure-as-a-service” Cloud Services. Services under this Master Agreement, including Kyndryl Programs and Services Environments, Kyndryl intellectual property, and all derivative works thereof, do not fall within the meaning of the term “Purchasing Entity Applications”.

**Purchasing Entity Content** means all text, files, images, graphics, illustrations, information, data (including Personal Data as that term is defined in Data Processing Agreement for Kyndryl Cloud Services attached as Addendum 2), audio, video, photographs and other content and material (other than Purchasing Entity Applications), in any format, provided by the Purchasing Entity or on behalf of the Purchasing Entity’s Users that reside in, or run on or through the Services Environment.

**Services** mean any of the specifications described in the Scope of Services/SLA/SOW/SD/Ordering Document that are supplied or created by the Contractor pursuant to this Master Agreement. The following terms may be interchange under the Master Agreement and any applicable purchases or services provided there under, including but not limited to: Transaction Document (TD), Scope of Work (SOW), Statement of Work (SOW), Service Description (SD), Change Order, Quote, Service Level Agreement (SLA), Order Document, Purchase Order (PO), Purchase Agreement, Order, Price Agreement, Service Order, Task Order (TO), and Work Order.

**Security Breach** for the specific purpose of handling an incident in the Data Processing Agreement means the misappropriation of Personal Data located on Kyndryl systems or the Cloud Services environment that compromises the security, confidentiality or integrity of such information.

**Services Environment** refers to the combination of hardware and software components owned, license, or managed by Kyndryl to which Kyndryl grants Purchasing Entity and

Purchasing Entity's Users access as part of the Cloud Services which Purchasing Entity has ordered. As applicable and subject to the terms of this Master Agreement and Purchasing Entity's Order, Kyndryl programs, Third Party Content, Purchasing Entity Content and Purchasing Entity Applications may be hosted in the Services Environment.

**Service Specifications** means the descriptions by Kyndryl that are applicable to the Services under Purchasing Entity's Order, including not limited to any Program Documentation, data sheets, hosting, support and security policies (for example, Kyndryl Cloud Services Agreement), and other descriptions referenced or incorporated in such descriptions or Purchasing Entity's Order.

**Service Level Agreement (SLA)** issued against a Participating Addendum means a written agreement between both the Purchasing Entity and the Contractor that is subject to the terms and conditions in this Master Agreement and relevant Participating Addendum unless otherwise expressly agreed in writing between the Purchasing Entity and the Contractor. SLAs should include: (1) the technical service level performance promises, (i.e. metrics for performance and intervals for measure), (2) description of service quality, (3) identification of roles and responsibilities, (4) remedies, such as credits, and (5) an explanation of how remedies or credits are calculated and issued. SLAs may also be included in a Statement of Work (SOW), Ordering Document (Order or PO) or Service Description (SD) depending on the Service offering purchased by the Purchasing Entity ("SLA/SOW/SD").

**Solicitation** means the documents used by the State of Utah, as the Lead State, to obtain Contractor's Proposal.

**Statement of Work (SOW) and/or Service Description (SD)** means a written statement in a solicitation document or contract that describes the Purchasing Entity's service needs and expectations.

**Third Party Content** means all text, files, images, graphics, illustrations, information, data, audio, video, photographs and other content and material, in any format, that are obtained or derived from third party sources outside of Kyndryl and made available to Purchasing Entity through, within, or in conjunction with Purchasing Entity's use of, the Cloud Services. Examples of Third Party Content include data feeds from social network services, rss feeds from blog posts, and data libraries and dictionaries and marketing data.

**Users** mean those employees, contractors, and end users, as applicable, authorized by the Purchasing Entity or on the Purchasing Entity's behalf to use the Cloud Services in accordance with this Master Agreement and Purchasing Entity's Order. For Cloud Services that are specifically designed to allow the Purchasing Entity's clients, agents, customers, suppliers or other third parties to access the Cloud Services to interact with the Purchasing Entity, such third parties will be considered "Users" subject to the terms of this Master Agreement and Purchasing Entity's Order.

**3. Term of the Master Agreement:** Unless otherwise specified as a shorter term in a Participating Addendum, the term of the Master Agreement will run from contract execution to September 15, 2026.

**4. Amendments:** The terms of this Master Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written approval of the Lead State and Contractor except as set forth in a Participating Addendum, e.g. ordering procedures specific to the Participating Entity, other terms and conditions, subject to approval of the individual state procurement director and compliance with local statutory and regulatory provisions.

**5. Assignment/Subcontracts:** Except in the event of a merger, consolidation, acquisition, internal restructuring, or sale of all or substantially all of the assets of Kyndryl, Contractor shall not assign, sell, transfer, or sublet rights, or delegate responsibilities under this Master Agreement, in whole or in part, without the prior written approval of the WSCA-NASPO Master Agreement Administrator. The Lead State may not assign the Master Agreement and no Participating Entity may assign its Participating Addendum, in whole or in part, without the prior approval of Contractor. No Purchasing Entity may give or transfer the Services ordered under an Ordering Document to another individual or entity. Assignment of Kyndryl rights to receive payments is not restricted.

**6. Discount Guarantee Period:** All discounts must be guaranteed for the entire term of the Master Agreement. Participating Entities and Purchasing Entities shall receive the immediate benefit of price or rate reduction of the services provided under only net new Orders this Master Agreement in the event Kyndryl's commercial list price for the Services decreases. A price or rate reduction reflected in Kyndryl's commercial list price will apply automatically to the Master Agreement for purposes of net new Orders only, and an amendment is not necessary.

**7. Termination:** Unless otherwise stated, this Master Agreement may be terminated by either party upon 60 days written notice prior to the effective date of the termination. Further, any Participating Entity may terminate its participation upon 30 days written notice, unless otherwise limited or stated in the Participating Addendum.

Any termination under this provision shall not affect the rights and obligations that survive termination or expiration of this Master Agreement, such as those relating to limitation of liability, indemnification, payment and others which by their nature are intended to survive.

Termination of the Master Agreement or any Participating Addendum will not affect Orders that are outstanding at the time of termination, as permitted in a Participating Entity's Participating Addendum. Those Orders will be performed according to their terms as if this Master Agreement or the Participating Addendum were still in full force and effect. However, those Orders may not be renewed subsequent to termination of this Master Agreement.

## **8. Confidentiality, Non-Disclosure, and Injunctive Relief**

a. Confidentiality. Each Party acknowledges that it and its employees or agents may, in the course of this Master Agreement, be exposed to or acquire Confidential Information. Any reports or other documents or items (including software) that result from the use of the Confidential Information shall be treated in the same manner as the Confidential Information from which it was derived. Confidential Information does not include

information that (1) is or becomes (other than by disclosure by the receiving party) publicly known; (2) is furnished by the disclosing party to others without restrictions similar to those imposed by this Master Agreement; (3) is rightfully in the receiving party's possession without the obligation of nondisclosure prior to the time of its disclosure under this Master Agreement; (4) is obtained from a source other than the disclosing party without the obligation of confidentiality; (5) is disclosed with the written consent of the disclosing party; or (6) is independently developed by employees, agents or subcontractors of the receiving party who can be shown to have had no access to the Confidential Information.

b. **Non-Disclosure.** Each party shall hold Confidential Information in confidence, using at least the industry standard of confidentiality, but no less than the standard of care such party uses for its own similar confidential information, and shall not copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than what is necessary to the performance of Orders placed under this Master Agreement. Each party shall advise each of its employees and agents of their obligations to keep Confidential Information confidential. Each party shall use commercially reasonable efforts to assist the disclosing party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the generality of the foregoing, the receiving party shall advise the disclosing party (including, as applicable the Purchasing Entity, applicable Participating Entity, and the Lead State) immediately if the receiving party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Master Agreement, and the receiving party shall at its expense cooperate with the disclosing party in seeking injunctive or other equitable relief in the name of Purchasing Entity or Contractor against any such person. Except as directed by the disclosing party, the receiving party will not at any time during or after the term of this Master Agreement disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Master Agreement, and that upon termination of this Master Agreement or at the disclosing party's request, the receiving party shall turn over to the disclosing party all documents, papers, and other matter in the receiving party's possession that embody Confidential Information. If applicable law, regulation or document retention policy prevents the receiving party from destroying or returning all or part of the Confidential Information, the receiving party shall maintain the security and confidentiality of all such retained Confidential Information. Notwithstanding the foregoing, the receiving party may keep one copy of such Confidential Information necessary for quality assurance, audits and evidence of the performance of this Master Agreement.

c. **Injunctive Relief.** Each party acknowledges that monetary damages may not be a sufficient remedy for unauthorized disclosure of Confidential Information and that the disclosing party shall be entitled, without waiving any other rights or remedies under this Master Agreement, to seek such injunctive or equitable relief as may be deemed proper by a court of competition jurisdiction.

d. **Purchasing Entity Law.** These provisions shall be applicable only to extent they are not in conflict with the applicable public disclosure laws of any Purchasing Entity and any applicable statutory, local, or constitutional requirements. The expectation is that these

alterations, modifications, supplements, or amendments will be addressed in the Participating Addendum or, with consent, may be included in the Ordering used by the Purchasing Entity to place the Order.

**9. Right to Publish:** Throughout the duration of this Master Agreement, Contractor must secure prior approval from the Lead State or Participating Entity for the release of any information that pertains to the potential work or activities covered by the Master Agreement, including but not limited to reference to or use of the Lead State or a Participating Entity's name, Great Seal of the State, Coat of Arms, any Agency or other subunits of the State government, or any State official or employee, for commercial promotion which is strictly prohibited. News releases or release of broadcast e-mails pertaining to this Master Agreement or Participating Addendum shall not be made without prior written approval of the Lead State or a Participating Entity.

The Contractor shall not make any representations of NASPO ValuePoint's opinion or position as to the quality or effectiveness of the services that are the subject of this Master Agreement without prior written consent. Failure to adhere to this requirement may result in termination of the Master Agreement for cause.

Kyndryl may orally refer to this Master Agreement, and the potential work and activities covered by this Master Agreement, and may orally reference the Lead State or a Participating Entity as a customer in sales presentations and activities.

## **10. Defaults and Remedies**

a. The occurrence of any of the following events shall be an event of default under this Master Agreement:

(1) Nonperformance of material contractual requirements; or

(2) A material breach of any applicable term or condition of this Master Agreement; or

(3) Any certification, representation or warranty by Contractor in response to the solicitation or in this Master Agreement that proves to be intentionally untrue or materially misleading; or

(4) Institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within thirty (30) calendar days after the institution or occurrence thereof; or

(5) Any default expressly specified in another section of this Master Agreement.

b. Upon the occurrence of an event of material default, the non-breaching party shall issue a written notice of default, identifying the nature of the default, and providing a period of 30 calendar days (or an additional period of time as may be agreed to by the parties) in which the other party shall have an opportunity to cure the default. Each party will allow the other a reasonable opportunity to comply before it claims that the other has not met its

obligations under this Agreement or an Ordering Document. The parties will attempt in good faith to resolve all disputes, disagreements or claims relating to this Agreement or any Ordering Document. In the event of a Contractor default, the Lead State shall not be required to provide advance written notice or a cure period and may immediately terminate this Master Agreement in whole or in part if the Lead State, in its sole discretion, determines that it is reasonably necessary to preserve public safety or prevent immediate public crisis. Time allowed for cure shall not diminish or eliminate either party's liability for damages.

c. If a party alleged to be in breach is afforded an opportunity to cure and fails to cure the default within the period specified in the written notice of default, such party shall be in breach of its obligations under this Master Agreement and the non-breaching party shall have the right to exercise any or all of the following remedies:

- (1) Exercise any remedy provided by law; and
- (2) Terminate the applicable portions that are the subject of the material breach in the Master Agreement and any related Contracts or portions thereof; and
- (3) Suspend Contractor's performance; and
- (4) Withhold applicable payment until the default is remedied.

d. Unless otherwise specified in the Participating Addendum, in the event of a default under a Participating Addendum, either party shall provide a written notice of default as described in this section and have all of the rights and remedies under this paragraph regarding its participation in the Master Agreement, in addition to those set forth in its Participating Addendum. Nothing in these Master Agreement Terms and Conditions shall be construed to limit the rights and remedies available to a Purchasing Entity under the applicable commercial code. The United Nations Convention on Contracts for the International Sale of Goods does not apply to transactions under this Master Agreement.

**11. Changes in Contractor Representation:** The Contractor must notify the Lead State of changes in the Contractor's key administrative personnel, consisting of Contract Manager & Report Administrator, in writing within 10 calendar days of the change. The Lead State reserves the right to approve changes in key personnel, as identified above. The Contractor agrees to propose replacement key personnel having substantially equal or better education, training, and experience as was possessed by the key person proposed and evaluated in the Contractor's proposal.

**12. Force Majeure:** Neither party to this (i) Master Agreement, (ii) a participating Addendum, or (iii) an Ordering Document shall be in default by reason of any failure or delay in performance of this Contract in accordance with reasonable control and without fault or negligence on their part. Such causes may include, but are not restricted to, acts of nature or the public enemy, restrictive acts of the government (including the denial or cancelation of any export, import, or other license) in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather, but in every case the failure to perform such must be beyond

the reasonable control and without the fault or negligence of the party. The parties will both use reasonable efforts to mitigate the effect of a force majeure event. If such event continues for more than 30 days, either party may cancel unperformed Services and affected Orders upon written notice. This Section does not excuse either party's obligation to take reasonable steps to follow its normal disaster recovery procedures or Purchasing Entity's obligation to pay for the Service.

### 13. Indemnification

a. Indemnification – Other than for Intellectual Property. The Contractor shall indemnify and hold harmless by defending (which includes paying fees and related costs of defense) NASPO, NASPO ValuePoint, the Lead State, Participating Entities, and Purchasing Entities, along with their officers, agents, and employees as well as any person or entity for which they may be legally liable (each, an "Indemnified Party" and collectively, the "Indemnified Parties"), from and against applicable, defined third-party claims, damages or causes of action brought against an Indemnified Party, for any death, bodily injury, or damage to real or tangible personal property arising directly from act(s), error(s), or omission(s) of the Contractor, its employees or subcontractors or volunteers, at any tier, in the performance under the Master Agreement. As used in this Section 13(a), the term "tangible personal property" shall not include software, documentation, data or data files. Contractor shall have no liability for any claim of bodily injury and/or tangible personal property damage arising from use of software or hardware. **This Section 13(a) states Contractor's entire liability and an Indemnified Party's exclusive remedy for bodily injury and property damage.**

b. Indemnification – Intellectual Property.

1. The Contractor shall indemnify and hold harmless by defending (which includes paying fees and related costs of defense) an Indemnified Party, from and against applicable, defined third-party claims, damages or causes of action brought against an Indemnified Party, arising out of the claim that the Product or its use, infringes Intellectual Property rights ("Intellectual Property Claim") of another person or entity.

2. The Contractor's obligations under this section shall not extend to any claims arising from, and Contractor has no responsibility for claims based on, (a) non-Contractor products and services, (b) items not provided by Contractor, or (c) any violation of law or third-party rights caused by Client's content, materials, designs, or specifications.

3. The Contractor's obligations under this section shall not extend to any claims arising from, and Contractor has no responsibility for claims based on, the combination of the Product with any other product, system or method, regardless of if the Product, system or method is: (a) provided by the Contractor or the Contractor's subsidiaries or affiliates; (b) specified by the Contractor to work with the Product; (c) reasonably required, in order to use the Product in its intended manner, and the infringement could not have been avoided by substituting another

reasonably available product, system or method capable of performing the same function; or (d) it would be reasonably expected to use the Product in combination with such product, system or method. Contractor has no responsibility for claims based, in whole or part, on Non-Contractor Products, items not provided by Contractor, or any violation of law or third-party rights caused by Participating Entity's content, materials, designs, specifications, or use of a non-current version or release of a Contractor Product when an infringement claim could have been avoided by using a current version or release. Contractor reserves the right to modify or replace a Service with an equivalent non-infringing one or, if replacement is not reasonably available, to discontinue a Service and provide a credit for any pre-paid unexpired term. The Indemnified Parties are responsible for any violation of law or any third-party rights caused by its content or, except as provided in this paragraph, its use of a Service.

