

CLOUD SOLUTIONS 2016-2026

Led by the State of Utah

Master Agreement #: AR3710

Contractor: **KYNDRYL, INC.**

Participating Entity: **STATE OF ALABAMA**

The following products or services are included in this contract portfolio:

- *All products and accessories listed on the Contractor page of the NASPO ValuePoint website.*

Master Agreement Terms and Conditions:

1. Scope: This addendum covers **Cloud Solutions** led by the State of *Utah* for use by state agencies and other entities located in the Participating State authorized by that State's statutes to utilize State contracts with the prior approval of the State's Chief Procurement Official.
2. Participation: This NASPO ValuePoint Master Agreement may be used by all state agencies, institutions of higher institution, political subdivisions and other entities authorized to use statewide contracts in the State of Alabama. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.
3. Access to Cloud Solutions Services Requires State CIO Approval: Unless otherwise stipulated in this Participating Addendum, specific services accessed through the NASPO ValuePoint cooperative Master Agreements for Cloud Solutions by state executive branch agencies are subject to the authority and prior approval of the State Chief Information Officer's Office. The State Chief Information Officer means the individual designated by the state Governor within the Executive Branch with enterprise-wide responsibilities for leadership and management of information technology resources of a state.
4. Primary Contacts: The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Contractor

Name:	M. Sajid Kapadia, Kyndryl, Inc. Customer Partner
Address:	1 Vanderbilt Ave, Floor 15, New York, New York 10017
Telephone:	703-347-1923
Fax:	
Email:	m.sajid.kapadia@kyndryl.com

Participating Entity

Name:	Jennifer Loretz, Senior Buyer
Address:	100 N. Union Street, Ste 192
Telephone:	334-242-750
Fax:	
Email:	Jennifer.loretz@purchasing.alabama.gov

5. PARTICIPATING ENTITY MODIFICATIONS OR ADDITIONS TO THE MASTER AGREEMENT

These modifications or additions apply only to actions and relationships within the Participating Entity.

Participating Entity must check one of the boxes below.

☐ No changes to the terms and conditions of the Master Agreement are required.

☒ The following changes are modifying or supplementing the Master Agreement terms and conditions.

a. State CIO Approval:

State executive branch agencies which are subject to the authority and prior approval of the Alabama Secretary of Information Technology, in his or her role as State Chief Information Officer (CIO), must obtain such approval prior to making purchases from the Master Agreement. Approval may be dependent upon compliance with State of Alabama IT Policies, which are posted at <https://oit.alabama.gov/governance-library/> and which may be subject to change at the State of Alabama's discretion and addressed through the Project Change Request as necessary.

b. Other Purchasing Entities:

Political subdivisions, local government agencies, and public educational institutions may purchase products or services via this Agreement at their discretion. If such entities purchase from this Participating Addendum, they shall be considered Purchasing Entities as defined in the Master Agreement and will be responsible for ensuring compliance with all applicable laws and regulations. Contractor must interface with those Purchasing Entities directly and offer awarded contract pricing or better.

c. Mandatory Source:

For the supplies and services which Contractor provides through this Participating Addendum, State agencies must purchase through this Participating Addendum and may not use any other source except in an emergency. Notwithstanding the foregoing, this provision shall not be construed to preclude Contractor from responding to other procurement solicitations issued by the State or any of its agencies or political subdivisions.

d. Vendor Management Program:

The Office of Information Technology ("OIT") operates an OIT vendor management program for certain strategic vendors which includes periodic reviews of vendor performance. At the request of OIT, Contractor shall participate in the OIT vendor management program.

e. Incident Management and Breach Notification:

Contractor shall forward any notification to State agencies of a Data Breach, as defined in the Master Agreement, involving the State's Data provided to Contractor under an Order to

the Alabama Secretary of Information Technology via email to legal@oit.alabama.gov.

f. Data Protection:

Where applicable and as required by a written statement of work mutually agreed to between the Parties, Contractor will comply with applicable security standards including without limitation StateRAMP, HIPAA, IRS Publication 1075, and CJIS. Additionally, no Purchasing Agency shall provide any personal data that is subject to i) the European General Data Protection Regulation (EU/2016/679) (GDPR); or ii) other data protection laws for processing unless mutually agreed in a written statement of work. If personal data subject to GDPR or other data protection laws will be processed during the course of a statement of work, the State will inform Contractor, and the parties will amend the statement of work to include additional data security measures as required.

