
Customer Agreement

This Client Services Agreement (CSA) and applicable Attachments and Transaction Documents are the complete agreement regarding each transaction under this CSA (together, the Agreement) between City of Long Beach, a municipal corporation of the State of California ("Client" or "City") and Kyndryl, Inc. ("Kyndryl") (and collectively "Parties") for the term of two (2) years beginning January 1, 2022, to December 31, 2023.

Customer Agreement

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Part 1 - General

1.1 Definitions

Customer-set-up Machine is a Kyndryl Machine that you install according to our instructions.

Date of Installation is the following:

1. for a Kyndryl Machine we are responsible for installing, the business day after the day we install it or, if you defer installation, make it available to you for subsequent installation by us;
2. for a Customer-set-up Machine and a non-Kyndryl Machine, the second business day after the Machine's standard transit allowance period; and
3. for a Program, the latest of -
 - a. the day after its testing period ends,
 - b. the second business day after the Program's standard transit allowance period,
 - c. the date, specified in a Transaction Document, on which we authorize you to make a copy of the Program, or
 - d. the date you distribute a copy of a chargeable component in support of your authorized use of the Program.

Designated Machine is either 1) the machine on which you will use a Program for processing and which we require you to identify to us by type/model and serial number, or 2) any machine on which you use the Program if we do not require you to provide this identification to us.

Enterprise is any legal entity (such as a corporation) and the subsidiaries it owns by more than 50 percent. The term "Enterprise" applies only to the portion of the enterprise located in the United States or Puerto Rico.

Machine is a machine, its features, conversions, upgrades, elements, or accessories, or any combination of them. The term "Machine" includes a Kyndryl Machine and any non-Kyndryl Machine (including other equipment) that we may provide to you.

Materials are literary works or other works of authorship (such as programs, program listings, programming tools, documentation, reports, drawings and similar works) that we may deliver to you as part of a Service. The term "Materials" does not include Programs or Licensed Internal Code.

Product is a Machine or a Program.

Program is the following, including the original and all whole or partial copies:

1. machine-readable instructions and data;
2. components;
3. audio-visual content (such as images, text, recordings, or pictures); and
4. related licensed materials.

The term "Program" includes a Kyndryl Program and any non-Kyndryl Program that we may provide to you. The term does not include Licensed Internal Code or Materials.

Program Services are services that provide defect correction information, a restriction or a bypass for a Kyndryl Program provided we can reproduce your reported problem.

Service is performance of a task, provision of advice and counsel, assistance, or access to a resource (such as access to an information database) we make available to you.

Specifications is a document that provides information specific to a Product. For a Kyndryl Machine, we call the document "Official Published Specifications." For a Kyndryl Program, we call it "Licensed Program Specifications," or "License Information."

Specified Operating Environment is the Machines and Programs with which a Program is designed to operate, as described in the Program's Specifications.

1.2 Agreement Structure

Attachments

Some Products and Services have terms in addition to those specified in this Agreement. Kyndryl will provide and Client will acknowledge any additional terms in documents called "Attachments," which to the extent applicable, shall be incorporated in the Agreement. Attachments will be signed by the Parties.

Transaction Documents

For each business transaction, Kyndryl will provide Client with the appropriate "Transaction Documents" that confirm the specific details of the transaction. Transaction Documents will be signed by both Parties if requested by either Party. The following are examples of Transaction Documents with examples of the information they may contain:

1. addenda (contract-period duration, start date, and total quantity);
2. exhibits (eligible Products by category);
3. invoices (item, quantity, and amount due);
4. statements of work (scope of Services, responsibilities, deliverables, completion criteria, estimated schedule or contract period, and charges); and
5. supplements (Machine quantity and type ordered, price, estimated shipment date, and warranty period).

Conflicting Terms

If there is a conflict among the terms in the various documents, the terms of an Attachment prevail over those of this Agreement. The terms of a Transaction Document prevail over this Agreement and Attachments.

Kyndryl's Acceptance of Client's Order

A Product or Service becomes subject to this Agreement when Kyndryl accepts Client's order by doing any of the following:

1. sending Client a Transaction Document;
2. shipping the Machine or making the Program available to Client; or
3. providing the Service.

Client's Acceptance of Additional Terms

Client shall accept the additional terms in an Attachment or Transaction Document by signing the Attachment or Transaction Document.

1.3 Delivery

Kyndryl will try to meet Client's delivery requirements for Products and Services. Client orders and will inform Client of their status. Transportation charges, if applicable, will be specified in a Transaction Document.

1.4 Charges and Payment

The amount payable for a Product or Service will be based on one or more of the following types of charges:

1. one-time {for example, the price of a Machine);
2. recurring {for example, a periodic charge for Programs or measured use of Services);
3. time and materials {for example, charges for hourly Services); or
4. fixed price {for example, a specific amount agreed to between us for a custom Service).

Depending on the particular Product, Service, or circumstance, additional charges may apply (such as special handling or travel related expenses). Kyndryl will inform Client in advance whenever additional charges apply.

Recurring charges for a Product begin on its Date of Installation. Charges for Services are billed as specified in the Agreement which may be in advance, periodically during the performance of the Service, or after the Service is completed.