**4. This Section 13(b) provides the Indemnified Party's exclusive remedy for any infringement claims or damages.**

c. The Indemnified Party shall notify the Contractor within a reasonable time after receiving notice of an Intellectual Property Claim or other indemnified claim or cause of action. Contractor will defend the Indemnified Party against such claims pursuant to this Section 13, and pay amounts finally awarded by a court against the Indemnified Party or included in a settlement approved by Contractor, provided that the Indemnified Party promptly (i) notifies Contractor in writing of the claim, (ii) supplies information requested by Contractor, and (iii) allows Contractor to control, and reasonably cooperates in, the defense and settlement, including mitigation efforts. If the Contractor promptly and reasonably investigates and defends any Intellectual Property Claim, it shall have control over the defense and settlement of it. The Indemnified Party shall furnish, at the Contractor's reasonable request and expense, information and assistance necessary for such defense. This section is subject to any limitations of liability in this Master Agreement or in any other document executed in conjunction with this Master Agreement.

**14. Independent Contractor:** The Contractor shall be an independent contractor. Contractor shall have no authorization, express or implied, to bind the Lead State, Participating States, other Participating Entities, or Purchasing Entities to any agreements, settlements, liability or understanding whatsoever, and agrees not to hold itself out as agent except as expressly set forth herein or as expressly agreed in any Participating Addendum.

**15. Individual Customers:** Except to the extent modified by a Participating Addendum, each Purchasing Entity shall follow the terms and conditions of the Master Agreement and applicable Participating Addendum and will have the same rights and responsibilities for its purchases as the Lead State has in the Master Agreement, including but not limited to, any indemnity or right to recover any costs as such right is defined in the Master Agreement and applicable Participating Addendum for its purchases. Each Purchasing Entity will be responsible for its own charges, fees, and liabilities. The Contractor will apply the charges and invoice each Purchasing Entity individually.

## **16. Insurance**

a. Unless otherwise agreed in a Participating Addendum, Contractor shall, during the term of this Master Agreement, maintain in full force and effect, the insurance described in this section. Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in each Participating Entity's state and having a rating of A-, Class VII or better, in the most recently published edition of Best's Reports. Failure to buy and maintain the required insurance may result in this Master Agreement's termination or, at a Participating Entity's option, result in termination of its Participating Addendum.

b. Coverage shall be written on an occurrence basis. The minimum acceptable limits shall be as indicated below, with no deductible for each of the following categories:

(1) Commercial General Liability covering premises operations, products and completed operations, blanket contractual liability, personal injury (including death), advertising liability, and property damage, with a limit of not less than \$1 million per occurrence/\$3 million general aggregate;

### **(2) CLOUD MINIMUM INSURANCE COVERAGE:**

|                    | <b>Data Breach and Privacy/Cyberrisk Liability including Professional Technology Errors and Omissions</b> |
|--------------------|-----------------------------------------------------------------------------------------------------------|
| Level of Risk      | Minimum Insurance Coverage                                                                                |
| Low Risk Data      | \$2,000,000                                                                                               |
| Moderate Risk Data | \$5,000,000                                                                                               |
| High Risk Data     | \$10,000,000                                                                                              |

Nothing in this Master Agreement shall be deemed to preclude Kyndryl from selecting a new insurance carrier or carriers or obtaining new or amended policies at any time, as long as the above insurance coverage is maintained. This provision is not intended to, and does not, increase or decrease Kyndryl's liability under the Limitation of Liability provision of this Master Agreement.

(3) Contractor must comply with any applicable State Workers Compensation or Employers Liability Insurance requirements. Contractor will carry Crime or Employee Fidelity Coverage for loss of money, securities and other tangible property belonging to the Participating Entity resulting directly from a fraudulent or dishonest act by a Contractor employee taken by any means including via a computer, while performing professional

services for the Participating Entity.

(4) Professional Errors and Omissions. As applicable, Professional Errors and Omissions Policy in the minimum amount of \$1,000,000 per occurrence and \$1,000,000 in the aggregate, written on an occurrence form that provides coverage for its work undertaken pursuant to each Participating Addendum.

c. Contractor shall pay premiums on all insurance policies. Such policies shall also reference this Master Agreement and shall have a condition that they not be revoked by the insurer until written notice of intended revocation thereof shall have been given to Purchasing Entity and Participating Entity by the Contractor in accordance with the terms of the policy.

d. Prior to commencement of performance, Contractor shall provide to the Lead State a Certificate of Insurance to the Contractor's Commercial General Liability insurance policy that (1) names the Participating States identified in the Request for Proposal as additional insureds, (2) provides that no material alteration, cancellation, non-renewal, or expiration of the coverage contained in such policy shall have effect unless the named Participating State has been given in accordance with the terms of the policy notice, and (3) provides that the Contractor's liability insurance policy shall be primary, with any liability insurance of any Participating State as secondary and noncontributory only with respect to liability arising out of this contract. Unless otherwise agreed in any Participating Addendum, the Participating Entity's rights and Contractor's obligations are the same as those specified in the first sentence of this subsection. Before performance of any Purchase Order issued after execution of a Participating Addendum authorizing it, the Contractor shall provide to a Purchasing Entity or Participating Entity who requests it the same information described in this subsection.

e. Contractor shall furnish to the Lead State, Participating Entity, and, on request, the Purchasing Entity copies of certificates of insurance within thirty (30) calendar days of the execution of this Master Agreement, the execution of a Participating Addendum, or the Purchase Order's effective date and prior to performing any work. The insurance certificate shall provide the following information if applicable to the insurance policy: the name and address of the insured; name, address, telephone number and signature of the authorized agent; name of the insurance company (authorized to operate in all states); a description of coverage in detailed standard terminology (including policy period, policy number, insurance amounts, exclusions and endorsements); and an acknowledgment of the requirement for notice of cancellation. Copies of renewal certificates of all required insurance shall be furnished within thirty (30) days after any renewal date. These certificates of insurance must expressly indicate compliance with each and every insurance requirement specified in this section. Failure to provide evidence of coverage may, at sole option of the Lead State, or any Participating Entity, result in this Master Agreement's termination or the termination of any Participating Addendum.

**17. Laws and Regulations:** Any and all Services offered and furnished shall comply fully with all applicable Federal and State laws and regulations that are applicable to Kyndryl in its role as a provider of information technology products and services under this agreement. Each party is responsible for complying with: i) laws and regulations applicable to its business and content, and ii) import, export and economic sanction laws and regulations, including those of the United States that prohibit or restrict the export, re-export, or transfer of products, technology, services or data, directly or indirectly, to or for certain countries, end uses or end users. The Purchasing Entity is responsible for its use of Contractor and non-Contractor products and services.

**18. No Waiver of Sovereign Immunity:** The Lead State, Participating Entity or Purchasing Entity to the extent it applies, does not waive its sovereign immunity by entering into this Contract and fully retains all immunities and defenses provided by law with regard to any action based on this Contract. If a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court of (a) a Participating Entity's State if the dispute is between a Participating Entity or Purchasing Entity of that State, and Contractor; or (b) the Lead State if the dispute involves the Lead State.

### **19. Ordering**

a. Master Agreement order and purchase order numbers shall be clearly shown on all acknowledgments, shipping labels, packing slips, invoices, and on all correspondence as appropriate.

b. This Master Agreement permits Purchasing Entities to define project-specific requirements and informally compete the requirement among other firms having a Master Agreement on an "as needed" basis. This procedure may also be used when requirements are aggregated or other firm commitments may be made to achieve reductions in pricing. This procedure may be modified in Participating Addenda and adapted to Purchasing Entity rules and policies. The Purchasing Entity may in its sole discretion determine which firms should be solicited for a quote. The Purchasing Entity may select the quote that it considers most advantageous, cost and other factors considered.

c. Each Purchasing Entity will identify and utilize its own appropriate purchasing procedure and documentation. If the Purchasing Entity provides the necessary information to Contractor, Contractor is expected to become familiar with the Purchasing Entities' rules, policies, and procedures regarding the ordering of supplies and/or services contemplated by this Master Agreement.

d. Contractor shall not begin providing Services without an Ordering Document.

e. Orders may be placed consistent with the terms of this Master Agreement during the term of the Master Agreement.

f. All Orders pursuant to this Master Agreement, at a minimum, shall include:

(1) The services or supplies being delivered;

- (2) The place and requested time of delivery;
  - (3) A billing address;
  - (4) The name, phone number, and address of the Purchasing Entity representative;
  - (5) The price per unit or other pricing elements consistent with this Master Agreement and the contractor's proposal;
  - (6) A ceiling amount of the order for services being ordered; and
  - (7) The Master Agreement identifier and the Participating State contract identifier.
- g. Communications concerning administration of Orders placed under this Master Agreement shall be furnished solely to the authorized purchasing agent within the Purchasing Entity's purchasing office, or to such other individual identified in writing in the Order.
- h. Orders must be placed pursuant to this Master Agreement prior to the termination date of this Master Agreement. Contractor is reminded that financial obligations of Purchasing Entities payable after the current applicable fiscal year are contingent upon agency funds for that purpose being appropriated, budgeted, and otherwise made available.
- i. Notwithstanding the expiration or termination of this Master Agreement, Contractor agrees to perform in accordance with the terms of any Orders then outstanding at the time of such expiration or termination. Contractor shall not honor any Orders attempted after the expiration or termination of this Master Agreement. Orders from any separate indefinite quantity, task orders, or other form of indefinite delivery order arrangement priced against this Master Agreement may not be placed after the expiration or termination of this Master Agreement, notwithstanding the term of any such indefinite delivery order agreement.

## **20. Participants and Scope**

- a. Contractor may not deliver Services under this Master Agreement until a Participating Addendum acceptable to the Participating Entity and Contractor is executed. The NASPO ValuePoint Master Agreement Terms and Conditions are applicable to any Order by a Participating Entity (and other Purchasing Entities covered by their Participating Addendum), except to the extent altered, modified, supplemented or amended by a Participating Addendum. By way of illustration and not limitation, this authority may apply to unique delivery and invoicing requirements, confidentiality requirements, defaults on Orders, governing law and venue relating to Orders by a Participating Entity, indemnification, and insurance requirements. Statutory or constitutional requirements relating to availability of funds may require specific language in some Participating Addenda in order to comply with applicable law. The expectation is that these alterations, modifications, supplements, or amendments will be addressed in the Participating Addendum or, with the consent of the Purchasing Entity and Contractor, may be included in the Ordering Document (e.g. purchase order or contract) used by the Purchasing Entity to place the Order.
- b. Subject to subsection 20c and a Participating Entity's Participating Addendum, the use of specific NASPO ValuePoint cooperative Master Agreements by state agencies, political

subdivisions and other Participating Entities (including cooperatives) authorized by individual state's statutes to use state contracts is subject to the approval of the respective State Chief Procurement Official.

c. Unless otherwise stipulated in a Participating Entity's Participating Addendum, specific services accessed through the NASPO ValuePoint cooperative Master Agreements for Cloud Services by state executive branch agencies, as required by a Participating Entity's statutes, are subject to the authority and approval of the Participating Entity's Chief Information Officer's Office.

d. Obligations under this Master Agreement are limited to those Participating Entities who have signed a Participating Addendum and Purchasing Entities within the scope of those Participating Addenda. States or other entities permitted to participate may use an informal competitive process to determine which Master Agreements to participate in through execution of a Participating Addendum. Financial obligations of Participating States are limited to the orders placed by the departments or other state agencies and institutions having available funds. Participating States incur no financial obligations on behalf of political subdivisions

e. NASPO ValuePoint is not a party to the Master Agreement. It is a nonprofit cooperative purchasing organization assisting states in administering the NASPO ValuePoint cooperative purchasing program for state government departments, institutions, agencies and political subdivisions (e.g., colleges, school districts, counties, cities, etc.) for all 50 states, the District of Columbia and the territories of the United States.

f. Participating Addenda shall not be construed to amend the terms of this Master Agreement between the Lead State and Contractor. This shall not prohibit the Lead State or other interested Participating States from negotiating different terms and conditions in its Participating Addendum.

g. Participating Entities who are not states may under some circumstances sign their own Participating Addendum, subject to the approval of participation by the Chief Procurement Official of the state where the Participating Entity is located. Coordinate requests for such participation through NASPO ValuePoint. Any permission to participate through execution of a Participating Addendum is not a determination that procurement authority exists in the Participating Entity; they must ensure that they have the requisite procurement authority to execute a Participating Addendum.

h. Resale. Subject to any explicit permission in a Participating Addendum, Purchasing Entities may not resell goods, software, or Services obtained under this Master Agreement.

**21. Charges, Taxes and Payment:** Orders under this Master Agreement are fixed-price or fixed-rate orders, not cost reimbursement contracts. Unless otherwise stipulated in the Participating Addendum, Payment is normally made within 30 days following the date of a correct invoice is received. Purchasing Entities reserve the right to withhold payment of a portion (including all if applicable) of disputed amount of an invoice. After 45 days the Contractor may assess overdue account charges up to a maximum rate of one percent

per month on the outstanding balance. Payments may be remitted by mail or electronically. Payments may be made via a State or political subdivision "Purchasing Card" with no additional charge. Purchasing Entity agrees to pay all applicable charges specific for a Service by Contractor and charges for use in excess of authorizations. Charges are exclusive of applicable taxes, levies, or fees imposed by any governmental authority resulting from Purchasing Entity's acquisitions under this Master Agreement, and any late payment fees. Charges shall be identified on Contractor's invoice. Prepaid Services must be used within the applicable period. Contractor does not give credits or refunds for any prepaid, one-time charges, or other charges already due or paid.

**22. Data Access Controls:** Data Access Controls will be set forth and governing in the applicable Ordering/SOW/SLA/SD agreements which may include the following terms as agreed upon therein: Contractor will provide access to Purchasing Entity's Data only to those Contractor employees, contractors and subcontractors ("Contractor Staff") who need to access the Data to fulfill Contractor's obligations under this Agreement. Contractor shall not access a Purchasing Entity's user accounts or Data, except on the course of data center operations, response to service or technical issues, as required by the express terms of this Master Agreement, or at a Purchasing Entity's written request.

Contractor may not share a Purchasing Entity's Data with its parent corporation, other affiliates, or any other third party without the Purchasing Entity's express written consent.

Contractor will ensure that, prior to being granted access to the Data, Contractor Staff who perform work under this Agreement have successfully completed annual instruction of a nature sufficient to enable them to effectively comply with all Data protection provisions of this Agreement; and possess all qualifications appropriate to the nature of the employees' duties and the sensitivity of the Data they will be handling.

**23. Operations Management:** Contractor shall maintain the administrative, physical, technical, and procedural infrastructure associated with the provision of the Product in a manner that is, at all times during the term of this Master Agreement, at a level equal to those specified in the Solicitation.

**24. Public Information:** This Master Agreement and all related documents, except Confidential or Protected Information, are subject to disclosure pursuant to the Purchasing Entity's public information laws.

**25. Purchasing Entity Data:**

Purchasing Entity retains full right and title to Purchasing Entity's Protected Data provided by it. Except as allowed under the provisions herein or unless otherwise provided in a Statement of Work or Service Level Agreement applicable to this provision, Contractor shall not collect, access, or use user-specific Purchasing Entity Protected Data except as necessary to provide Service to the Purchasing Entity. No information regarding Purchasing Entity's use of the Service will be used by the Contractor for personal gain or make any other improper use of such application information as may be disclosed, provided, rented or sold to any third party for any reason unless required by law or regulation or by an order of a court of competent jurisdiction. The obligation shall extend

beyond the term of this Master Agreement in perpetuity except if Protected Data is legally or contractually subject to application Statute of Limitation or Survival terms.