If State data resides on Contractor's environments or systems, State may request relevant security-related testing, which may include vulnerability scanning, penetration testing or other manual or automated simulations of adversarial actions. The terms and conditions of such testing must be agreed to in a written statement of work or in a subsequent written agreement to be signed by both parties.

g. Right to Remove Individuals:

A Purchasing Entity shall have the right at any time to require that the Contractor remove from interaction with Purchasing Entity any named Contractor representative who the Purchasing Entity reasonably believes is detrimental to its working relationship with the Contractor. The Purchasing Entity shall provide the Contractor with notice of its determination, and the reasons it requests the removal. If the Purchasing Entity signifies that a potential security violation exists with respect to the request, the Contractor shall immediately remove such individual. The Contractor shall not assign the person to any other Order under this Participating Addendum without the Purchasing Entity's consent.

h. Choice of Law, Venue:

This Participating Addendum and all agreements relating to purchases or leases resulting therefrom will be governed by the laws of the State of Alabama and the sole venue for litigation will be state or federal court in Montgomery County, Alabama. No other court shall have jurisdiction.

i. Immigration:

By signing this Participating Addendum, the contracting parties affirm, for the duration of the agreement, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom.

j. Open Trade/No Boycott:

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For the term of this Participating Addendum, Contractor represents that it is not currently engaged in, and agrees not to engage in, the boycott of a person or an entity based in or doing business with a jurisdiction with which this State can enjoy open trade.

k. Compliance with Ala. Act No. 2023-409:

In compliance with Ala. Act No. 2023-409, by signing this Participating Addendum, Contractor provides written verification that Contractor, without violating controlling law or regulation, does not and will not, during the term of an Order engage in economic boycotts as the term “economic boycott” is defined in Section 1 of the Act. This requirement applies to Orders entered into on or after October 1, 2023 if Contractor employs 10 or more employees and the Order could exceed \$15,000 over the term of the Order. Under Section 2 of the Act, the written verification may be waived if the contracting governmental entity determines based on cost and quality factors that such a waiver is clearly in the best interest of the public.

l. Dispute Resolution:

In the event of any dispute between the parties arising from this Participating Addendum and any agreement relating to purchases or leases resulting therefrom, senior officials of both parties shall meet and engage in a good faith attempt to resolve the dispute. Should that effort fail, and the dispute involves the payment of money, contractor’s sole remedy is the filing of a claim with the Board of Adjustment of the State of Alabama. For any and all other disputes arising under the terms of this contract which are not resolved by negotiation, the parties agree to utilize appropriate forms of non-binding alternative dispute resolution including, but not limited to, mediation. Such dispute resolution shall occur in Montgomery, Alabama, utilizing where appropriate, mediators selected from the roster of mediators maintained by the Center For Dispute Resolution of the Alabama State Bar Association.

m. Conflict of Law:

If any provision of this Participating Addendum shall contravene any statute or Constitutional provision or amendment, either now in effect or which may, during the course of this agreement, be enacted, then that conflicting provision in the Participating Addendum shall be deemed null and void.

n. No Indemnification:

Contractor acknowledges and agrees that, under the terms of this Participating Addendum and agreements relating to purchases or leases resulting therefrom, the State is prohibited from indemnifying the Contractor. The State does not agree to and will not indemnify the Contractor for any reason.

o. Assignment:

Contractor acknowledges and agrees that Alabama Code Section 41-16-29 prohibits assignment of contracts without the written consent of the State and the requisitioning agency. Notwithstanding anything to the contrary, Contractor’s ability to assign amounts receivable under an Order shall not be considered “assignment of the contract” and thus is not limited hereunder.