Payments shall be paid by Client within thirty (30) days of the invoice date and to the account specified by Kyndryl subject to approval by Client of invoices which shall not be unreasonably withheld. Client may withhold the payment of good faith disputed charges up to 20% of any single invoice, not to exceed two (2) months of charges.. Client is obligated to pay all charges in excess of above maximum withheld amount under protest and with reservation of rights or must place those funds in an interest -bearing escrow account if greater than two (2) months of payments are withheld. Kyndryl has the right to suspend performance and/or terminate for non-payment.

If any authority imposes a duty, tax, levy, or fee, excluding those based on Kyndryl's net income, upon any transaction under this Agreement, then Client agrees to pay that amount as specified in the invoice or supply exemption documentation. Client is responsible for personal property taxes for each Product from the date Kyndryl ships it to Client.

One-time and recurring charges may be based on measurements of actual or authorized use (for example, number of users or processor size for Programs, meter readings for maintenance Services, or connect time for network Services). Client agrees to provide actual usage data if requested by Kyndryl. If Client makes changes to its environment that impact use charges (for example, change processor size or configuration for Programs), Client agrees to promptly notify Kyndryl and pay any applicable charges. Recurring charges will be adjusted accordingly. Unless Kyndryl agrees otherwise, Kyndryl shall not give credits or refunds for charges already due or paid. In the event that Kyndryl changes the basis of measurement, Kyndryl's terms for changing charges will apply.

Kyndryl may increase recurring charges for Products and Services, as well as labor rates and minimums for Services provided under this Agreement, by giving Client six (6) months' written notice. An increase applies on the first day of the invoice or charging period on or after the effective date Kyndryl specifies in the notice, but not less than six (6) months from the date notice is provided to Client. In response to the written notice Client may terminate the Agreement pursuant to this Agreement.

Client receives the benefit of a decrease in charges for amounts which become due and owing on or after the effective date of the decrease.

Any services for which Client prepays must be used within the applicable contract period. Unless Kyndryl specifies otherwise, it does not give credits or refunds for unused prepaid Services.

1.5 Changes to the Agreement Terms

Kyndryl may be required to change the terms of this Agreement by giving Client six months' written notice. However, these changes are not retroactive. They apply, as of the effective date specified in the notice, but not less than six (6) months from the date notice is provided to Client, only to new orders

and on-going transactions (such as licenses, except that changes to license termination terms are effective only for new orders). Part 5 of this Agreement contains additional provisions for changes to the terms of individual Service transactions. In response to the written notice the Client may terminate the Agreement.

Otherwise, for a change to be valid, both Parties must sign an amendment reflecting the change. Additional or different terms in any written communication from Client (such as an order) are void.

1.6 Kyndryl Business Partners

Kyndryl has signed agreements with certain organizations (called "Kyndryl Business Partners") to promote, market, and support certain Products and Services. When Client orders Kyndryl Products or Services (marketed to Client by Kyndryl Business Partners) under this Agreement, Kyndryl confirms that it is responsible for providing the Products or Services to Client under the warranties and other terms of this Agreement. Kyndryl is not responsible for 1) the actions of Kyndryl Business Partners, 2) any additional obligations Kyndryl Business Partners have to Client, or 3) any products or services that Kyndryl Business Partners supply to Client under their agreements.

1.7 Mutual Responsibilities

Both Parties agree that under this Agreement:

1. Neither Party shall assign, or otherwise transfer, this Agreement or its rights under this Agreement, delegate its obligations, or resell any Service, without the other Party's prior written consent which shall not be unreasonably withheld. Any attempt to do so is void.
2. neither Party grants the other the right to use its trademarks, trade names, or other designations in any promotion or publication without prior written consent;
3. all information exchanged is nonconfidential. If either Party requires the exchange of confidential information, it will be made under a signed confidentiality agreement;
4. each Party is free to enter into similar agreements with others;
5. each Party grants the other only the licenses and rights specified. No other licenses or rights (including licenses or rights under patents) are granted;
6. each Party may communicate with the other by electronic means. An identification code (called a "user ID") contained in an electronic document is sufficient to verify the sender's identity and the document's authenticity;
7. each Party will allow the other reasonable opportunity to comply before it claims that the other has not met its obligations; and
8. If any Party fails to perform its non-monetary obligations because of strikes, lockouts, labor disputes, embargoes, acts of God, inability to obtain labor or materials or reasonable substitutes for labor materials, governmental restrictions, governmental regulations, governmental controls, judicial orders, enemy or hostile governmental action, pandemic, civil commotion, fire or other casualty, or other causes beyond the reasonable control of the party obligated to perform, then that party's performance will be excused for a period equal to the period of such cause for failure to perform.

1.8 Client's Responsibilities

Client agrees:

1. to acquire Machines with the intent to use them within Client's Enterprise and not for reselling, leasing, or transferring to a third party, unless either of the following applies -
 - a. Client is arranging lease-back financing for the Machines, or
 - b. Client purchases the Machines without any discount or allowance, and does not remarket them in competition with Kyndryl's authorized remarketers;
2. to allow Kyndryl to install mandatory engineering changes (such as those required for

safety) on a Machine. Any parts Kyndryl removes become the property of Kyndryl. Client represents that it has the permission from the owner and any lien holders of the Machines to transfer ownership and possession of removed parts to Kyndryl;

3. that Client is responsible for the results obtained from the use of the Products and Services;

4. to provide Kyndryl with sufficient, free, and safe access to Client's facilities for Kyndryl to fulfill its obligations; and
5. to comply with all applicable export and import laws and regulations.