Contractor shall not use any information collected in connection with this Master Agreement, including Purchasing Entity Data, for any purpose other than fulfilling its obligations under this Master Agreement.

## **26. Records Administration and Audit.**

a. The Contractor shall allow authorized agents of a government agency to audit financial data records, pertaining to this Master Agreement and orders placed by Purchasing Entities under it and its internal and external auditors once a year, subject to thirty (30) days prior written notice received by the Contractor, at a mutually agreed upon time during normal business hours, and in a manner that does not unreasonably disrupt Contractor's or customer's business and subject to Contractor's reasonable security and confidentiality requirements/procedures /policies. Contractor will assist the Lead State, a Participating Entity, a Purchasing Entity, the federal government (including its grant awarding entities and the U.S. Comptroller General), and any other duly authorized agent of a governmental agency, from whom Purchasing Entity will obtain a written agreement sufficient to obligate them to maintain the Contractor's Confidential Information in confidence in a manner not less protective than obligations under the Master Agreement Section 8 Confidentiality) in auditing only information (excluding costs) which is relevant to the provision of Services purchased under this Master Agreement. Contractor will provide access to information and data reasonably necessary to perform the audit. Contractor shall not allow Purchasing Entity or its auditor access to data of other Contractor customers, or except as necessary to comply with the foregoing, to Contractor's Confidential Information This right shall survive for a period of six (6) years following termination of this Agreement or final payment for any order placed by a Purchasing Entity against this Agreement, whichever is later, to assure compliance with the terms hereof or to evaluate performance hereunder.

b. Without limiting any other remedy available to any governmental entity, the Contractor shall reimburse the applicable Lead State, Participating Entity, or Purchasing Entity for any overpayments inconsistent with the terms of the Master Agreement or orders or underpayment of fees found as a result of the examination of the Contractor's records. Contractor may audit the Purchasing Entity's use of the Services (e.g., through use of software tools) to assess whether the Purchasing Entity's use of the Services is in accordance with the Purchasing Entity's Order and the terms of this Master Agreement. The Purchasing Entity agrees to cooperate with Contractor's audit and provide reasonable assistance and access to information. Any such audit shall not unreasonably interfere with the Purchasing Entity's normal business operations. The Purchasing Entity agrees to pay within 60 days of written notification any fees applicable to the Purchasing Entity's use of the Services in excess of the Purchasing Entity's rights. If the Purchasing Entity does not pay, Contractor can end the Purchasing Entity's Services and/or the Purchasing Entity's Order. The Purchasing Entity agrees that Contractor shall not be responsible for any of the Purchasing Entity's costs incurred in cooperating with the audit.

c. The rights and obligations herein exist in addition to any quality assurance obligation in

the Master Agreement requiring the Contractor to self-audit contract obligations and that permits the Lead State to review compliance with those obligations.

d. Consistent with terms set forth above, the Contractor shall allow the Purchasing Entity to audit conformance to the Master Agreement and applicable Participating Addendum terms. The Purchasing Entity may perform this audit or contract with a third party at its discretion and at the Purchasing Entity's expense.

**27. Administrative Fees:** The Contractor shall pay to NASPO ValuePoint, or its assignee, a NASPO ValuePoint Administrative Fee of one-quarter of one percent (0.25% or 0.0025) no later than 60 days following the end of each calendar quarter. The NASPO ValuePoint Administrative Fee shall be submitted quarterly and is based on sales of the Services. The NASPO ValuePoint Administrative Fee is not negotiable. This fee is to be included as part of the pricing submitted with proposal.

Additionally, some states may require an additional administrative fee be paid directly to the state on purchases made by Purchasing Entities within that state. For all such requests, the fee level, payment method and schedule for such reports and payments will be incorporated into the Participating Addendum that is made a part of the Master Agreement. The Contractor may adjust the Master Agreement pricing accordingly for purchases made by Purchasing Entities within the jurisdiction of the state. All such agreements shall not affect the NASPO ValuePoint Administrative Fee percentage or the prices paid by the Purchasing Entities outside the jurisdiction of the state requesting the additional fee. The NASPO ValuePoint Administrative Fee shall be based on the gross amount of all sales at the adjusted prices (if any) in Participating Addenda.

**28. System Failure or Damage:** In the event of system failure or damage caused by Contractor or its Services resulting in loss or damage to Participating Entity's Data, the Contractor agrees to restore or assist in restoring Data to the Cloud Service with the system to operational capacity from Participating Entity's last available backup copy in compatible format.

**29. Title to Product:** If access to the Product requires an application program interface (API), Contractor shall provide the API during the term of the Services. Upon termination of the Services use the API shall cease. Subject to the definitions applicable to "Product(s)" herein as excluded from the definition of Intellectual Property, for purposes of clarity of ownership of any such intellectual property rights shall not include any copyrights, patents, moral rights, trademarks, trade dress, trade secrets, or any other intellectual property rights created outside of or modified or enhanced as a result of the Services or SOW/SD/SLA/PO, including but not limited to any such rights that preexist. If Ancillary Software is licensed to the Purchasing Entity under separate third party license terms, then the Purchasing Entity's use of such software is subject solely to such separate terms.

**30. Data Privacy:** The Purchasing Entity is responsible for its use of Contractor and non-Contractor products and services, including IRS Pub 1075 as applicable to the Services containing Federal Tax Information and tax data. Prior to entering into an SLA/SOW/SD with a Purchasing Entity, the Contractor and Purchasing Entity must cooperate and hold

a meeting to determine the Data Categorization to determine whether the Contractor will hold, store, or process High Risk Data, Moderate Risk Data and Low Risk Data. The Parties/Contractor/Purchasing Entity must document the Data Categorization in the Ordering Document / SLA/SOW/SD or Statement of Work. If there is a violation of law or if there is a breach of security or breach of obligations by a Purchasing Entity applicable to the Cloud Services, Kyndryl may suspend, revoke, or limit the use of the Cloud Service and in which case of a suspension, charges continue to accrue for the Cloud Service for the duration of any such suspension. If the cause of the suspension is reasonably capable of being remedied, Kyndryl will provide notice of what actions must be taken to reinstate the Cloud Service where failure to take such actions within a reasonable time may result in termination of the Cloud Service.

### **31. Warranties, Disclaimers, and Exclusive Remedies:**

a. Kyndryl warrants, as of the effective date of an applicable Ordering Document, it (i) has the necessary experience and expertise to provide the Cloud Service; (ii) has all approvals required by law to comply with its obligations under the Agreement where Kyndryl provides the Cloud Service; (iii) has all rights in the Cloud Service necessary to provide the Cloud Services as described in the relevant Ordering Document; and (iv) it will perform Cloud Services in all material respects as described in its Service Specifications, and Professional Services in a professional manner in accordance with its Service Specifications.

b. Purchasing Entity and Kyndryl each warrants and represents that: (i) it has the authority to enter into the Agreement or Ordering Document; (ii) the persons entering into the Agreement or Ordering Document on its behalf have been duly authorized to do so; and (iii) the Agreement and Ordering Document and the obligations created under them are binding upon it and enforceable against it in accordance with their terms, and do not and will not violate the terms of any other agreement, or any judgment or court order, to which it is bound.

c. If the Services provided to Purchasing Entity were not performed as warranted, Purchasing Entity must promptly provide written notice to Kyndryl that describes the deficiency in the Services (including as applicable, the service request number notifying Kyndryl of the deficiency in the Services).

**d. KYNDRYL DOES NOT GUARANTEE THAT (i) THE SERVICES WILL BE PERFORMED ERROR-FREE OR UNINTERRUPTED OR THAT KYNDRYL WILL CORRECT ALL SERVICES ERRORS, (ii) THE SERVICES WILL OPERATE IN COMBINATION WITH PURCHASING ENTITY'S CONTENT OR ITS APPLICATIONS, OR WITH ANY OTHER HARDWARE OR SOFTWARE SYSTEMS, SERVICES, OR DATA NOT PROVIDED BY IBM, AND (iii) THE SERVICES WILL MEET PURCHASING ENTITY'S REQUIREMENTS, SPECIFICATIONS, OR EXPECTATIONS. PURCHASING ENTITY ACKNOWLEDGES THAT KYNDRYL DOES NOT CONTROL THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES, INCLUDING THE INTERNET, AND THAT THE SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES.**

**KYNDRYL IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS. KYNDRYL IS NOT RESPONSIBLE FOR ANY ISSUES RELATED TO THE PERFORMANCE, OPERATION, OR SECURITY OF THE SERVICES THAT ARISE FROM PURCHASING ENTITY'S CONTENT, ITS APPLICATIONS, OR THIRD-PARTY CONTENT. KYNDRYL WARRANTIES WILL NOT APPLY IF THERE HAS BEEN MISUSE, MODIFICATION, DAMAGE NOT CAUSED BY IBM, FAILURE TO COMPLY WITH INSTRUCTIONS PROVIDED BY IBM, OR IF OTHERWISE STATED IN AN ATTACHMENT OR TD. NON-KYNDRYL SERVICES ARE SOLD UNDER THE AGREEMENT AS-IS, WITHOUT WARRANTIES OF ANY KIND. THIRD PARTIES MAY PROVIDE THEIR OWN WARRANTIES.**

**e. FOR ANY BREACH OF SERVICES WARRANTY, PURCHASING ENTITY'S EXCLUSIVE REMEDY AND KYNDRYL'S ENTIRE LIABILITY SHALL BE THE CORRECTION OF THE DEFICIENT SERVICES THAT CAUSED THE BREACH OF WARRANTY, OR, IF KYNDRYL CANNOT SUBSTANTIALLY CORRECT THE DEFICIENCY IN A COMMERCIALY REASONABLE MANNER, PURCHASING ENTITY MAY END THE DEFICIENT SERVICES AND KYNDRYL WILL REFUND TO PURCHASING ENTITY THE FEES PAID FOR THE DEFICIENT SERVICES FOR THE PERIOD OF TIME DURING WHICH THE SERVICES WERE DEFICIENT.**

**f. TO THE EXTENT NOT PROHIBITED BY LAW, THESE WARRANTIES ARE EXCLUSIVE AND THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS INCLUDING FOR SOFTWARE, HARDWARE, SYSTEMS, NETWORKS OR ENVIRONMENTS OR FOR MERCHANTABILITY, SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE.**

### **32. Transition Assistance:**

a. The Contractor shall reasonably cooperate with other parties in connection with all Services to be delivered under this Master Agreement, including without limitation any successor service provider to whom a Purchasing Entity's Data is transferred in connection with the termination or expiration of this Master Agreement. The Contractor shall assist a Purchasing Entity in exporting and extracting a Purchasing Entity's Data, in a format usable without the use of the Services and as agreed to between a Purchasing Entity and Contractor in a Statement of Work. Any transition services requested by a Purchasing Entity involving additional knowledge transfer and support shall be subject to a separate transition Statement of Work.

b. A Purchasing Entity and the Contractor shall, create a Transition Plan Document identifying the transition services to be provided and including a Statement of Work if applicable. Unless otherwise specified in a Statement of Work or SLA, Purchasing Entity shall have no expectation of access past the termination of the service nor Contractor maintaining Purchasing Entity's Data. Such Transition Plan shall be agreed upon before the end of the service.

c. The Contractor must maintain the confidentiality and security of a Purchasing Entity's

Data during the transition services, and thereafter as required in the Participating Addendum.

**33. Waiver of Breach:** Failure of the Lead State, Master Agreement Administrator, Participating Entity, Purchasing Entity or Contractor to declare a default or enforce any rights and remedies shall not operate as a waiver under this Master Agreement or Participating Addendum. Any waiver by the Lead State, Participating Entity, Purchasing Entity, or Contractor must be in writing. Waiver by the Lead State Master Agreement Administrator, Participating State Participating Entity or Contractor of any default, right or remedy under this Master Agreement or Participating Addendum, shall not be construed or operate as a waiver of any subsequent default or breach of such term or requirement, or of any other term or requirement under this Master Agreement, Participating Addendum, or Ordering Document.

**34. Assignment of Antitrust Rights:** Contractor irrevocably assigns to a Participating Entity who is a state any claim for relief or cause of action which the Contractor now has or which may accrue to the Contractor in the future by reason of any violation of state or federal antitrust laws (15 U.S.C. § 1-15 or a Participating Entity's state antitrust provisions), as now in effect and as may be amended from time to time, in connection with any goods or services provided to the Contractor for the purpose of carrying out the Contractor's obligations under this Master Agreement or Participating Addendum, including, at a Participating Entity's option, the right to control any such litigation on such claim for relief or cause of action.

**35. Debarment:** The Contractor certifies, to the best of its knowledge, that neither it nor its principals are presently debarred, suspended, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. This certification represents a recurring certification made at the time any Order is placed under this Master Agreement. If the Contractor cannot certify this statement, attach a written explanation for review by the Lead State.

**36. Performance and Payment Time Frames that Exceed Contract Duration:** Provided all Services have been purchased through an Kyndryl Ordering Document, all maintenance or other agreements for services entered into during the duration of an Ordering Document /SLA and whose performance and payment time frames extend beyond the duration of this Master Agreement shall remain in effect for performance and payment purposes (limited to the time frame and services established per each written agreement). No new leases, maintenance or other agreements for Services may be executed after the Master Agreement has expired. All Services which require payment must be paid in accordance with the invoice even after the expiration of the Master Agreement. For the purposes of this section, renewals of maintenance, subscriptions, SaaS subscriptions and agreements, and other service agreements, shall not be considered as "new."

### **37. Governing Law and Venue**

a. The procurement, evaluation, and award of the Master Agreement shall be governed

by and construed in accordance with the laws of the Lead State sponsoring and administering the procurement. The construction and effect of the Master Agreement after award shall be governed by the law of the state serving as Lead State (in most cases also the Lead State). The construction and effect of any Participating Addendum or Order against the Master Agreement shall be governed by and construed in accordance with the laws of the Participating Entity's or Purchasing Entity's State.

b. Unless otherwise specified in the RFP, the venue for any protest, claim, dispute or action relating to the procurement, evaluation, and award is in the Lead State. Venue for any claim, dispute or action concerning the terms of the Master Agreement shall be in the state serving as Lead State. Venue for any claim, dispute, or action concerning any Order placed against the Master Agreement or the effect of a Participating Addendum shall be in the Purchasing Entity's State.

c. If a claim is brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for (in decreasing order of priority): the Lead State for claims relating to the procurement, evaluation, award, or contract performance or administration if the Lead State is a party; the Participating State if a named party; the Participating Entity state if a named party; or the Purchasing Entity state if a named party.

d. This section is also not a waiver by the Participating State of any form of immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

**38. No Guarantee of Service Volumes:** The Contractor acknowledges and agrees that the Lead State and NASPO ValuePoint makes no representation, warranty or condition as to the nature, timing, quality, quantity or volume of business for the Services or any other products and services that the Contractor may realize from this Master Agreement, or the compensation that may be earned by the Contractor by offering the Services. The Contractor acknowledges and agrees that it has conducted its own due diligence prior to entering into this Master Agreement as to all the foregoing matters.

**39. NASPO ValuePoint eMarket Center:** In July 2011, NASPO ValuePoint entered into a multi-year agreement with JAGGAER, formerly SciQuest, whereby JAGGAER will provide certain electronic catalog hosting and management services to enable eligible NASPO ValuePoint's customers to access a central online website to view and/or shop the goods and services available from existing NASPO ValuePoint Cooperative Contracts. The central online website is referred to as the NASPO ValuePoint eMarket Center.

The Contractor will have visibility in the eMarket Center through Ordering Instructions. These Ordering Instructions are available at no cost to the Contractor and provided customers information regarding the Contractors website and ordering information.

At a minimum, the Contractor agrees to the following timeline: NASPO ValuePoint eMarket Center Site Admin shall provide a written request to the Contractor to begin Ordering Instruction process. The Contractor shall have thirty (30) days from receipt of written request to work with NASPO ValuePoint to provide any unique information and ordering

instructions that the Contractor would like the customer to have.