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p. Not to Constitute a Debt to the State:

The terms and commitments contained in this Participating Addendum or Order shall not constitute a debt to the State of Alabama, in the incurring of which is prohibited by Section 213 of the Office Recompilation of the Constitution of Alabama, 1901, as amended by Amendment No. 26.

q. Disclosure Statement:

Section 41-16-82, Code of Alabama 1975 requires the disclosure statement to be completed and filed with all proposals, bids, contracts, or grant proposals to the State of Alabama in excess of \$5,000. In circumstances where a contract is awarded by competitive bid, the disclosure statement shall be required only from the person receiving the contract and shall be submitted within ten (10) days of the award.

r. Administrative fee:

Awarded bidder(s) are to pay the State an administrative fee for all sales paid under this contract. This fee will be 2.0% (0.02) of the total dollar amount for all sales paid. The fee is to be remitted the first month of each quarter before the 20th and will represent a single, one-time payment for all sales paid during the prior quarter and as adjusted for errors associated with earlier quarters. This fee is not to be listed as a separate cost on invoices. The State of Alabama Chief Procurement Officer may waive the administrative fee in writing for any particular Order or written statement of work.

The awarded bidder(s) will be required to provide a summary report each quarter before the 20th listing sales paid during the prior calendar quarter. This report is to include the quarter being reported, the master agreement number, purchasing entity, sales amount, and fee amount. A report is due even when there is no activity. This report is to be sent electronically to telecom.admin@oit.alabama.gov. A copy of the summary report is to also accompany the payment. The remittance is to be identified with the reporting quarter and master agreement number. Failure to comply with provisions of this paragraph will be grounds for termination of the contract(s).

Reports and Payments will be due according to the following schedule:

October, November, December – Due by January 20th
January, February, March – Due by April 20th
April, May, June – Due by July 20th
July, August, September – Due by October 20th

Remittance is to be payable to the "State of Alabama Department of Finance" and be sent to:

Alabama Department of Finance
Division of Accounting and Administration
PO Box 300658

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Montgomery, Alabama 36130-0658

s. Electronic Payments:

Vendors must accept multiple forms of electronic payment at no additional cost to the State. Payment forms include but are not limited to state issued credit cards, P-cards, EFT or other forms of electronic payment.

t. Late Payments:

Penalty for agencies paying invoices late may not exceed the rate charged by State of Alabama Comptroller's Office per the Code of Alabama, Section 41-16-3 and as established by the Secretary of the Treasury under the authority of 26 U.S.C. §6621.

u. Non-appropriation of funds:

Continuation of any agreement between the State and a bidder beyond a fiscal year is contingent upon continued legislative appropriation of funds for the purpose of this bid and any resulting agreement. Non-availability of funds at any time shall cause any agreement to become void and unenforceable and no liquidated damages shall accrue to the state as a result. The State will not incur liability beyond the payment of accrued agreement payment.

v. Proration:

Any provision of a contract resulting from this bid to the contrary notwithstanding, in the event of failure of the State to make payment hereunder as a result of partial unavailability, at the time such payment is due, of such sufficient revenues of the State to make such payment (proration of appropriated funds for the State having been declared by the governor pursuant to Section 41-4-90 of the Code of Alabama 1975), the contractor shall have the option, in addition to the other remedies of the contract, of renegotiating the contract (extending or changing payment terms or amounts) or terminating the contract.

w. State Purchasing Vendor Expo:

Contract holders are required to attend the Vendor Expo in the initial 12 months of this agreement, 2024. Participation is optional for the remainder of the contract term.

6. Subcontractors: All contactors, dealers, and resellers authorized in the State of Alabama, as shown on the dedicated Contractor (cooperative contract) website, are approved to provide sales and service support to participants in the NASPO ValuePoint Master Agreement. The contractor's dealer participation will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement.
7. Orders: Any order placed by a Participating Entity or Purchasing Entity for a product and/or service available from this Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions) of the Master Agreement unless the parties to the order agree in writing that another contract or agreement applies to such order.

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IN WITNESS WHEREOF, the parties have executed this Addendum as of the date of execution by both parties below.

Participating Entity: State of Alabama	Contractor: Kyndryl, Inc.
Signature: <i>Christine Cook</i>	Signature: <i>Stuart F. Wilkins</i> Stuart F. Wilkins (Dec 14, 2023 16:51 EST)
Name: Christine Cook	Name: Stuart F. Wilkins
Title: Chief Procurement Officer	Title: Director, Account Management Partner
Date: 12/19/2023	Date: 12/14/2023

**Please email fully executed PDF copy of this document
to
PA@naspovaluepoint.org
to support documentation of participation and posting
in appropriate data bases.**