1.9 Patents and Copyrights

For purposes of this Section, the term "Product" includes Materials (alone or in combination with Products Kyndryl provides to Client as a system) and Licensed Internal Code.

If a third party claims that a Product Kyndryl provides to Client infringes that party's patent or copyright, Kyndryl will defend Client against that claim at Kyndryl's expense and pay all costs, damages, and reasonable attorney's fees that a court finally awards subject to the limitation of liability under Section 1.10 herein, provided that Client:

1. promptly notifies Kyndryl in writing of the claim; and
2. allows Kyndryl to control, and Client cooperates with Kyndryl in, the defense and any related settlement negotiations.

If such a claim is made or appears likely to be made, Client agrees to permit Kyndryl to enable Client to continue to use the Product, or to modify it, or replace it with one that is at least functionally equivalent. If Kyndryl determines that none of these alternatives is reasonably available, Client agrees to return the Product to Kyndryl upon Kyndryl's written request. Kyndryl will then provide Client a credit equal to:

1. for a Machine, Client's net book value provided Client has followed generally-accepted accounting principles;
2. for a Program, the amount paid by Client or 12 months' charges (whichever is less); and
3. for Materials, the amount Client paid Kyndryl for the Materials.

Claims for Which Kyndryl is Not Responsible

Kyndryl has no obligation regarding any claim based on any of the following:

1. anything Client provides which is incorporated into a Product;
2. Client's modification of a Product, or a Program's use in other than its Specified Operating Environment;
3. the combination, operation, or use of a Product with other Products not provided by Kyndryl as a system, or the combination, operation, or use of a Product with any product, data, or apparatus that Kyndryl did not provide; or
4. infringement by a non-Kyndryl Product alone, as opposed to its combination with Products Kyndryl provides to Client as a system.

1.10 Limitation of Liability

Circumstances may arise where, because of a default by Kyndryl or other liability, Client is entitled to recover damages from Kyndryl. In each such instance, regardless of the basis on which Client is entitled to claim damages from Kyndryl (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), Kyndryl is liable for no more than:

1. payments referred to in the patents and copyrights terms described above;
2. damages for bodily injury (including death) and damage to real property and tangible personal property; and
3. the forgoing payments or damages in 1.10(1) and 1.10(2) above and amount of any other actual direct damages shall be limited in the aggregate up to the greater of: \$450,000 or three times the annual charges (if recurring, 12 months' charges apply) for the Product or Service that is the subject of the claim. For purposes of this item, the term "Product" includes Materials and Licensed Internal Code.

This limit also applies to Kyndryl's subcontractors and Program developers. It is the maximum for which Kyndryl, and its subcontractors and Program developers are responsible.

Items for Which Kyndryl is Not Liable

Under no circumstances Kyndryl, or its subcontractors, or Program developers liable for any of the following:

1. third-party claims against Client for damages (other than those under the first two items listed above); or
2. special, incidental, or indirect damages or for any economic consequential damages (including lost profits or savings), even if Kyndryl is informed of their possibility.

1.11 Agreement Termination

Either party shall have the right to terminate this Agreement for any reason or no reason at any time by giving ninety (90) calendar days prior written notice to the other party. In the event of termination under this section, Client shall pay Kyndryl for services satisfactorily performed and costs incurred up to the effective date of termination for which Kyndryl has not been previously paid. On the effective date of termination, Consultant shall deliver to Client all of its data. Kyndryl acknowledges and agrees that Client's obligation to make final payment is conditioned on Client's receipt of the Data to Client.

Any terms of this Agreement which by their nature extend beyond the Agreement termination remain in effect until fulfilled, and apply to both Parties' respective successors and assignees.

1.12 Insurance

1.

A. As a condition precedent to the effectiveness of this Agreement, Kyndryl shall procure and maintain, at Kyndryl's expense for the duration of this Agreement, from insurance companies that are admitted to write insurance in California and have ratings of or equivalent to A:V by A.M. Best Company or from authorized non-admitted insurance companies subject to Section 1763 of the California Insurance Code and that have ratings of or equivalent to A-VII by A.M. Best Company, the following insurance:

i. Commercial general liability insurance (equivalent in scope to ISO form CG 00 01 11 85 or CG 00 01 10 93) in an amount not less than One Million Dollars (\$1,000,000.00) per each occurrence and Two Million Dollars (\$2,000,000.00) general aggregate. This coverage shall include but not be limited to broad form contractual liability, cross liability, independent contractors liability, and products and completed operations liability. City, its boards and commissions, and their officials, employees and agents shall be named as additional insureds by endorsement and this insurance shall contain no special limitations on the scope of protection given to City, its boards and commissions, and their officials, employees and agents. This policy shall be endorsed to state that the insurer waives its right of subrogation against City, its boards and commissions, and their officials, employees and agents.

ii. Workers' Compensation insurance as required by the California Labor Code and employer's liability insurance in an amount not less than One Million Dollars (\$1,000,000.00). This policy shall be endorsed to state that the insurer waives its right of subrogation against City, its boards and commissions, and their officials, employees and agents. However, waiver of subrogation does not apply in instances of gross negligence on the part of the customer, where gross negligence is defined to mean carelessness that is reckless disregard for the safety of others and/or a failure to use the slightest degree of care.

iii. Professional liability or errors and omissions insurance in an amount not less than One Million Dollars (\$1,000,000.00) per claim.

iv. Commercial automobile liability insurance (equivalent in scope to ISO form CA 00 01 06 92), covering Auto Symbol 1 (Any Auto) in an amount not less than Five Hundred Thousand Dollars (\$500,000.00) combined single limit per accident.