**40. Contract Provisions for Orders Utilizing Federal Funds:** Pursuant to Appendix II to 2 Code of Federal Regulations (CFR) Part 200, Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, Orders funded with federal funds may have additional contractual requirements or certifications that must be satisfied at the time the Order is placed or upon delivery. These federal requirements may be proposed by Participating Entities in Participating Addenda and Purchasing Entities for incorporation in Orders placed under this master agreement. Kyndryl reserves the right to negotiate such terms and to decline such Orders.

**41. Government Support:** Unless otherwise provided in an Ordering Document, no support, facility space, materials, special access, personnel or other obligations on behalf of the states or other Participating Entities, other than payment, are required under the Master Agreement.

**42. NASPO ValuePoint Summary and Detailed Usage Reports:** In addition to other reports that may be required by this solicitation, the Contractor shall provide the following NASPO ValuePoint reports.

a. Summary Sales Data. The Contractor shall submit quarterly sales reports directly to NASPO ValuePoint using the NASPO ValuePoint Quarterly Sales/Administrative Fee Reporting Tool found at <http://calculator.naspovaluepoint.org>. Any/all sales made under the contract shall be reported as cumulative totals by state. Even if Contractor experiences zero sales during a calendar quarter, a report is still required. Reports shall be due no later than 30 day following the end of the calendar quarter (as specified in the reporting tool).

b. Detailed Sales Data. Contractor shall also report detailed sales data by: (1) state; (2) entity/customer type, e.g. local government, higher education, K12, non-profit; (3) Purchasing Entity name; (4) Purchasing Entity bill-to and ship-to locations; (5) Purchasing Entity and Contractor Purchase Order identifier/number(s); (6) Purchase Order Type (e.g. sales order, credit, return, upgrade, determined by industry practices); (7) Purchase Order date; and (8) line item description, including product number if used. The report shall be submitted in any form required by the solicitation. Reports are due on a quarterly basis and must be received by the Lead State and NASPO ValuePoint Cooperative Development Team no later than thirty (30) days after the end of the reporting period. Reports shall be delivered to the Lead State and to the NASPO ValuePoint Cooperative Development Team electronically through a designated portal, email, CD-Rom, flash drive or other method as determined by the Lead State and NASPO ValuePoint. Detailed sales data reports shall include sales information for all sales under Participating Addenda executed under this Master Agreement. The format for the detailed sales data report is shown in Attachment H.

c. Reserved – Kyndryl does not permit personal use of this master agreement by Public Entity employees.

d. Contractor shall provide the NASPO ValuePoint Cooperative Development Coordinator with an executive summary each quarter that includes, at a minimum, a list of states with

an active Participating Addendum, states that Contractor is in negotiations with and any PA roll out or implementation activities and issues. NASPO ValuePoint Cooperative Development Coordinator and Contractor will determine the format and content of the executive summary. The executive summary is due 30 days after the conclusion of each calendar quarter.

e. Timely submission of these reports is a material requirement of the Master Agreement. The recipient of the reports shall have exclusive ownership of the media containing the reports. The Lead State and NASPO ValuePoint shall have a perpetual, irrevocable, non-exclusive, royalty free, transferable right to display, modify, copy, and otherwise use reports, data and information provided under this section.

f. If requested by a Participating Entity, the Contractor must provide detailed sales data within the Participating State.

#### **43. NASPO ValuePoint Cooperative Program Marketing, Training, and Performance Review:**

a. Contractor agrees to work cooperatively with NASPO ValuePoint personnel. Contractor agrees to present plans to NASPO ValuePoint for the education of Contractor's contract administrator(s) and sales/marketing workforce regarding the Master Agreement contract, including the competitive nature of NASPO ValuePoint procurements, the Master agreement and participating addendum process, and the manner in which qualifying entities can participate in the Master Agreement.

b. Contractor agrees, as Participating Addendums become executed, if requested by ValuePoint personnel to provide plans to launch the program within the participating state. Plans will include time frames to launch the agreement and confirmation that the Contractor's website has been updated to properly reflect the contract offer as available in the participating state.

c. Contractor agrees, absent anything to the contrary outlined in a Participating Addendum, to consider customer proposed terms and conditions, as deemed important to the customer, for possible inclusion into the Ordering Document. Contractor will ensure that their sales force is aware of this contracting option.

d. Contractor agrees to participate in an annual contract performance review at a location selected by the Lead State and NASPO ValuePoint, which may include a discussion of marketing action plans, target strategies, marketing materials, as well as Contractor reporting and timeliness of payment of administration fees.

e. Contractor acknowledges that the NASPO ValuePoint logos may not be used by Contractor in sales and marketing until a logo use agreement is executed with NASPO ValuePoint.

f. The Lead State expects to evaluate the utilization of the Master Agreement at the annual performance review. Lead State may, in its discretion, terminate the Master Agreement pursuant to section 6 when Contractor utilization does not warrant further administration

of the Master Agreement. The Lead State may exercise its right to not renew the Master Agreement if vendor fails to record or report revenue for three consecutive quarters, upon 60-calendar day written notice to the Contractor. This subsection does not limit the discretionary right of either the Lead State or Contractor to terminate the Master Agreement pursuant to section 7.

g. Reserved

#### **44. Additional Terms and Conditions**

##### **a. Restrictions:**

Effective Sept 1, 2021, IBM's IaaS offerings as found in the attached document (Attachment C) will become the offerings of Kyndryl. IBM retains the SaaS and PaaS categories and offerings within those categories. IBM/Kyndryl agrees that they do not now, and will not, until such time as this Agreement is open for additional category responses within ~~for~~ the term of this Agreement, have duplicative scopes of work found in the IBM/Kyndryl NASPO ValuePoint Master Agreement. IBM/Kyndryl may not expand, modify or change the scope of work without the Lead State's consent, said consent may not be withheld where IBM and Kyndryl offerings do not overlap, or otherwise unreasonably withheld.

The Purchasing Entity may not and may not cause or permit others to:

- I. remove or modify any program markings or any notice of Kyndryl's or its licensors' proprietary rights;
- II. make the programs or materials resulting from the Services (excluding Purchasing Entity Content and Purchasing Entity Applications) available in any manner to any third party for use in the third party's business operations (unless such access is expressly permitted for the specific Services the Purchasing Entity has acquired);
- III. modify, make derivative works of, disassemble, decompile, reverse engineer, reproduce, distribute, republish or download any part of the Services (the foregoing prohibitions include but are not limited to review of data structures or similar materials produced by programs), or access or use the Services in order to build or support, and/or assist a third party in building or supporting, products or Services competitive to IBM;
- IV. perform or disclose any benchmark or performance tests of the Services, including the Kyndryl Programs;
- V. perform or disclose any of the following security testing of the Services Environment or associated infrastructure: network discovery, port and service identification, vulnerability scanning, password cracking, remote access testing, or penetration testing; and
- VI. license, sell, rent, lease, transfer, assign, distribute, host, outsource, permit timesharing or service bureau use, or otherwise commercially exploit or make available the Services, Kyndryl Programs, Ancillary Software, Services

Environments or Kyndryl materials, to any third party, other than as expressly permitted under the terms of the applicable Order.

**b. Service Specifications:**

- I. The Services are subject to and governed by Service Specifications applicable to the Purchasing Entity's Order. Service Specifications may define provisioning and management processes applicable to the Services (such as capacity planning), types and quantities of system resources (such as storage allotments), functional and technical aspects of the Kyndryl Programs, as well as any Services deliverables. The Purchasing Entity acknowledges that use of the Services in a manner not consistent with the Service Specifications may adversely affect Services performance and/or may result in additional fees. If the Services permit the Purchasing Entity to exceed the ordered quantity (e.g., soft limits on counts for Users, sessions, storage, etc.), then the Purchasing Entity is responsible for promptly purchasing such additional quantity to account for the Purchasing Entity's excess usage.
- II. Kyndryl may make changes or updates to the Services (such as infrastructure, security, technical configurations, application features, etc.) during the Services Period, including to reflect changes in technology, industry practices, patterns of system use, and availability of Third Party Content. The Service Specifications are subject to change at Kyndryl's discretion. Changes or updates will take effect (a) upon a new Order, (b), for Orders previously entered, upon the change effective date for ongoing Services, or (c) upon the renewal date for Services that automatically renew per Ordering Document. The intent of any modification will be to: i) improve or clarify existing commitments; ii) maintain alignment to current adopted standards and applicable laws; or iii) provide additional features and functionality. Modifications will not degrade the security or data protection features or functionality of a Cloud Service.

**c. Use of the Services:**

- I. The Purchasing Entity is responsible for identifying and authenticating all Users, for approving access by such Users to the Services, for controlling against unauthorized access by Users, and for maintaining the confidentiality of usernames, passwords and account information. By federating or otherwise associating the Purchasing Entity's and the Purchasing Entity's Users' usernames, passwords and accounts with IBM, the Purchasing Entity accept responsibility for the confidentiality and timely and proper termination of user records in the Purchasing Entity's local (intranet) identity infrastructure or on the Purchasing Entity's local computers. Kyndryl is not responsible for any harm caused by the Purchasing Entity's Users, including individuals who were not authorized to have access to the Services but who were able to gain access because usernames, passwords or accounts were not terminated on a timely basis in the Purchasing Entity's local identity management infrastructure or the Purchasing Entity's local computers. The Purchasing Entity is responsible for all activities that occur under

the Purchasing Entity's and the Purchasing Entity's Users' usernames, passwords or accounts or as a result of the Purchasing Entity's or the Purchasing Entity's Users' access to the Services, and agree to notify Kyndryl immediately of any unauthorized use. The Purchasing Entity agrees to make every reasonable effort to prevent unauthorized third parties from accessing the Services.

- II. The Purchasing Entity shall not use or permit use of the Services, including by uploading, emailing, posting, publishing or otherwise transmitting any material, including Purchasing Entity Content, Purchasing Entity Applications Content, for any purpose that may (1) menace or harass any person or cause damage or injury to any person or property, (2) involve the publication of any material that is false, defamatory, harassing or obscene, (3) violate privacy rights or promote bigotry, racism, hatred or harm, (4) constitute unsolicited bulk e-mail, "junk mail", "spam" or chain letters; (5) constitute an infringement of intellectual property or other proprietary rights, or (6) otherwise violate applicable laws, ordinances or regulations. In addition to any other rights afforded to Kyndryl under this Master Agreement, Kyndryl reserves the right, but has no obligation, to take remedial action if any material violates the restrictions in the foregoing sentence (the "Acceptable Use Policy"), including the removal or disablement of access to such material. Kyndryl shall have no liability to the Purchasing Entity in the event that Kyndryl takes such action. The Purchasing Entity shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness and ownership of all of Purchasing Entity Content, Purchasing Entity Applications. To the extent not prohibited by applicable law, the Purchasing Entity agrees to defend and indemnify Kyndryl against any claim arising out of a violation of the Purchasing Entity's obligations under this section.
- III. The Purchasing Entity is required to accept all patches, bug fixes, updates, maintenance and service packs (collectively, "Patches") necessary for the proper function and security of the Services, including for the Kyndryl Programs, as such Patches are generally released by Kyndryl as described in the Service Specifications. Kyndryl is not responsible for performance or security issues encountered with the Cloud Services that result from the Purchasing Entity's failure to accept the application of Patches that are necessary for the proper function and security of the Services. Except for emergency or security related maintenance activities, Kyndryl will coordinate with the Purchasing Entity the scheduling of application of Patches, where possible, based on Kyndryl's next available standard maintenance window.
- IV. The Purchasing Entity shall obtain at the Purchasing Entity's sole expense any rights and consents from third parties necessary for Purchasing Entity Content, Purchasing Entity Applications, and Third Party Content, as well as other vendor's products provided by the Purchasing Entity that the Purchasing Entity use with the Services, including such rights and consents as necessary for Kyndryl to perform the Services under this Master Agreement.

- V. The Purchasing Entity remains solely responsible for the Purchasing Entity's regulatory compliance in connection with the Purchasing Entity's use of the Services. The Purchasing Entity is responsible for making Kyndryl aware of any technical requirements that result from the Purchasing Entity's regulatory obligations prior to entering into an Order governed by this Master Agreement. Kyndryl will cooperate with the Purchasing Entity's efforts to determine whether use of the standard Kyndryl Services offering is consistent with those requirements. Additional fees may apply to any additional work performed by Kyndryl or changes to the Services.

**d. Trial Use and Pilot Cloud Services:**

- I. For certain Cloud Services, Kyndryl may make available "trials" and "conference room pilots" for non-production evaluation purposes. Cloud trials and conference room pilots must be ordered under a separate agreement.
- II. Kyndryl may make available "production pilots" for certain Cloud Services under this Master Agreement. Production pilots ordered by the Purchasing Entity is described in the Service Specifications applicable to the Purchasing Entity's Order, and are provided solely for the Purchasing Entity to evaluate and test Cloud Services for the Purchasing Entity's internal business purposes. The Purchasing Entity may be required to order certain Professional Services as a prerequisite to an Order for a production pilot.

**e. Services Period; End of Services:**

- I. Services provided under this Master Agreement shall be provided for the Services Period defined in the Purchasing Entity's Order, unless earlier suspended or terminated in accordance with this Master Agreement or the Order.
- II. Kyndryl may suspend or limit, to the extent necessary, Participating Entity's use of a Service if Kyndryl determines there is a material breach of Purchasing Entity's obligations, a security breach, violation of law, or breach of the terms as set forth in 7b of the Kyndryl CSA.

**f. Limitation of Liability:**

- A. CONTRACTOR'S AGGREGATE LIABILITY FOR ALL DAMAGES ARISING OUT OF OR RELATED TO THIS MASTER AGREEMENT OR A PURCHASING ENTITY'S ORDER, WHETHER IN CONTRACT OR TORT, OR OTHERWISE, SHALL IN NO EVENT EXCEED THE GREATER OF (i) TWO (2) TIMES THE TOTAL AMOUNTS ACTUALLY PAID TO KYNDRYL IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY LESS ANY REFUNDS OR CREDITS RECEIVED BY THE PURCHASING ENTITY FROM CONTRACTOR UNDER SUCH ORDER OR (ii) ONE MILLION DOLLARS (U.S.\$1,000,000).

- B. NOTWITHSTANDING THE ABOVE, NEITHER THE CONTRACTOR NOR THE PURCHASING ENTITY SHALL BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, PUNITIVE OR SPECIAL DAMAGES OF ANY KIND ARISING DIRECTLY OR INDIRECTLY OUT OF THIS MASTER AGREEMENT OR A PURCHASING ENTITY'S ORDER, INCLUDING, WITHOUT LIMITATION, DAMAGES RESULTING FROM LOSS OF USE OR LOSS OF PROFIT OR REVENUE (EXCLUDING FEES UNDER THIS MASTER AGREEMENT), DATA, OR DATA USE BY THE PURCHASING ENTITY, THE CONTRACTOR, OR BY OTHERS.
- C. Contractor's obligation to indemnify for (i) infringement claims or damages under Sections 13(b) or (ii) claim(s) of bodily injury and tangible personal property damage under Section 13(a) shall apply without regard to whether the damages under such claim(s) (y) are classified as direct, indirect, or otherwise, or (z) exceed the limits on liability under this Section 44(f) (Additional Terms and Conditions: Limitation of Liability).