B.

C. Each insurance policy, shall be primary and not contributing to any other insurance or self-insurance maintained by City, and shall be endorsed to state that coverage maintained by City shall be excess to and shall not contribute to insurance or self-insurance maintained by Kyndryl. Kyndryl shall notify City in writing within five (5) days after any insurance has been voided by the insurer or cancelled by

the insured.

D. If this coverage is written on a "claims made" basis, it must provide for an extended reporting period of not less than one hundred eighty (180) days, commencing on the date this Agreement expires or is terminated, unless Kyndryl guarantees that Kyndryl will provide to City evidence of uninterrupted, continuing coverage for a period of not less than three (3) years, commencing on the date this Agreement expires or is terminated.

E. Kyndryl shall require that all subconsultants or contractors that Kyndryl uses in the performance of these services maintain insurance in compliance with this Section unless otherwise agreed in writing by City's Risk Manager or designee.

F. Prior to the start of performance, Kyndryl shall deliver to City certificates of insurance and the endorsements for approval as to sufficiency and form. In addition, Kyndryl shall, within five (5) days prior to expiration of the insurance, furnish to City certificates of insurance and endorsements evidencing renewal of the insurance. Kyndryl shall make available to City's Risk Manager or designee certificates relating to this insurance, during normal business hours.

G. Any modification or waiver of these insurance requirements shall only be made with the approval of City's Risk Manager or designee.

H. The procuring or existence of insurance shall not be construed or deemed as a limitation on liability relating to Kyndryl's performance or as full performance of or compliance with the indemnification provisions of this Agreement.

1.13 Governing Law

The laws of the State of California govern this Agreement.

Nothing in this Agreement affects any statutory rights of consumers that cannot be waived or limited by contract.

1.14 Data Privacy and Security Principles

Kyndryl Data Security and Privacy Principles (DSP), at <http://www.kyndryl.com/terms/dsp>, apply for generally available Services as identified in a Transaction Document. At Kyndryl's discretion, Kyndryl may change the DSP from time to time and the change will be effective when published or on the specified effective date. The intent of any change will be to improve and clarify existing commitments and maintain alignment to current adopted operational and security standards or applicable laws. The intent is not to degrade the security or functionality.

In addition to the DSP, any specific security features and functions of a Service will be described in the applicable Transaction Document. Client is responsible for selecting, ordering, enabling, or using available data protection features appropriate to support Client's use of Services. Client is responsible for assessing the suitability of the Services for Client's intended use. Client acknowledges that the use of Services meets Client's requirements and processing instructions required to comply with applicable laws.

Kyndryl's Data Processing Addendum at <http://www.kyndryl.com/terms/dpa> (DPA) and applicable DPA Exhibit(s) apply to personal data processed pursuant to the Services, if and to the extent: i) the European General Data Protection Regulation (EU/2016/679) (GDPR); or ii) other data protection laws identified at <http://www.kyndryl.com/terms/dpl> apply.

Upon request by either party, Kyndryl, Client, and affiliates of either will enter into additional agreements as required by law in the prescribed form for the protection of personal or regulated personal data processed pursuant to the Services. The parties agree (and will ensure that their respective affiliates agree) that such additional agreements will be subject to the terms of this CSA.

Customer Agreement

Part 2 - Warranties

2.1 The Kyndryl Warranties

Warranty for Kyndryl Machines

For each Kyndryl Machine, Kyndryl warrants that it:

1. is free from defects in materials and workmanship; and
2. conforms to its Specifications.

The warranty period for a Machine is a specified, fixed period commencing on its Date of Installation. During the warranty period, Kyndryl provides repair and exchange Service for the Machine, without charge, under the type of Service Kyndryl designates for the Machine.

If a Machine does not function as warranted during the warranty period and Kyndryl is unable to either 1) make it do so, or 2) replace it with one that is at least functionally equivalent, Client may return it to Kyndryl and Kyndryl will refund Client's money.

Additional terms regarding Service for Machines during and after the warranty period are contained in Part 5.

Warranty for Kyndryl Programs

For each warranted Kyndryl Program, Kyndryl warrants that when it is used in the Specified Operating Environment, it will conform to its Specifications.

The warranty period for a Program expires when its Program Services are no longer available. During the warranty period, Kyndryl provides defect-related Program Services without charge. Program Services are available for a warranted Program for at least one year following its general availability.

If a Program does not function as warranted during the first year after Client obtains its license and Kyndryl is unable to make it do so, Client may return the Program to Kyndryl and Kyndryl will refund Client's money. To be eligible, Client must have obtained its license while Program Services (regardless of the remaining duration) were available for it. Additional terms regarding Program Services are contained in Part 4.

Warranty for Kyndryl Services

For each Kyndryl Service, Kyndryl warrants that Kyndryl performs it:

1. using reasonable care and skill; and
2. according to its current description (including any completion criteria) contained in this Agreement, an Attachment, or a Transaction Document.

Warranty for Systems

Where Kyndryl provides Products to Client as a system, Kyndryl warrants that they are compatible and will operate with one another. This warranty is in addition to Kyndryl's other applicable warranties.

2.2 Extent of Warranty

If a Machine is subject to federal or state consumer warranty laws, Kyndryl's statement of limited warranty included with the Machine applies in place of these Machine warranties.

The warranties will be voided by misuse, accident, modification, unsuitable physical or operating environment, operation in other than the Specified Operating Environment, improper maintenance by Client, removal or alteration of Product or parts identification labels, or failure caused by a product for which Kyndryl is not responsible.

THESE WARRANTIES ARE CLIENT'S EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

2.3 Items Not Covered by Warranty

Kyndryl does not warrant uninterrupted or error-free operation of a Product or Service or that Kyndryl will correct all defects.

Kyndryl will identify Kyndryl Products that it does not warrant.

Unless Kyndryl specifies otherwise, Kyndryl provides Materials, non-Kyndryl Products, and non-Kyndryl Services **WITHOUT WARRANTIES OF ANY KIND**. However, non-Kyndryl manufacturers, suppliers, or publishers may provide their own warranties to Client.

Customer Agreement

Part 3 - Machines

3.1 Title and Risk of Loss

When Kyndryl accepts Client's order, Kyndryl agree to sell Client the Machine described in a Transaction Document. Kyndryl transfers title to Client or, if Client chooses, Client's lessor when Kyndryl ships the Machine. However, Kyndryl reserves a purchase money security interest in the Machine until Kyndryl receives the amounts due. For a feature, conversion, or upgrade involving the removal of parts which become Kyndryl's property, Kyndryl reserves the security interest until Kyndryl receives the amounts due and the removed parts. Client agrees to sign an appropriate document to permit Kyndryl to perfect its purchase money security interest.

Kyndryl bears the risk of loss for the Machine up to and including its Date of Installation. Thereafter, Client assumes the risk.

3.2 Production Status

Each Kyndryl Machine is manufactured from new parts, or new and used parts. In some cases, a Machine may not be new and may have been previously installed. Regardless of a Machine's production status, Kyndryl's warranty terms apply.

3.3 Installation

For the Machine to function properly, it must be installed in a suitable physical environment. Client agrees to provide an environment meeting the specified requirements for the Machine.

Kyndryl has standard installation procedures. Kyndryl will successfully complete these procedures before Kyndryl considers a Kyndryl Machine (other than a Machine for which Client defers installation or a Customer-set-up Machine) installed.

Client is responsible for installing a Customer-set-up Machine (Kyndryl provides instructions to enable Client to do so) and a non-Kyndryl Machine.

Machine Features, Conversions, and Upgrades

Kyndryl sells features, conversions, and upgrades for installation on Machines, and, in certain instances, only for installation on a designated, serial-numbered Machine. Many of these transactions involve the removal of parts and their return to Kyndryl. As applicable, Client represents that it has the permission from the owner and any lien holders to 1) install features, conversions, and upgrades and 2) transfer ownership and possession of removed parts (which become Kyndryl's property) to Kyndryl. Client further represents that all removed parts are genuine, unaltered, and in good working order. A part that replaces a removed part will assume the warranty or maintenance Service status of the replaced part. Client agrees to allow Kyndryl to install the feature, conversion, or upgrade within thirty (30) days of its delivery. Otherwise, Kyndryl may terminate the transaction and Client must return the feature, conversion, or upgrade to Kyndryl at Client's expense.

3.4 Licensed Internal Code

Certain Machines Kyndryl specifies (called "Specific Machines") use Licensed Internal Code (called "Code"). Kyndryl owns copyrights in Code or has the right to license Code. Kyndryl or a third party own all copies of Code, including all copies made from them.

Kyndryl will identify each Specific Machine in a Transaction Document. If Client is the rightful possessor of a Specific Machine, Kyndryl grants you a license to use the Code (or any replacement we provide) on, or in conjunction with, only the Specific Machine, designated by serial

number, for which the Code is provided. Kyndryl licenses the Code to only one rightful possessor at a time.

Under each license, Kyndryl authorizes Client to do only the following:

1. execute the Code to enable the Specific Machine to function according to its Specifications;
2. make a backup or archival copy of the Code (unless Kyndryl makes one available for Client's use), provided Client reproduce the copyright notice and any other legend of ownership on the copy. Client may use the copy only to replace the original, when necessary; and
3. execute and display the Code as necessary to maintain the Specific Machine.

Client agrees to acquire any replacement for, or additional copy of, Code directly from Kyndryl in accordance with Kyndryl's standard policies and practices. Client also agrees to use that Code under these terms.

Client may transfer possession of the Code to another party only with the transfer of the Specific Machine. If Client does so, it must 1) destroy all Client's copies of the Code that were not provided by Kyndryl, 2) either give the other party all Client's Kyndryl-provided copies of the Code or destroy them, and 3) notify the other party of these terms. Kyndryl licenses the other party when it accepts these terms by initial use of the Code. These terms apply to all Code Client acquires from any source.