**g. Third Party Web Sites, Content, Products and Services:**

- I. The Services may enable the Purchasing Entity to link to, transmit Purchasing Entity Content to, or otherwise access, other Web sites, platforms, content, products, services, and information of third parties. Kyndryl does not control and is not responsible for such Web sites or platforms or any such content, products, services and information accessible from or provided through the Services, and the Purchasing Entity bear all risks associated with access to and use of such Web sites and third party content, products, services and information.
- II. Any Third Party Content made accessible by Kyndryl is provided on an "as-is" and "as available" basis without any warranty of any kind. Third Party Content may be indecent, offensive, inaccurate, infringing or otherwise objectionable or unlawful, and the Purchasing Entity acknowledge that Kyndryl is not responsible for and under no obligation to control, monitor or correct Third Party Content; however, Kyndryl reserves the right to take remedial action if any such content violates applicable restrictions under this Master Agreement, including the removal of, or disablement of access to, such content. Kyndryl disclaims all liabilities arising from or related to Third Party Content.
- III. The Purchasing Entity acknowledge that: (1) the nature, type, quality and availability of Third Party Content may change at any time during the Services Period, and (2) features of the Services that interoperate with third parties (each, a "Third Party Service"), depend on the continuing availability of such third parties' respective application programming interfaces (APIs) for use with the Services. Kyndryl may update, change or modify the Services under this Master Agreement as a result of a change in, or unavailability of, such Third Party Content, Third Party Services or APIs. If any third party ceases to make its Third Party Content or APIs available on reasonable terms for the Services, as determined by Kyndryl in its sole discretion, Kyndryl may cease providing access to the affected Third Party Content or Third

Party Services without any liability to the Purchasing Entity. Any changes to Third Party Content, Third Party Services or APIs, including their availability or unavailability, during the Services Period does not affect the Purchasing Entity's obligations under this Master Agreement or the applicable Order, and the Purchasing Entity will not be entitled to any refund, credit or other compensation due to any such changes.

- IV. Any Third Party Content that the Purchasing Entity store in the Purchasing Entity's Services Environment will count towards any storage or other allotments applicable to the Cloud Services that the Purchasing Entity ordered.

#### **h. Service Analyses:**

Kyndryl may (i) compile statistical and other information related to the performance, operation and use of the Services, and (ii) use data from the Services Environment in aggregated form for security and operations management, to create statistical analyses, and for research and development purposes (clauses i and ii are collectively referred to as "Service Analyses"). Kyndryl may make Service Analyses publicly available; however, Service Analyses will not incorporate Purchasing Entity Content or Confidential Information in a form that could serve to identify the Purchasing Entity or any individual, and Service Analyses do not constitute Personal Data. Kyndryl retains all intellectual property rights in Service Analyses.

#### **i. Export:**

a. Export laws and regulations of the United States and any other relevant local export laws and regulations apply to the Services. the Purchasing Entity agree that such export laws govern the Purchasing Entity's use of the Services (including technical data) and any Services deliverables provided under this Master Agreement, and the Purchasing Entity agree to comply with all such export laws and regulations (including "deemed export" and "deemed re-export" regulations). the Purchasing Entity agree that no data, information, software programs and/or materials resulting from Services (or direct product thereof) will be exported, directly or indirectly, in violation of these laws, or will be used for any purpose prohibited by these laws

b. The Purchasing Entity acknowledge that the Cloud Services are designed with capabilities for the Purchasing Entity and the Purchasing Entity's Users to access the Services Environment without regard to geographic location and to transfer or otherwise move Purchasing Entity Content and Purchasing Entity Applications between the Services Environment and other locations such as User workstations. The Purchasing Entity is solely responsible for the authorization and management of User accounts, as well as export control and geographic transfer of Purchasing Entity Content and Purchasing Entity Applications.

**j. Notice:**

i. All notices under this Master Agreement must be in writing and sent to the business address specified for this Master Agreement, unless a party designates in writing a different address.

ii. Kyndryl may give notices applicable to Kyndryl's Cloud Services customer base by means of a general notice on the Kyndryl portal for the Cloud Services, and notices specific to the Purchasing Entity by electronic mail to the Purchasing Entity's e-mail address on record in Kyndryl's account information or by written communication sent by first class mail or pre-paid post to the Purchasing Entity's address on record in Kyndryl's account information.

**k. Miscellaneous:**

i. If any term of this Master Agreement is found to be invalid or unenforceable, the remaining provisions will remain effective and such term shall be replaced with another term consistent with the purpose and intent of this Master Agreement.

ii. The purchase of Cloud Services, Professional Services, or other service offerings, programs or products are all separate offers and separate from any other Order. The Purchasing Entity understands that the Purchasing Entity may purchase Cloud Services, Professional Services, or other service offerings, programs or products independently of any other Order. The Purchasing Entity's obligation to pay under any Order is not contingent on performance of any other service offerings or delivery of programs or products.

**45. NASPO ValuePoint Cloud Offerings Search Tool:** In support of the Cloud Offerings Search Tool here: <http://www.naspovaluepoint.org/#/contract-details/71/search> Contractor shall ensure its Cloud Offerings are accurately reported and updated to the Lead State in the format/template shown in Attachment I.

**46. Entire Agreement:** This Master Agreement, along with any attachment and Exhibits contains the entire understanding of the parties hereto with respect to the Master Agreement unless a term is modified in a Participating Addendum or otherwise with a Participating or Purchasing Entity as set forth herein. For purposes of clarity, each Service Description, SOW, Order, or Transaction Document may contain references to associated documents or terms which, upon acceptance, will be incorporated as part of the Cloud Services as allowed under this Master Agreement. No click-through, or other end user terms and conditions or agreements required by the Contractor ("Additional Terms") provided with any Services hereunder shall be binding on Participating Entities or Purchasing Entities, unless ~~even~~ if use of such Services requires an affirmative "acceptance" of those Additional Terms before access is permitted. If any provision of the Master Agreement is invalid or unenforceable, the remaining provisions remain in full force and effect and nothing in this Agreement affects the statutory rights of consumers that cannot be waived or limited by contract.

**Exhibit 1 to the Master Agreement: Infrastructure-as-a-Service**

**1. Data Ownership:** The Purchasing Entity will own all right, title and interest in its Data that is related to the Services provided by this Master Agreement. The Contractor shall not access Purchasing Entity user accounts or Purchasing Entity Data, except (1) in the course of data center operations, (2) in response to service or technical issues, (3) as required by the express terms of this Master Agreement, Participating Addendum, Transaction Document (TD), and/or other contract documents (including compliance with applicable laws), or (4) at the Purchasing Entity's written request.

**Unless set forth in a TD,** Contractor shall not collect, access, or use user-specific Purchasing Entity Data except as strictly necessary to provide Service to the Purchasing Entity. No information regarding a Purchasing Entity's use of the Service may be disclosed, provided, rented or sold to any third party for any reason unless required by law or regulation or by an order of a court of competent jurisdiction or is publicly available. This obligation shall survive and extend beyond the term of this Master Agreement.

**2. Data Protection:** Protection of personal privacy and Data shall be an integral part of the business activities of the Contractor so that there is no inappropriate or unauthorized use of Purchasing Entity information at any time. To this end, the Contractor shall safeguard the confidentiality, integrity and availability of Purchasing Entity Data and comply with the following conditions:

- a. The Contractor shall implement and maintain appropriate administrative, technical and organizational security measures to safeguard against unauthorized access, disclosure or theft of Personal Data and Non-Public Data. Such security measures shall be in accordance with security measures described in applicable TD.
- b. All Non-Public Data obtained from the Purchasing Entity by the Contractor in the performance of the Master Agreement shall become and remain the property of the Purchasing Entity.
- c. All Personal Data shall be encrypted if, and to the extent as set forth in, an applicable TD regarding security requirements of data classification. If and unless otherwise stipulated in an applicable TD, the Contractor may not be responsible for encryption of the Personal Data. Any stipulation of responsibilities will identify specific roles and responsibilities and shall be included in the applicable TD, or otherwise made a part of the Master Agreement.
- d. If stipulated in the applicable TD, the Contractor shall encrypt all Non-Public Data at rest and in transit based upon the applicable security requirements set forth and agreed to in the applicable TD. The Purchasing Entity shall identify data it deems as Non-Public Data to the Contractor. The level of protection and encryption for all Non-Public Data shall be identified in the applicable TD.
- e. At no time shall any Data or processes defined as Confidential — that either belong to or are intended for the use of a Purchasing Entity or its officers, agents or employees — be copied, disclosed or retained by the Contractor or any party related to the Contractor for subsequent use in any transaction that does not include the Purchasing Entity.
- f. The Contractor shall not use any Purchasing Entity Data in connection with the Services issued from this Master Agreement for any purpose other than fulfilling the Services.

g. Nothing contained herein shall be deemed to enlarge or otherwise change the Contractor's responsibilities for treatment of Confidential Information as set forth in Section 8 of the Master Agreement.

**3. Data Location:** As selected by Purchasing Entity from available Contractor data centers, the Contractor shall provide its services to the Purchasing Entity and its end users solely from data centers in the U.S. and storage of Purchasing Entity data at rest shall be located solely in data centers in the U.S. The Contractor shall not allow its personnel or contractors to store Purchasing Entity data on portable devices, including personal computers, except for devices that are used and kept only at its U.S. data centers. The Contractor shall permit its personnel and contractors to access Purchasing Entity data remotely only as required to provide technical and general administrative support. The Contractor may provide technical user support on a 24/7 basis using a Follow the Sun model, unless otherwise prohibited in a Participating Addendum.

**4. Data Breach Notification:** The Contractor shall inform the Purchasing Entity of Data Breach related to Purchasing Entity's Data within the possession or control of the Contractor and related to the service provided under the Master Agreement, Participating Addendum, or applicable TD. Such notice will be based upon Purchasing Entity's selection of security requirements described in the applicable TD.

a. Incident Response: The Contractor may need to communicate with outside parties regarding an Incident, which may include contacting law enforcement, fielding media inquiries and seeking external expertise, defined by law or contained in the Master Agreement, Participating Addendum, or applicable TD. Discussing Incidents with the Purchasing Entity should be handled on an urgent as-reasonably-needed basis, as part of Contractor's communication and mitigation processes as mutually agreed, defined by law or contained in the Master Agreement, Participating Addendum, or applicable TD.

b. Security Breach Reporting Requirements: Unless otherwise stipulated in a signed writing, the Contractor shall report a Security Breach subject to the same requirements in section 4(c) below related to its service under the Master Agreement, Participating Addendum, or applicable TD to the appropriate Purchasing Entity.

c. Data Breach Reporting Requirements: If the Contractor has actual knowledge of a confirmed Data Breach that affects the security of any Purchasing Entity data that is subject to applicable Data Breach notification law, the Contractor shall (1) promptly notify the appropriate Purchasing Entity as stipulated within the applicable TD (but no later than 72 hours after Contractor determines that Purchasing Entity Personal Data has been subject to a Data Breach), unless shorter time is required by applicable law, and (2) take commercially reasonable measures to address the Data Breach in a timely manner.

**5. Breach Responsibilities:** This section only applies when a Data Breach occurs with respect to Personal Data within the possession or control of the Contractor and related to the service provided under the Master Agreement, Participating Addendum or applicable TD.

a. The Contractor, shall notify the appropriate Purchasing Entity in accordance with the agreed upon notification requirements in the applicable TD.

b. The Contractor shall notify the appropriate Purchasing Entity identified contact as described in TD, unless shorter time is required by applicable law. If the Contractor confirms that there is a

Data Breach, the Contractor shall (1) cooperate with the Purchasing Entity as stipulated in the applicable TD to investigate and resolve the Data Breach, (2) promptly implement necessary remedial measures, if necessary, and (3) maintain & follow documented incident response policies consistent with NIST guidelines for computer security incident handling and will comply with data breach notifications terms of the Contractor's Cloud Services Agreement.

c. Unless otherwise stipulated, *if a Purchasing Entity retained Contractor to encrypt Personal Data in accordance with an applicable TD, and* a Data Breach is a direct result of Contractor's breach of its contractual obligation to encrypt Personal Data or otherwise prevent its release, the Contractor shall, subject to the conditions set forth in subsections (A) and (B) of this section, bear the costs (which shall be deemed direct damages) associated with (1) the investigation and resolution of the data breach; (2) notifications to individuals, regulators or others required by federal and state laws or as otherwise agreed to; (3) a credit monitoring service required by state (or federal) law or as otherwise agreed to; (4) a website or a toll-free number and call center for affected individuals required by federal and state laws — all not to exceed the average per record per person cost calculated for data breaches in the United States (currently \$217 per record/person) in the most recent Cost of Data Breach Study: Global Analysis published by the Ponemon Institute at the time of the data breach; and (5) completion of all corrective actions related to the delivery of the Service as reasonably determined by Contractor based on root cause analysis and findings, provided however that:

(A) CONTRACTOR'S ENTIRE OBLIGATION FOR ALL DAMAGES AND EXPENSES RELATED TO A DATA BREACH SHALL BE SUBJECT TO THE LIMITATION SET FORTH IN SECTION 44.f. OF THE MASTER AGREEMENT TERMS AND CONDITIONS, WHICH SHALL BE MODIFIED AS FOLLOWS SOLELY IN THE EVENT OF A DATA BREACH: (i) IN CONNECTION WITH ORDERS RECEIVED IN AGGREGATE VALUE BETWEEN ONE MILLION DOLLARS (U.S. \$1,000,000) AND FIVE MILLION DOLLARS (U.S. \$5,000,000), SUBSECTION 44.f.A.(ii) SHALL BE MODIFIED TO READ "TWO MILLION, FIVE HUNDRED THOUSAND DOLLARS (U.S. \$2,500,000)"; AND (ii) IN CONNECTION WITH ORDERS RECEIVED IN AGGREGATE VALUE THAT EXCEEDS FIVE MILLION DOLLARS (U.S. \$5,000,000), SUBSECTION 44.f.A.(ii) SHALL BE MODIFIED TO READ "THREE MILLION DOLLARS (U.S. \$3,000,000)"; and

(B) this Section 5.c sets forth Contractor's entire obligation and, when applicable, shall constitute Purchasing Entity's sole and exclusive remedy for all damages and expenses related to a Data Breach.

**6. Notification of Legal Requests:** The Contractor shall contact the Purchasing Entity upon receipt of any electronic discovery, litigation holds, discovery searches and expert testimonies related to the Purchasing Entity's Data under the Master Agreement, or which in any way might reasonably require access to the Purchasing Entity's Data. The Contractor shall not respond to subpoenas or service of process related to the Purchasing Entity without first notifying the Purchasing Entity, unless prohibited by law from providing such notice.

## **7. Termination and Suspension of Service:**

a. In the event of an early termination of the Master Agreement, Participating Addendum or applicable TD, Contractor shall allow for the Purchasing Entity to retrieve its digital content and

provide for the subsequent secure disposal of the Purchasing Entity's digital content as stipulated in applicable TD.

b. During any period of service suspension, the Contractor shall not take any action to intentionally erase or otherwise dispose of any of the Purchasing Entity's Data except for material breach including non-payment, security breach or violation of law by Purchasing Entity.

c. In the event of early termination of any Services or agreement in entirety except for material breach including, as applicable, non-payment, security breach or violation of law, the Contractor shall not take any action to intentionally erase any Purchasing Entity's Data for a period to be outlined in the applicable TD. After such day period outline in the applicable TD, the Contractor shall have no obligation to maintain or provide any Purchasing Entity Data and shall thereafter, delete all Purchasing Entity data in its systems or otherwise in its possession or under its control. Any charges or fees assessed by Contractor for access and retrieval of Purchasing Entity Data, if any, shall be at Contractor's standard charges and fees for such access and retrieval.

d. The Purchasing Entity shall be entitled to any post termination assistance generally made available with respect to the services, unless a unique data retrieval arrangement has been established as part of an applicable TD.

e. Upon termination of the Services or the Agreement in its entirety, Contractor shall securely dispose of all Purchasing Entity's Data in all of its forms, such as disk, CD/ DVD, backup tape and paper, if stipulated in an applicable TD by the Purchasing Entity. Such Data shall be permanently deleted and shall not be recoverable, according to National Institute of Standards and Technology (NIST)-approved methods.