Client's license terminates when Client no longer rightfully possess the Specific Machine.

Actions Client May Not Take

Client agrees to use the Code only as authorized above. Client may not do, for example, any of the following:

1. otherwise copy, display, transfer, adapt, modify, or distribute the Code (electronically or otherwise), except as Kyndryl may authorize in the Specific Machine's Specifications or in writing to Client;
2. reverse assemble, reverse compile, or otherwise translate the Code unless expressly permitted by applicable law without the possibility of contractual waiver;
3. sublicense or assign the license for the Code; or
4. lease the Code or any copy of it.

3.5 Machine Code

For certain Machines Kyndryl may provide basic input/output system code, utilities, diagnostics, device drivers, or microcode (collectively called "Machine Code"). This Machine Code is licensed under the terms of the agreement provided with it.

Customer Agreement

Part 4 - Programs

4.1 License

When Kyndryl accepts Client's order, Kyndryl grants Client a nonexclusive, nontransferable license to use the Program. Programs are owned by Kyndryl, Inc. or one of its subsidiaries ("Kyndryl") or a Kyndryl supplier and are copyrighted and licensed (not sold).

4.2 License Details

Under each license, Kyndryl authorizes Client to:

1. use the Program's machine-readable portion on only the Designated Machine. If the Designated Machine is inoperable, Client may use another Machine temporarily. If the Designated Machine cannot assemble or compile the Program, Client may assemble or compile the Program on another Machine.

If Client changes a Designated Machine previously identified to Kyndryl, Client agrees to notify Kyndryl of the change and its effective date;

2. use the Program to the extent of authorizations Client has acquired;
3. make and install copies of the Program, to support the level of use authorized, provided Client reproduces the copyright notices and any other legends of ownership on each copy or partial copy; and
4. use any portion of the Program Kyndryl 1) provides in source form, or 2) marks restricted (for example, "Restricted Materials of Kyndryl") only to -
 - a. resolve problems related to the use of the Program, and
 - b. modify the Program so that it will work together with other products.

Client agrees to comply with any additional terms Kyndryl may place on a Program. Kyndryl identifies these terms in the Program's Specifications or in a Transaction Document.

Actions Client May Not Take

Client agrees not to:

1. reverse assemble, reverse compile, or otherwise translate the Program; or
2. sublicense, rent, or lease the Program.

4.3 Program Components Not Used on the Designated Machine

Some Programs have components that are designed for use on machines other than the Designated Machine on which the Program is used. Client may make copies of a component and its documentation in support of Client's authorized use of the Program provided Client notify Kyndryl of the component's actual date of distribution.

4.4 Distributed System License Option

For some Programs, Client may make a copy under a Distributed System License Option (called a "DSLO" copy). Kyndryl charges less for a DSLO copy than it does for the original license (called the "Basic" license). In return for the lesser charge, Client agrees to do the following while licensed under a DSLO:

1. have a Basic license for the Program;
2. provide problem documentation and receive Program Services (if any) only through the location of the Basic license; and

3. distribute to, and install on, the DSLO's Designated Machine, any release, correction, or bypass that we provide for the Basic license.

4.5 Program Testing

Kyndryl provides a testing period for certain Programs to help Client evaluate if they meet Client's needs. If Kyndryl offers a testing period, it will start 1) the second business day after the Program's standard transit allowance period, or 2) on another date specified in a Transaction Document. Kyndryl will inform Client of the duration of the Program's testing period.

Kyndryl does not provide testing periods for DSLO copies.

4.6 Packaged Programs

Kyndryl provides certain Programs together with their own license agreements. These Programs are licensed under the terms of the agreements provided with them.

4.7 Program Protection

For each Program, Client agrees to:

1. ensure that anyone who uses it (accessed either locally or remotely) does so only for Client's authorized use and complies with Kyndryl's terms regarding Programs; and
2. maintain a record of all copies and provide it to Kyndryl upon Kyndryl's request.

4.8 Program Services

Kyndryl provides Program Services for warranted Programs and for selected other Programs. If Kyndryl can reproduce Client's reported problem in the Specified Operating Environment, Kyndryl will issue defect correction information, a restriction, or a bypass. Kyndryl provides Program Services for only the unmodified portion of a current release of a Program.

Kyndryl provides Program Services 1) on an on-going basis (with at least six months' written notice before we terminate Program Services), 2) until the date specified by Kyndryl, or 3) for a period specified by Kyndryl.

4.9 License Termination

Client may terminate the license for a Program on one (1) month's written notice, or at any time during the Program's testing period.

Licenses for certain replacement Programs may be acquired for an upgrade charge. When Client acquires these replacement Programs, Client agrees to terminate the license of the replaced Programs when charges become due, unless Kyndryl specifies otherwise.

Kyndryl may terminate Client's license if Client fails to comply with the terms of this Agreement. If Client's license is terminated, Client's authorization to use the Program is also terminated.

Customer Agreement

Part 5 - Services

5.1 Kyndryl Services

Services may be either standard offerings or customized to Client's specific requirements. Each Service transaction may include one or more Services that:

1. expire at task completion or an agreed upon date;
2. automatically renew as another transaction with a specified contract period. Renewals will continue until either of us terminates the Service; or
3. do not expire and are available for Client's use until either of the Parties terminates the Service.

5.2 Personnel

Each Party is responsible for the supervision, direction, and control of their respective personnel.

Kyndryl reserves the right to determine the assignment of its personnel.

Kyndryl may subcontract a Service, or any part of it, to subcontractors selected by it.

5.3 Materials Ownership and License

Kyndryl will specify Materials to be delivered to Client. Kyndryl will identify them as being "Type I Materials," "Type II Materials," or otherwise as both Parties agree. If not specified, Materials will be considered Type II Materials.

Type I Materials are those, created during the Service performance period, in which Client will have all right, title, and interest (including ownership of copyright). Kyndryl will retain one copy of the Materials. Client grants Kyndryl 1) an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, distribute (internally and externally) copies of, and prepare derivative works based on Type I Materials and 2) the right to authorize others to do any of the former.

Type II Materials are those, created during the Service performance period or otherwise (such as those that preexist the Service), in which Kyndryl or third parties have all right, title, and interest (including ownership of copyright). Kyndryl will deliver one copy of the specified Materials to Client. Kyndryl grants Client an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, and distribute, within Client's Enterprise only, copies of Type II Materials.

Type III Materials are those, created during the project, which Client will own (including ownership of copyright). No license is granted to Kyndryl with respect to Type III Materials. However, both Parties are free to use any ideas, concepts, know-how, or techniques, which are developed or provided by the other or jointly by both Parties during a project. Both Parties are free to enter into similar agreements with others, and to develop and provide Materials or Services which are similar to those provided under this Agreement. Kyndryl will keep one copy of the Materials for archival purposes only."

Each Party agrees to reproduce the copyright notice and any other legend of ownership on any copies made under the licenses granted in this Section.

Any idea, concept, know-how, or technique which relates to the subject matter of a Service and is developed or provided by either Party, or jointly by both Parties, in the performance of a Service may (subject to applicable patents and copyrights) be freely used by either Party.

5.4 Changes to Service Terms

Kyndryl may change the terms of Services that are renewable or non-expiring by giving Client three (3) months' written notice. However, these changes are not retroactive. They apply immediately to renewal transactions and as of the effective date we specify in the notice to all

existing transactions. In both instances the changes will not be effective before three months of the written notice. If Kyndryl makes a change to the terms of a renewable Service that 1) affects Client's current contract period and 2) Client considers unfavorable, upon Client's request, Kyndryl will defer the proposed change until the end of that contract period at which time Client may terminate the Service.

When both Parties agree to change any Services statement of work other than as described above, Kyndryl will prepare a written description of the agreed change (called a "Change Authorization"), which both Parties must sign. The terms of a Change Authorization prevail over those of the statement of work and any of its previous Change Authorizations.

5.5 Renewal

Renewable Services renew for a same length contract period provided Client notify Kyndryl in writing at least thirty (30) days before the end of a specific contract period that Client wish to renew and both Parties sign an Attachment or Transaction Document to renew.

5.6 Termination and Withdrawal

Either Party may terminate a Service if the other does not meet its material obligations concerning the Service.

Client may terminate a non-expiring Service, without adjustment charge, on one (1) month's written notice to Kyndryl provided Client has met all minimum requirements specified in the applicable Attachments and Transaction Documents.

Client may terminate a renewable Service or a non-expiring maintenance Service, without adjustment charge, on one month's written notice to Kyndryl; provided Client has met all minimum requirements specified in the applicable Attachments and Transaction Documents and any of the following circumstances occur:

1. Client permanently removes the eligible Product, for which the Service is provided, from productive use within its Enterprise;
2. the eligible location, for which the Service is provided, is no longer controlled by Client (for example, because of sale or closing of the facility);
3. an increase in the Service charges, either alone or in combination with prior increases over the previous twelve (12) months, is more than the maximum specified in the applicable Service Transaction Document. If no maximum is specified, then this circumstance does not apply; or
4. the Machine has been under maintenance Services for at least six (6) months and Client gives us one month's written notice prior to terminating the maintenance Service.

For all other circumstances, Client may terminate an expiring or renewable Service on one (1) month's written notice to Kyndryl but such termination will result in adjustment charges equal to the lesser of:

1. the charges remaining to complete the contract period; or
2. the amount equal to the total discount provided to Client during this contract period (the difference between the list price and actual contact price for the contract period).

Client agrees to pay Kyndryl for all Services provided and any Products and Materials delivered through Service termination and any charges incurred in terminating subcontracts.

Kyndryl may withdraw a renewable or non-expiring Service or support for an eligible Product on three (3) months' written notice to Client. If Kyndryl withdraws a Service for which Client has prepaid and those services have not yet been fully provided to Client, Kyndryl will provide Client with a prorated refund.

Any terms which by their nature extend beyond termination or withdrawal remain in effect until fulfilled and apply to respective successors and assignees.

5.7 Service for Machines (during and after warranty)

Kyndryl provides certain types of repair and exchange Service either at Client's location or at a service center to keep Machines in, or restore them to, conformance with their Specifications. Kyndryl will inform Client of the available types of Service for a Machine. Kyndryl may repair the failing Machine or exchange it at its discretion.