## **8. Background Checks:**

a. Contractor follows a mandated set of employment verification requirements for all new hires, including regular, fixed term, supplementals, part time, interns, early professional and professional hires. These standards apply to Contractor's wholly owned subsidiaries and joint ventures. The requirements currently include, but may not be limited to, criminal background checks, proof of identity validation, and additional checks if the candidate previously worked for a government entity. Each country is responsible for implementing the above requirements in their hiring process as applicable and permissible pursuant to each country's local laws.

When requested under an applicable TD, the Contractor shall conduct a background investigation in accordance with Contractor's internal process. This investigation may be at the Purchasing Entity's expense. Contractor will conduct the background and/or verification checks in accordance with Contractor's policies and applicable law and background report may include a check of a national criminal database as well as the OFAC Listing.

b. The Contractor and the Purchasing Entity recognize that security responsibilities are shared. The Contractor is responsible for providing a secure infrastructure as provided in an applicable TD. The Purchasing Entity is responsible for its secure guest operating system, firewalls and other logs captured within the guest operating system. Specific shared responsibilities are identified within the applicable TD.

c. If any of the stated personnel providing services under an applicable TD is not acceptable to the Purchasing Entity as a result of the background investigation, the Purchasing Entity, shall have the option to either (1) request replacement of the person, or (2) terminate the Participating Addendum and any related service agreement in accordance with the Termination Section of the Master Agreement.

#### **9. Access to Security Logs and Reports:**

a. The Contractor shall provide reports specified in an applicable TD to the Purchasing Entity. Depending upon offering being purchased, reports may include latency statistics, user access, user access IP address, user access history and security logs for all Purchasing Entity files related to the Master Agreement, Participating Addendum, or applicable TD.

b. The Contractor and the Purchasing Entity recognize that security responsibilities are shared. The Contractor is responsible for providing a secure infrastructure as provided in an applicable TD. The Purchasing Entity is responsible for its secure guest operating system, firewalls and other logs captured within the guest operating system. Specific shared responsibilities are identified within the SLA.

**10. Contract Audit:** The Contractor shall allow the Purchasing Entity to audit financial data and records for conformance with Section 26 of the Master Agreement, Records and Audit Administration.

**11. Data Center Audit:** The Contractor shall perform an independent audit of its data centers at least annually at its expense, and upon request to a Purchasing Entity with a written non-disclosure agreement. A redacted Service Organization Control (SOC) 2 audit report or equivalent third-party audit will be provided. Data Center audit reports are Confidential Information of Contractor and shall be treated as such at all times. Access to such reports under an Open Records or Freedom of Information Act provision shall be addressed as needed in the Participating Addendum under which a Purchasing Entity procures a Cloud Service. Physical access to data centers is prohibited except as required by law.

**12. Change Control and Advance Notice:** The Contractor shall give reasonable notice as defined in an applicable TD to the Purchasing Entity of any upgrades (e.g., major upgrades, minor upgrades, system changes) that Contractor expects may impact service availability and performance. A major upgrade is a replacement of hardware, software or firmware with a newer or better version in order to bring the system up to date or to improve its characteristics. It may include a new version number.

Contractor will make updates and upgrades available to Purchasing Entity at no additional costs when Contractor makes such updates and upgrades generally available to its users at no cost. Additional costs may be required for specific customer requests, and these updates and upgrades will be based on list price less applicable contract discounts.

**13. Security:** Based upon selection of IaaS Service and as requested by a Purchasing Entity, the Contractor shall disclose its non-proprietary system security plans (SSP) or security processes and technical limitations to the Purchasing Entity such that adequate protection and flexibility can be attained between the Purchasing Entity and the Contractor. For example: virus checking and port sniffing — the Purchasing Entity and the Contractor shall understand each other's roles and responsibilities as described in an applicable TD.

**14. Non-disclosure and Separation of Duties:** The Contractor shall enforce separation of job duties, require commercially reasonable non-disclosure agreements in accordance with Master Agreement paragraph 8 Confidentiality, Non-Disclosure, and Injunctive Relief, and limit staff knowledge of Purchasing Entity data to that which is necessary to perform job duties.

**15. Import and Export of Data:** The Purchasing Entity shall have the ability to import or export data in piecemeal or in entirety at its discretion without interference from the Contractor at any time during the term of Contractor's contract with the Purchasing Entity. This includes the ability for the Purchasing Entity to import or export data to/from other Contractors subject to compliance with Master Agreement Section 17 Laws. Contractor shall specify in an applicable TD if Purchasing Entity is required to provide its' own tools for this purpose, including the optional purchase of Contractors tools if Contractors applications are not able to provide this functionality directly.

**16. Responsibilities and Uptime Guarantee:** The Contractor shall be responsible for the acquisition and operation of all hardware, software and network support related to the services being provided. The technical and professional activities required for establishing, managing and maintaining the environments are the shared responsibilities of the parties described in an applicable TD. The system shall be available as described in the applicable TD (with agreed-upon maintenance downtime) and provide service to customers as defined in the applicable TD.

**17. Subcontractor Disclosure:** Contractor shall identify corporate entities related to services provided under this Master Agreement, who shall be involved in any application development and/or operations. For purposes of clarity, Contractor is not required to identify its employees who are providing Services.

**18. Business Continuity and Disaster Recovery:** If requested as part of the Services, the Contractor shall provide a business continuity and disaster recovery (BC/DR) plan upon request, based on the Purchasing Entity's recovery time objective (RTO) of XXX hours/days (XXX hour/days shall be provided to Contractor by the Purchasing Entity.) As part of the BC/DR services, Contractor will work with the Purchasing Entity to perform an annual Disaster Recovery test and take action to correct any issues detected during the test in a time frame mutually agreed between the Contractor and the Purchasing Entity.

**19. Subscription Terms:** If set forth in an applicable TD, Contractor grants to a Purchasing Entity the ability to: (i) access and use the Service for its business purposes; (ii) for IaaS, use underlying software as embodied or used in the Service; and (iii) view, copy, upload and download (where applicable), and use Contractor's documentation. Except as set forth in the Master Agreement, no Contractor terms, including standard click through license or website terms or use of privacy policy, shall apply to Purchasing Entities unless such terms are included in this Master Agreement or in an applicable TD.

## **Exhibit 1 to the Master Agreement: Infrastructure-as-a-Service**

**1. Data Ownership:** The Purchasing Entity will own all right, title and interest in its Data that is related to the Services provided by this Master Agreement. The Contractor shall not access Purchasing Entity user accounts or Purchasing Entity Data, except (1) in the course of data center operations, (2) in response to service or technical issues, (3) as required by the express terms of this Master Agreement, Participating Addendum, Transaction Document (TD), and/or other contract documents (including compliance with applicable laws), or (4) at the Purchasing Entity's written request.

Unless set forth in a TD, Contractor shall not collect, access, or use user-specific Purchasing Entity Data except as strictly necessary to provide Service to the Purchasing Entity. No information regarding a Purchasing Entity's use of the Service may be disclosed, provided, rented or sold to any third party for any reason unless required by law or regulation or by an order of a court of competent jurisdiction or is publicly available. This obligation shall survive and extend beyond the term of this Master Agreement.

**2. Data Protection:** Protection of personal privacy and Data shall be an integral part of the business activities of the Contractor so that there is no inappropriate or unauthorized use of Purchasing Entity information at any time. To this end, the Contractor shall safeguard the confidentiality, integrity and availability of Purchasing Entity Data and comply with the following conditions:

- a. The Contractor shall implement and maintain appropriate administrative, technical and organizational security measures to safeguard against unauthorized access, disclosure or theft of Personal Data and Non-Public Data. Such security measures shall be in accordance with security measures described in applicable TD.
- b. All Non-Public Data obtained from the Purchasing Entity by the Contractor in the performance of the Master Agreement shall become and remain the property of the Purchasing Entity.
- c. All Personal Data shall be encrypted if, and to the extent as set forth in, an applicable TD regarding security requirements of data classification. If and unless otherwise stipulated in an applicable TD, the Contractor may not be responsible for encryption of the Personal Data. Any stipulation of responsibilities will identify specific roles and responsibilities and shall be included in the applicable TD, or otherwise made a part of the Master Agreement.
- d. If stipulated in the applicable TD, the Contractor shall encrypt all Non-Public Data at rest and in transit based upon the applicable security requirements set forth and agreed to in the applicable TD. The Purchasing Entity shall identify data it deems as Non-Public Data to the Contractor. The level of protection and encryption for all Non-Public Data shall be identified in the applicable TD.
- e. At no time shall any Data or processes defined as Confidential — that either belong to or are intended for the use of a Purchasing Entity or its officers, agents or employees — be copied, disclosed or retained by the Contractor or any party related to the Contractor for subsequent use in any transaction that does not include the Purchasing Entity.

f. The Contractor shall not use any Purchasing Entity Data in connection with the Services issued from this Master Agreement for any purpose other than fulfilling the Services.

g. Nothing contained herein shall be deemed to enlarge or otherwise change the Contractor's responsibilities for treatment of Confidential Information as set forth in Section 8 of the Master Agreement.

**3. Data Location:** As selected by Purchasing Entity from available Contractor data centers, the Contractor shall provide its services to the Purchasing Entity and its end users solely from data centers in the U.S and storage of Purchasing Entity data at rest shall be located solely in data centers in the U.S. The Contractor shall not allow its personnel or contractors to store Purchasing Entity data on portable devices, including personal computers, except for devices that are used and kept only at its U.S. data centers. The Contractor shall permit its personnel and contractors to access Purchasing Entity data remotely only as required to provide technical and general administrative support. The Contractor may provide technical user support on a 24/7 basis using a Follow the Sun model, unless otherwise prohibited in a Participating Addendum.

**4. Data Breach Notification:** The Contractor shall inform the Purchasing Entity of Data Breach related to Purchasing Entity's Data within the possession and control of the Contractor and related to the service provided under the Master Agreement, Participating Addendum, or applicable TD. Such notice will be based upon Purchasing Entity's selection of security requirements described in the applicable TD.

a. Incident Response: The Contractor may need to communicate with outside parties regarding an Incident, which may include contacting law enforcement, fielding media inquiries and seeking external expertise, defined by law or contained in the Master Agreement, Participating Addendum, or applicable TD. Discussing Incidents with the Purchasing Entity should be handled on an urgent as-reasonably-needed basis, as part of Contractor's communication and mitigation processes as mutually agreed, defined by law or contained in the Master Agreement, Participating Addendum, or applicable TD.

b. Security Breach Reporting Requirements: Unless otherwise stipulated in a signed writing, the Contractor shall report a Security Breach subject to the same requirements in section 4(c) below related to its service under the Master Agreement, Participating Addendum, or applicable TD to the appropriate Purchasing Entity.

c. Data Breach Reporting Requirements: If the Contractor has actual knowledge of a confirmed Data Breach that affects the security of any Purchasing Entity data that is subject to applicable Data Breach notification law, the Contractor shall (1) promptly notify the appropriate Purchasing Entity as stipulated within the applicable TD (but no later than 72 hours after Contractor determines that Purchasing Entity Personal Data has been subject to a Data Breach), unless shorter time is required by applicable law, and (2) take commercially reasonable measures to address the Data Breach in a timely manner.

**5. Breach Responsibilities:** This section only applies when a Data Breach occurs with respect to Personal Data within the possession or control of the Contractor and related to the service provided under the Master Agreement, Participating Addendum or applicable TD.

- a. The Contractor, shall notify the appropriate Purchasing Entity in accordance with the agreed upon notification requirements in the applicable TD.
- b. The Contractor shall notify the appropriate Purchasing Entity identified contact as described in TD, unless shorter time is required by applicable law. If the Contractor confirms that there is a Data Breach, the Contractor shall (1) cooperate with the Purchasing Entity as stipulated in the applicable TD to investigate and resolve the Data Breach, (2) promptly implement necessary remedial measures, if necessary, and (3) maintain & follow documented incident response policies consistent with NIST guidelines for computer security incident handling and will comply with data breach notifications terms of the Contractor's Cloud Services Agreement.
- c. Unless otherwise stipulated, if a Purchasing Entity retained Contractor to encrypt Personal Data in accordance with an applicable TD, and a Data Breach is a direct result of Contractor's breach of its contractual obligation to encrypt Personal Data or otherwise prevent its release, the Contractor shall, subject to the conditions set forth in subsections (A) and (B) of this section, bear the costs (which shall be deemed direct damages) associated with (1) the investigation and resolution of the data breach; (2) notifications to individuals, regulators or others required by federal and state laws or as otherwise agreed to; (3) a credit monitoring service required by state (or federal) law or as otherwise agreed to; (4) a website or a toll-free number and call center for affected individuals required by federal and state laws — all not to exceed the average per record per person cost calculated for data breaches in the United States (currently \$217 per record/person) in the most recent Cost of Data Breach Study: Global Analysis published by the Ponemon Institute at the time of the data breach; and (5) completion of all corrective actions related to the delivery of the Service as reasonably determined by Contractor based on root cause analysis and findings, provided however that:

(A) CONTRACTOR'S ENTIRE OBLIGATION FOR ALL DAMAGES AND EXPENSES RELATED TO A DATA BREACH SHALL BE SUBJECT TO THE LIMITATION SET FORTH IN SECTION 44.f. OF THE MASTER AGREEMENT TERMS AND CONDITIONS, WHICH SHALL BE MODIFIED AS FOLLOWS SOLELY IN THE EVENT OF A DATA BREACH: (i) IN CONNECTION WITH ORDERS RECEIVED IN AGGREGATE VALUE BETWEEN ONE MILLION DOLLARS (U.S. \$1,000,000) AND FIVE MILLION DOLLARS (U.S. \$5,000,000), SUBSECTION 44.f.A.(ii) SHALL BE MODIFIED TO READ "TWO MILLION, FIVE HUNDRED THOUSAND DOLLARS (U.S. \$2,500,000)"; AND (ii) IN CONNECTION WITH ORDERS RECEIVED IN AGGREGATE VALUE THAT EXCEEDS FIVE MILLION DOLLARS (U.S. \$5,000,000), SUBSECTION 44.f.A.(ii) SHALL BE MODIFIED TO READ "THREE MILLION DOLLARS (U.S. \$3,000,000)"; and

(B) this Section 5.c sets forth Contractor's entire obligation and, when applicable, shall constitute Purchasing Entity's sole and exclusive remedy for all damages and expenses related to a Data Breach.

**6. Notification of Legal Requests:** The Contractor shall contact the Purchasing Entity upon receipt of any electronic discovery, litigation holds, discovery searches and expert testimonies related to the Purchasing Entity's Data under the Master Agreement, or which in any way might reasonably require access to the Purchasing Entity's Data. The Contractor shall not respond to subpoenas or service of process related to the Purchasing Entity without first notifying the Purchasing Entity, unless prohibited by law from providing such notice.

**7. Termination and Suspension of Service:**

a. In the event of an early termination of the Master Agreement, Participating Addendum or applicable TD, Contractor shall allow for the Purchasing Entity to retrieve its digital content and provide for the subsequent secure disposal of the Purchasing Entity's digital content as stipulated in the applicable TD.

b. During any period of service suspension, the Contractor shall not take any action to intentionally erase or otherwise dispose of any of the Purchasing Entity's Data except for material breach including non-payment, security breach or violation of law by Purchasing Entity.

c. In the event of early termination of any Services or agreement in entirety except for material breach including, as applicable, non-payment, security breach or violation of law, the Contractor shall not take any action to intentionally erase any Purchasing Entity's Data for a period to be outlined in the applicable TD. After such day period outline in the applicable TD, the Contractor shall have no obligation to maintain or provide any Purchasing Entity Data and shall thereafter, delete all Purchasing Entity data in its systems or otherwise in its possession or under its control. Any charges or fees assessed by Contractor for access and retrieval of Purchasing Entity Data, if any, shall be at Contractor's standard charges and fees for such access and retrieval.

d. The Purchasing Entity shall be entitled to any post termination assistance generally made available with respect to the services, unless a unique data retrieval arrangement has been established as part of an applicable TD.

e. Upon termination of the Services or the Agreement in its entirety, Contractor shall securely dispose of all Purchasing Entity's Data in all of its forms, such as disk, CD/ DVD, backup tape and paper, if stipulated in an applicable TD by the Purchasing Entity. Such Data shall be permanently deleted and shall not be recoverable, according to National Institute of Standards and Technology (NIST)-approved methods.

**8. Background Checks:**

a. Contractor follows a mandated set of employment verification requirements for all new hires, including regular, fixed term, supplementals, part time, interns, early professional and

professional hires. These standards apply to Contractor's wholly owned subsidiaries and joint ventures. The requirements currently include, but may not be limited to, criminal background checks, proof of identity validation, and additional checks if the candidate previously worked for a government entity. Each country is responsible for implementing the above requirements in their hiring process as applicable and permissible pursuant to each country's local laws.

When requested under an applicable TD, the Contractor shall conduct a background investigation in accordance with Contractor's internal process. This investigation may be at the Purchasing Entity's expense. Contractor will conduct the background and/or verification checks in accordance with Contractor's policies and applicable law and background report may include a check of a national criminal database as well as the OFAC Listing.

b. The Contractor and the Purchasing Entity recognize that security responsibilities are shared. The Contractor is responsible for providing a secure infrastructure as provided in an applicable TD. The Purchasing Entity is responsible for its secure guest operating system, firewalls and other logs captured within the guest operating system. Specific shared responsibilities are identified within the applicable TD.

c. If any of the stated personnel providing services under an applicable TD is not acceptable to the Purchasing Entity as a result of the background investigation, the Purchasing Entity, shall have the option to either (1) request replacement of the person, or (2) terminate the Participating Addendum and any related service agreement in accordance with the Termination Section of the Master Agreement.

#### **9. Access to Security Logs and Reports:**

a. The Contractor shall provide reports specified in an applicable TD to the Purchasing Entity. Depending upon offering being purchased, reports may include latency statistics, user access, user access IP address, user access history and security logs for all Purchasing Entity files related to the Master Agreement, Participating Addendum, or applicable TD.

b. The Contractor and the Purchasing Entity recognize that security responsibilities are shared. The Contractor is responsible for providing a secure infrastructure as provided in an applicable TD. The Purchasing Entity is responsible for its secure guest operating system, firewalls and other logs captured within the guest operating system. Specific shared responsibilities are identified within the applicable TD.

**10. Contract Audit:** The Contractor shall allow the Purchasing Entity to audit financial data and records for conformance with Section 26 of the Master Agreement, Records and Audit Administration.

**11. Data Center Audit:** The Contractor shall perform an independent audit of its data centers at least annually at its expense, and upon request to a Purchasing Entity with a written non-disclosure agreement. A redacted Service Organization Control (SOC) 2 audit report or equivalent third-party audit will be provided. Data Center audit reports are Confidential Information of Contractor and shall be treated as

such at all times. Access to such reports under an Open Records or Freedom of Information Act provision shall be addressed as needed in the Participating Addendum under which a Purchasing Entity procures a Cloud Service. Physical access to data centers is prohibited except as required by law.

**12. Change Control and Advance Notice:** The Contractor shall give reasonable notice as defined in an applicable TD to the Purchasing Entity of any upgrades (e.g., major upgrades, minor upgrades, system changes) that Contractor expects may impact service availability and performance. A major upgrade is a replacement of hardware, software or firmware with a newer or better version in order to bring the system up to date or to improve its characteristics. It may include a new version number.

Contractor will make updates and upgrades available to Purchasing Entity at no additional costs when Contractor makes such updates and upgrades generally available to its users at no cost. Additional costs may be required for specific customer requests, and these updates and upgrades will be based on list price less applicable contract discounts.

**13. Security:** Based upon selection of IaaS Service and as requested by a Purchasing Entity, the Contractor shall disclose its non-proprietary system security plans (SSP) or security processes and technical limitations to the Purchasing Entity such that adequate protection and flexibility can be attained between the Purchasing Entity and the Contractor. For example: virus checking and port sniffing — the Purchasing Entity and the Contractor shall understand each other's roles and responsibilities as described in an applicable TD.

**14. Non-disclosure and Separation of Duties:** The Contractor shall enforce separation of job duties, require commercially reasonable non-disclosure agreements in accordance with Master Agreement paragraph 8 Confidentiality, Non-Disclosure, and Injunctive Relief, and limit staff knowledge of Purchasing Entity data to that which is necessary to perform job duties.

**15. Import and Export of Data:** The Purchasing Entity shall have the ability to import or export data in piecemeal or in entirety at its discretion without interference from the Contractor at any time during the term of Contractor's contract with the Purchasing Entity. This includes the ability for the Purchasing Entity to import or export data to/from other Contractors subject to compliance with Master Agreement Section 17 Laws. Contractor shall specify in an applicable TD if Purchasing Entity is required to provide its' own tools for this purpose, including the optional purchase of Contractors tools if Contractors applications are not able to provide this functionality directly.

**16. Responsibilities and Uptime Guarantee:** The Contractor shall be responsible for the acquisition and operation of all hardware, software and network support related to the services being provided. The technical and professional activities required for establishing, managing and maintaining the environments are the shared responsibilities of the parties described in an applicable TD. The system shall be available as described in the applicable TD (with agreed-upon maintenance downtime) and provide service to customers as defined in the applicable TD.

**17. Subcontractor Disclosure:** Contractor shall identify corporate entities related to services provided under this Master Agreement, who shall be involved in any application development and/or operations. For purposes of clarity, Contractor is not required to identify its employees who are providing Services.

**18. Business Continuity and Disaster Recovery:** If requested as part of the Services, the Contractor shall provide a business continuity and disaster recovery (BC/DR) plan upon request, based on the Purchasing Entity's recovery time objective (RTO) of XXX hours/days (XXX hour/days shall be provided to Contractor by the Purchasing Entity.) As part of the BC/DR services, Contractor will work with the Purchasing Entity to perform an annual Disaster Recovery test and take action to correct any issues detected during the test in a time frame mutually agreed between the Contractor and the Purchasing Entity.

**19. Subscription Terms:** If set forth in an applicable TD, Contractor grants to a Purchasing Entity the ability to: (i) access and use the Service for its business purposes; (ii) for IaaS, use underlying software as embodied or used in the Service; and (iii) view, copy, upload and download (where applicable), and use Contractor's documentation. Except as set forth in the Master Agreement, no Contractor terms, including standard click through license or website terms or use of privacy policy, shall apply to Purchasing Entities unless such terms are included in this Master Agreement or in an applicable TD.

## Attachment B – Scope of Services Awarded to Contractor

### **1.1 Awarded Service Model(s).**

Contractor is awarded the following Service Model:

- Infrastructure as a Service (IaaS)

### **1.2 Risk Categorization.\***

Contractor's offered solutions offer the ability to store and secure data under the following risk categories:

| <b>Service Model</b> | <b>Low Risk Data</b> | <b>Moderate Risk Data</b> | <b>High Risk Data</b> | <b>Deployment Models Offered</b>        |
|----------------------|----------------------|---------------------------|-----------------------|-----------------------------------------|
| IaaS                 | x                    | x                         | x                     | Public, Private, **Hybrid, ***Community |

\*Contractor may add additional OEM solutions during the life of the contract.

\*\* In the Hybrid Deployment Model, some of the systems, applications, and database may reside on customer premises outside of KYNDRYL Cloud infrastructure. Therefore, those components must support the Data Risk classifications, as specified in the Table above for the end-to-end cloud solution to comply with the requirement in this document.

\*\*\* While the Community Cloud is not a standard Deployment Model, as per KYNDRYL Cloud terminology, it is supported on KYNDRYL Cloud platform.

### **2.1 Deployment Models.**

Contractor may provide cloud based services through the following deployment methods:

- **Private cloud.** The cloud infrastructure is provisioned for exclusive use by a single organization comprising multiple consumers (e.g., business units). It may be owned, managed, and operated by the organization, a third party, or some combination of them, and it may exist on or off premises.
- **Community cloud.** The cloud infrastructure is provisioned for exclusive use by a specific community of consumers from organizations that have shared concerns (e.g., mission, security requirements, policy, and compliance considerations). It may be owned, managed, and operated by one or more of the organizations in the community, a third party, or some combination of them, and it may exist on or off premises.
- **Public cloud.** The cloud infrastructure is provisioned for open use by the general public. It may be owned, managed, and operated by a business, academic, or government organization, or some combination of them. It exists on the premises of the cloud provider.

- **Hybrid cloud.** The cloud infrastructure is a composition of two or more distinct cloud infrastructures (private, community, or public) that remain unique entities, but are bound together by standardized or proprietary technology that enables data and application portability (e.g., cloud bursting for load balancing between clouds)

## Attachment C - Pricing Discounts and Schedule

Contractor: Kyndryl, Inc.**Pricing Notes**

1. % discounts are based on minimum discounts off Contractor's commercially published pricelists versus fixed pricing. Nonetheless, Orders will be fixed-price or fixed-rate and not cost reimbursable contracts. Contractor has the ability to update and refresh its respective price catalog, as long as the agreed-upon discounts are fixed.
2. Minimum guaranteed contract discounts do not preclude an Offeror and/or its authorized resellers from providing deeper or additional, incremental discounts at their sole discretion.
3. Purchasing entities shall benefit from any promotional pricing offered by Contractor to similar customers. Promotional pricing shall not be cause for a permanent price change.
4. Contractor's price catalog include the price structures of the cloud service models, value added services (i.e., Maintenance Services, Professional Services, Etc.), and deployment models that it intends to provide including the types of data it is able to hold under each model. Pricing shall all-inclusive of infrastructure and software costs and management of infrastructure,
5. Contractor provides tiered pricing to accompany its named user licensing model, therefore, as user count reaches tier thresholds, unit price decreases.

**Cloud Service Model: Infrastructure as a Service (IaaS)**

| Description                                                                        | Minimum Discount % Off |
|------------------------------------------------------------------------------------|------------------------|
| IaaS Minimum Discount % *<br>(applies to all OEM's offered within this IaaS model) | 3.00%                  |
| <b>Average IaaS OEM Discount Off</b>                                               | <b>3.00%</b>           |

**Additional Value Added Services**

| Rates are Calendar Year NOT Government Fiscal Year                          | Outyear rates are escalated using a 2% escalation factor |                             |                            |
|-----------------------------------------------------------------------------|----------------------------------------------------------|-----------------------------|----------------------------|
| Title(s)                                                                    | Minimum Education / Certification Level                  | Minimum Years of Experience | Jan 1, 2021 - Dec 31, 2021 |
| Architect I                                                                 | Bachelors                                                | 1                           | \$ 162.66                  |
| Architect II                                                                | Bachelors                                                | 3                           | \$ 195.73                  |
| Architect III                                                               | Bachelors                                                | 5                           | \$ 228.80                  |
| Architect IV                                                                | Bachelors                                                | 7                           | \$ 276.52                  |
| Architect V                                                                 | Bachelors                                                | 12                          | \$ 344.36                  |
| Consultant I                                                                | Bachelors                                                | 1                           | \$ 223.27                  |
| Consultant II                                                               | Bachelors                                                | 3                           | \$ 251.82                  |
| Consultant III                                                              | Bachelors                                                | 5                           | \$ 275.68                  |
| Consultant IV                                                               | Bachelors                                                | 7                           | \$ 312.79                  |
| Consultant V                                                                | Bachelors                                                | 12                          | \$ 357.08                  |
| Database Administrator I                                                    | Bachelors                                                | 1                           | \$ 130.13                  |
| Database Administrator II                                                   | Bachelors                                                | 3                           | \$ 146.39                  |
| Database Administrator III                                                  | Bachelors                                                | 5                           | \$ 162.66                  |
| Database Administrator IV                                                   | Bachelors                                                | 7                           | \$ 233.35                  |
| Database Administrator V                                                    | Bachelors                                                | 12                          | \$ 303.24                  |
| Project Coordinator I                                                       | Bachelors                                                | 1                           | \$ 103.02                  |
| Project Coordinator II                                                      | Bachelors                                                | 3                           | \$ 113.07                  |
| Project Coordinator III                                                     | Bachelors                                                | 5                           | \$ 124.70                  |
| Project Coordinator IV                                                      | Bachelors                                                | 7                           | \$ 146.39                  |
| Project Manager I                                                           | Bachelors                                                | 1                           | \$ 125.97                  |
| Project Manager II                                                          | Bachelors                                                | 3                           | \$ 128.49                  |
| Project Manager III                                                         | Bachelors                                                | 5                           | \$ 190.16                  |
| Project Manager IV                                                          | Bachelors                                                | 7                           | \$ 243.98                  |
| Project Manager V                                                           | Bachelors                                                | 12                          | \$ 344.35                  |
| Systems Administrator - Client, Enterprise and Data Center Technologies I   | Bachelors                                                | 1                           | \$ 131.19                  |
| Systems Administrator - Client, Enterprise and Data Center Technologies II  | Bachelors                                                | 3                           | \$ 145.84                  |
| Systems Administrator - Client, Enterprise and Data Center Technologies III | Bachelors                                                | 5                           | \$ 160.49                  |
| Systems Administrator - Client, Enterprise and Data Center Technologies IV  | Bachelors                                                | 7                           | \$ 183.26                  |
| Systems Administrator - Client, Enterprise and Data Center Technologies V   | Bachelors                                                | 12                          | \$ 219.89                  |
| Technical Systems and Solutions Specialist I                                | Bachelors                                                | 1                           | \$ 130.13                  |
| Technical Systems and Solutions Specialist II                               | Bachelors                                                | 3                           | \$ 179.46                  |
| Technical Systems and Solutions Specialist III                              | Bachelors                                                | 5                           | \$ 228.80                  |
| Technical Systems and Solutions Specialist IV                               | Bachelors                                                | 7                           | \$ 252.88                  |
| Technical Systems and Solutions Specialist V                                | Bachelors                                                | 12                          | \$ 282.70                  |
| IT Analyst - Solutions I                                                    | Bachelors                                                | 1                           | \$ 119.29                  |
| IT Analyst - Solutions II                                                   | Bachelors                                                | 3                           | \$ 132.84                  |
| IT Analyst - Solutions III                                                  | Bachelors                                                | 5                           | \$ 146.39                  |
| IT Analyst - Solutions IV                                                   | Bachelors                                                | 7                           | \$ 162.66                  |
| IT Analyst - Solutions V                                                    | Bachelors                                                | 12                          | \$ 196.55                  |
| Security Analyst - Junior                                                   | Bachelors                                                | 1                           | \$ 96.02                   |
| Security Analyst - Intermediate                                             | Bachelors                                                | 5                           | \$ 134.66                  |
| Security Analyst - Senior                                                   | Bachelors                                                | 7                           | \$ 175.98                  |
| Computer Network Defense (CND) Analyst - Junior                             | Bachelors                                                | 1                           | \$ 108.19                  |
| Computer Network Defense (CND) Analyst - Intermediate                       | Bachelors                                                | 5                           | \$ 146.84                  |
| Computer Network Defense (CND) Analyst - Senior                             | Bachelors                                                | 7                           | \$ 188.16                  |
| Security Architect - Junior                                                 | Bachelors                                                | 1                           | \$ 151.69                  |
| Security Architect - Intermediate                                           | Bachelors                                                | 5                           | \$ 190.33                  |
| Security Architect - Senior                                                 | Bachelors                                                | 7                           | \$ 231.66                  |
| Information Assurance Analyst - Junior                                      | Bachelors                                                | 1                           | \$ 129.29                  |
| Information Assurance Analyst - Intermediate                                | Bachelors                                                | 5                           | \$ 167.93                  |
| Information Assurance Analyst - Senior                                      | Bachelors                                                | 7                           | \$ 203.52                  |
| Penetration Tester - Intermediate                                           | Bachelors                                                | 3                           | \$ 159.46                  |
| Penetration Tester - Senior                                                 | Bachelors                                                | 6                           | \$ 178.67                  |

## Attachment C - Pricing Discounts and Schedule

Contractor: Kyndryl, Inc.

|                                                                                                  |           |    |    |        |
|--------------------------------------------------------------------------------------------------|-----------|----|----|--------|
| Cybersecurity Engineer - Junior                                                                  | Bachelors | 1  | \$ | 100.65 |
| Cybersecurity Engineer - Intermediate                                                            | Bachelors | 5  | \$ | 139.29 |
| Cybersecurity Engineer - Senior                                                                  | Bachelors | 7  | \$ | 180.61 |
| Cybersecurity Technical Writer - Junior                                                          | Bachelors | 1  | \$ | 91.38  |
| Cybersecurity Technical Writer - Intermediate                                                    | Bachelors | 5  | \$ | 130.03 |
| CyberSecurity Assessment and Authorization (A&A) Analyst - Junior                                | Bachelors | 1  | \$ | 118.59 |
| CyberSecurity Assessment and Authorization (A&A) Analyst - Intermediate                          | Bachelors | 5  | \$ | 157.23 |
| CyberSecurity Assessment and Authorization (A&A) Analyst - Senior                                | Bachelors | 7  | \$ | 198.55 |
| Vulnerability Management Analyst - Junior                                                        | Bachelors | 1  | \$ | 152.58 |
| Vulnerability Management Analyst - Intermediate                                                  | Bachelors | 5  | \$ | 191.23 |
| Vulnerability Management Analyst - Senior                                                        | Bachelors | 7  | \$ | 232.55 |
| Cloud Computing Security Specialist (CCSS)-Subject Matter Expert (SME) - Staff                   | Bachelors | 3  | \$ | 185.47 |
| Cloud Computing Security Specialist (CCSS)-Subject Matter Expert (SME) - Intermediate            | Bachelors | 5  | \$ | 230.95 |
| Cloud Computing Security Specialist (CCSS)-Subject Matter Expert (SME) - Senior                  | Bachelors | 7  | \$ | 295.92 |
| Operational Technology Security Engineer - Junior                                                | Bachelors | 1  | \$ | 143.40 |
| Operational Technology Security Engineer - Intermediate                                          | Bachelors | 5  | \$ | 182.04 |
| Operational Technology Security Engineer - Senior                                                | Bachelors | 7  | \$ | 223.36 |
| Health IT Architect-Skill Level I                                                                | Bachelors | 1  | \$ | 162.66 |
| Health IT Architect-Skill Level II                                                               | Bachelors | 3  | \$ | 195.73 |
| Health IT Architect-Skill Level III                                                              | Bachelors | 5  | \$ | 228.80 |
| Health IT Architect-Skill Level IV                                                               | Bachelors | 7  | \$ | 276.52 |
| Health IT Architect-Skill Level V                                                                | Bachelors | 12 | \$ | 344.36 |
| Health IT Consultant-Skill Level I                                                               | Bachelors | 1  | \$ | 223.27 |
| Health IT Consultant-Skill Level II                                                              | Bachelors | 3  | \$ | 251.82 |
| Health IT Consultant-Skill Level III                                                             | Bachelors | 5  | \$ | 275.68 |
| Health IT Consultant-Skill Level IV                                                              | Bachelors | 7  | \$ | 312.79 |
| Health IT Consultant-Skill Level V                                                               | Bachelors | 12 | \$ | 357.08 |
| Health IT Database Administrator-Skill Level I                                                   | Bachelors | 1  | \$ | 130.13 |
| Health IT Database Administrator-Skill Level II                                                  | Bachelors | 3  | \$ | 146.39 |
| Health IT Database Administrator-Skill Level III                                                 | Bachelors | 5  | \$ | 162.66 |
| Health IT Database Administrator-Skill Level IV                                                  | Bachelors | 7  | \$ | 233.35 |
| Health IT Database Administrator-Skill Level V                                                   | Bachelors | 12 | \$ | 303.24 |
| Health IT Project Coordinator-Skill Level I                                                      | Bachelors | 1  | \$ | 103.02 |
| Health IT Project Coordinator-Skill Level II                                                     | Bachelors | 3  | \$ | 113.07 |
| Health IT Project Coordinator-Skill Level III                                                    | Bachelors | 5  | \$ | 124.70 |
| Health IT Project Coordinator-Skill Level IV                                                     | Bachelors | 7  | \$ | 146.39 |
| Health IT Project Manager-Skill Level I                                                          | Bachelors | 1  | \$ | 125.97 |
| Health IT Project Manager-Skill Level II                                                         | Bachelors | 3  | \$ | 128.49 |
| Health IT Project Manager-Skill Level III                                                        | Bachelors | 5  | \$ | 190.16 |
| Health IT Project Manager-Skill Level IV                                                         | Bachelors | 7  | \$ | 243.98 |
| Health IT Project Manager-Skill Level V                                                          | Bachelors | 12 | \$ | 344.35 |
| Health IT System Administrator - Client, Enterprise and Data Center Technologies-Skill Level I   | Bachelors | 1  | \$ | 131.19 |
| Health IT System Administrator - Client, Enterprise and Data Center Technologies-Skill Level II  | Bachelors | 3  | \$ | 145.84 |
| Health IT System Administrator - Client, Enterprise and Data Center Technologies-Skill Level III | Bachelors | 5  | \$ | 160.49 |
| Health IT System Administrator - Client, Enterprise and Data Center Technologies-Skill Level IV  | Bachelors | 7  | \$ | 183.26 |
| Health IT System Administrator - Client, Enterprise and Data Center Technologies-Skill Level V   | Bachelors | 12 | \$ | 219.89 |
| Health IT Technical Systems and Solutions Specialist-Skill Level I                               | Bachelors | 1  | \$ | 130.13 |
| Health IT Technical Systems and Solutions Specialist-Skill Level II                              | Bachelors | 3  | \$ | 179.46 |
| Health IT Technical Systems and Solutions Specialist-Skill Level III                             | Bachelors | 5  | \$ | 228.80 |
| Health IT Technical Systems and Solutions Specialist-Skill Level IV                              | Bachelors | 7  | \$ | 252.88 |
| Health IT Technical Systems and Solutions Specialist-Skill Level V                               | Bachelors | 12 | \$ | 282.70 |
| Health IT Analyst - Solutions-Skill Level I                                                      | Bachelors | 1  | \$ | 119.29 |
| Health IT Analyst - Solutions-Skill Level II                                                     | Bachelors | 3  | \$ | 132.84 |
| Health IT Analyst - Solutions-Skill Level III                                                    | Bachelors | 5  | \$ | 146.39 |
| Health IT Analyst - Solutions-Skill Level IV                                                     | Bachelors | 7  | \$ | 162.66 |
| Health IT Analyst - Solutions-Skill Level V                                                      | Bachelors | 12 | \$ | 196.55 |
| Cloud Architect V                                                                                | Bachelors | 12 | \$ | 344.36 |
| Cloud Architect IV                                                                               | Bachelors | 7  | \$ | 276.52 |
| Cloud Architect III                                                                              | Bachelors | 5  | \$ | 228.80 |
| Cloud Architect II                                                                               | Bachelors | 3  | \$ | 195.73 |
| Cloud Architect I                                                                                | Bachelors | 1  | \$ | 162.66 |
| Cloud Business Analyst V                                                                         | Bachelors | 12 | \$ | 344.36 |
| Cloud Business Analyst IV                                                                        | Bachelors | 7  | \$ | 276.52 |
| Cloud Business Analyst III                                                                       | Bachelors | 5  | \$ | 228.80 |
| Cloud Business Analyst II                                                                        | Bachelors | 3  | \$ | 179.46 |
| Cloud Business Analyst I                                                                         | Bachelors | 1  | \$ | 130.13 |
| Cloud Consultant V                                                                               | Bachelors | 12 | \$ | 468.97 |
| Cloud Consultant IV                                                                              | Bachelors | 7  | \$ | 312.79 |
| Cloud Consultant III                                                                             | Bachelors | 5  | \$ | 275.68 |
| Cloud Database Administrator IV                                                                  | Bachelors | 7  | \$ | 233.35 |
| Cloud Database Administrator III                                                                 | Bachelors | 5  | \$ | 162.66 |
| Cloud Database Administrator II                                                                  | Bachelors | 3  | \$ | 146.39 |
| Cloud Project Coordinator IV                                                                     | Bachelors | 7  | \$ | 146.39 |
| Cloud Project Coordinator III                                                                    | Bachelors | 5  | \$ | 124.70 |
| Cloud Project Coordinator II                                                                     | Bachelors | 3  | \$ | 113.07 |
| Cloud Project Coordinator I                                                                      | Bachelors | 1  | \$ | 103.02 |
| Cloud Project Manager V                                                                          | Bachelors | 12 | \$ | 344.35 |

## Attachment C - Pricing Discounts and Schedule

Contractor: Kyndryl, Inc.

|                                                                                       |           |     |    |        |
|---------------------------------------------------------------------------------------|-----------|-----|----|--------|
| Cloud Project Manager IV                                                              | Bachelors | 7   | \$ | 243.98 |
| Cloud Project Manager III                                                             | Bachelors | 5   | \$ | 190.16 |
| Cloud Project Manager II                                                              | Bachelors | 3   | \$ | 128.49 |
| Cloud Project Manager I                                                               | Bachelors | 1   | \$ | 125.97 |
| Cloud Systems Administrator V                                                         | Bachelors | 12  | \$ | 219.89 |
| Cloud Systems Administrator IV                                                        | Bachelors | 7   | \$ | 183.26 |
| Cloud Systems Administrator III                                                       | Bachelors | 5   | \$ | 160.49 |
| Cloud Systems Administrator II                                                        | Bachelors | 3   | \$ | 145.84 |
| Cloud Systems Administrator I                                                         | Bachelors | 1   | \$ | 131.19 |
| Cloud Technical Systems and Solutions Specialist V                                    | Bachelors | 12  | \$ | 282.70 |
| Cloud Technical Systems and Solutions Specialist IV                                   | Bachelors | 7   | \$ | 252.88 |
| Cloud Technical Systems and Solutions Specialist III                                  | Bachelors | 5   | \$ | 228.80 |
| Cloud Technical Systems and Solutions Specialist II                                   | Bachelors | 3   | \$ | 179.46 |
| Cloud Analyst - Solutions V                                                           | Bachelors | 12  | \$ | 196.55 |
| Cloud Analyst - Solutions IV                                                          | Bachelors | 7   | \$ | 162.66 |
| Cloud Analyst - Solutions III                                                         | Bachelors | 5   | \$ | 146.39 |
| Cloud Analyst - Solutions II                                                          | Bachelors | 3   | \$ | 132.84 |
| Cloud Analyst - Solutions I                                                           | Bachelors | 1   | \$ | 119.29 |
| Cloud Security Analyst - Senior                                                       | Bachelors | 7   | \$ | 175.98 |
| Cloud Security Analyst - Intermediate                                                 | Bachelors | 5   | \$ | 134.66 |
| Cloud Security Analyst - Junior                                                       | Bachelors | 1   | \$ | 96.02  |
| Cloud Computer Network Defense (CND) Analyst - Senior                                 | Bachelors | 7   | \$ | 188.16 |
| Cloud Computer Network Defense (CND) Analyst - Intermediate                           | Bachelors | 5   | \$ | 146.84 |
| Cloud Computer Network Defense (CND) Analyst - Junior                                 | Bachelors | 1   | \$ | 108.19 |
| Cloud Security Architect - Senior                                                     | Bachelors | 7   | \$ | 231.66 |
| Cloud Security Architect - Intermediate                                               | Bachelors | 5   | \$ | 190.33 |
| Cloud Information Assurance Analyst - Senior                                          | Bachelors | 7   | \$ | 203.52 |
| Cloud Information Assurance Analyst - Intermediate                                    | Bachelors | 5   | \$ | 167.93 |
| Cloud Information Assurance Analyst - Junior                                          | Bachelors | 1   | \$ | 129.29 |
| Cloud Penetration Tester - Senior                                                     | Bachelors | 6   | \$ | 178.67 |
| Cloud Penetration Tester - Intermediate                                               | Bachelors | 3   | \$ | 159.46 |
| Cloud Cybersecurity Engineer - Senior                                                 | Bachelors | 7   | \$ | 180.61 |
| Cloud Cybersecurity Engineer - Intermediate                                           | Bachelors | 5   | \$ | 139.29 |
| Cloud Cybersecurity Engineer - Junior                                                 | Bachelors | 1   | \$ | 100.65 |
| Cloud Cybersecurity Technical Writer -Intermediate                                    | Bachelors | 5   | \$ | 130.03 |
| Cloud Cybersecurity Technical Writer - Junior                                         | Bachelors | 1   | \$ | 91.38  |
| Cloud CyberSecurity Assessment and Authorization Analyst - Senior                     | Bachelors | 7   | \$ | 198.55 |
| Cloud CyberSecurity Assessment and Authorization (A&A) Analyst - Intermediate         | Bachelors | 5   | \$ | 157.23 |
| Cloud Information Security Analyst (Data Protection) - Intermediate                   | Bachelors | 5   | \$ | 196.59 |
| Cloud Vulnerability Management Analyst - Senior                                       | Bachelors | 7   | \$ | 232.55 |
| Cloud Vulnerability Management Analyst - Intermediate                                 | Bachelors | 5   | \$ | 191.23 |
| Cloud Vulnerability Management Analyst - Junior                                       | Bachelors | 1   | \$ | 152.58 |
| Cloud Computing Security Specialist (CCSS)-Subject Matter Expert (SME) - Senior       | Bachelors | 7   | \$ | 295.92 |
| Cloud Computing Security Specialist (CCSS)-Subject Matter Expert (SME) - Intermediate | Bachelors | 5   | \$ | 230.95 |
| Cloud Operational Technology Security Engineer - Senior                               | Bachelors | 7   | \$ | 223.36 |
| Cloud Operational Technology Security Engineer - Intermediate                         | Bachelors | 5   | \$ | 182.04 |
| Cloud Operational Technology Security Engineer - Junior                               | Bachelors | 1   | \$ | 143.40 |
| Director - General                                                                    | N/A       | N/A | \$ | 302.34 |
| Consultant I - General                                                                | N/A       | N/A | \$ | 108.42 |
| Consultant II - General                                                               | N/A       | N/A | \$ | 128.70 |
| Consultant III - General                                                              | N/A       | N/A | \$ | 147.76 |
| Management Consultant - General                                                       | N/A       | N/A | \$ | 155.69 |
| Senior Management Consultant - General                                                | N/A       | N/A | \$ | 200.17 |
| Manager - General                                                                     | N/A       | N/A | \$ | 219.37 |
| Senior Manager - General                                                              | N/A       | N/A | \$ | 263.50 |
| Functional Specialist/SME I - General                                                 | N/A       | N/A | \$ | 199.60 |
| Functional Specialist/SME II - General                                                | N/A       | N/A | \$ | 254.32 |
| Program Support - General                                                             | N/A       | N/A | \$ | 194.42 |

**Attachment E - Service Offering EULAs, SLAs**

Kyndryl Master Agreement AR3710

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**ATTACHMENT 1 – SCOPE ADDENDUM**

**STATE OF NEW JERSEY  
PARTICIPATING ADDENDUM AND STANDARD TERMS AND CONDITIONS**

**Under  
NASPO ValuePoint Contract for Cloud Solutions  
[State of Utah Master Contract Number AR3710]**

**Scope Addendum**

As set forth in Section 2.0, Scope of Participating Addendum, the scope of Products and Services that may be procured by Authorized Purchasers defined in Section 6.0(1) of this Participating Addendum (State Agencies) shall be those Products and Services established below. Contractor may only offer State Agencies the Products and Services from the following cloud service providers:

Kyndryl, Inc.

Contractor may also provide State Agencies cloud-related Services within the scope of its Master Agreement.

For all other Authorized Purchasers, the full suite of Product and Service offerings available under the Master Agreement may be procured under this Attachment 1 to the Participating Addendum.