UCSF Benioff Children's
Hospital Oakland

UCSF Benioff Children's
Hospital San Francisco

**Patient Financial
Services**
PO BOX 0810
San Francisco, CA
94143-0810

Customer Service Tel: 866-433-4035
Fax: 415-353-3914

Email:
Patient.FinancialServices@ucsfmedctr.org
Hours: Monday through Friday 8:00 am to
4:00 pm
MyChart: General Billing Messages

Deborah G Miller
408 PRECITA AVE
SAN FRANCISCO, CA 94110-4727
Guarantor ID: 100459645

July 25, 2022
(Originally delivered through MyChart electronically)

Final Notice Prior To Collections

You are receiving this notice as one or more of your accounts has gone unpaid for more than 120 days. California state law requires that before any account is assigned to a collections (bad debt) vendor, that a pre-collections notice is delivered to the patient detailing specific account information. This notice provides you with details about the balance you owe, our previous attempts to collect, and actions you can take to address the account. This is your final notice prior to collections assignment for the account(s) listed below.

Your account number(s) that will be assigned to collections are listed below:

Hosp Acct ID	Admit Date	Disch Date	Acct Balance	Primary Payor	Primary Benefit Plan
69750519	02/14/2022	02/14/2022	1,728.64	AETNA	US/MANAGED CHOICE AETNA

(If no coverage appears above, then your account is Self Pay and was not billed to insurance)

Your account(s) will be assigned to Transworld Systems Incorporated (TSI) 21 days from the date of this letter. You may contact TSI by phone, toll free, at 1-877-865-7686 Monday through Friday 5:00 am to 5:00 pm Pacific Time.

If you wish to make a payment prior to assignment to collections, or you have questions about your account, please contact UCSF's Self-Pay Billing Office, toll free, at 1-866-433-4035.

To request a detail bill, which is an itemized statement of all charges, payments, and

adjustments for this account, you may do so by phone: 866-433-4035, or by emailing patient.financialservices@ucsf.edu

UCSF sent you 5 monthly statements regarding your account(s) and seeking payment. Each statement you received from UCSF included information about applying for financial assistance.

Your most recent statement was sent on *7/23/2022*

Financial assistance is available for patients who meet the qualifying income or medical expense criteria. For more information on Financial Assistance eligibility please visit <https://www.ucsfhealth.org/billing-and-insurance>.

You may apply for Financial Assistance by using MyChart, by emailing your completed application to: Patient.financialservices@ucsf.edu, or by mailing your application to:

UCSF Health
Patient Financial Services – Financial Assistance Program.
505 Parnassus Ave., #0810
San Francisco, CA 94143-5631

A paper application for Financial Assistance is included below though we encourage you to apply through MyChart for faster service.

When the type of Service requires that Client deliver the failing Machine to Kyndryl, Client agrees to ship it suitably packaged (prepaid unless Kyndryl specifies otherwise) to a location designated by Kyndryl. After Kyndryl has repaired or exchanged the Machine, Kyndryl will return it to Client at Kyndryl's expense unless Kyndryl specifies otherwise. Kyndryl is responsible for loss of, or damage to, Client's Machine while it is

1) in Kyndryl's possession or 2) in transit in those cases where Kyndryl is responsible for the transportation charges.

Client agrees to:

1. obtain authorization from the owner to have Kyndryl service a Machine that Client does not own; and
2. where applicable, before Kyndryl provides Service -
 - a. follow the problem determination, problem analysis, and service request procedures that Kyndryl provides,
 - b. secure all programs, data, and funds contained in a Machine, and
 - c. inform Kyndryl of changes in a Machine's location.

When Service involves the exchange of a Machine or part, the item Kyndryl replaces becomes Kyndryl's property and the replacement becomes Client's. Client represents that all removed items are genuine and unaltered. The replacement may not be new, but will be in good working order and at least functionally equivalent to the item replaced. The replacement assumes the warranty or maintenance Service status of the replaced item. Before Kyndryl exchanges a Machine or part, Client agrees to remove all features, parts, options, alterations, and attachments not under Kyndryl's service. Client also agrees to ensure that the item is free of any legal obligations or restrictions that prevent its exchange.

Any feature, conversion, or upgrade Kyndryl services must be installed on a Machine which is 1) for certain Machines, the designated, serial-numbered Machine and 2) at an engineering-change level compatible with the feature, conversion, or upgrade.

Repair and exchange Services do not cover:

1. accessories, supply items, and certain parts, such as batteries, frames, and covers;
2. Machines damaged by misuse, accident, modification, unsuitable physical or operating environment, or improper maintenance by Client;
3. Machines with removed or altered Machine or parts identification labels;
4. failures caused by a product for which we are not responsible; or
5. service of Machine alterations.

Kyndryl manages and installs engineering changes that apply to Kyndryl Machines and may also perform preventive maintenance.

Kyndryl provides maintenance Services for selected non-Kyndryl Machines.

5.8 Maintenance Coverage

When Client orders Machine maintenance Services under this Agreement, Kyndryl will inform Client of the date on which the maintenance Services will begin. Kyndryl may inspect the Machine within one month following that date. If the Machine is not in an acceptable condition for service, Client may have Kyndryl restore it for a charge. Alternatively, Client may withdraw its request for maintenance Services. However, Client will be charged for any maintenance Services which Kyndryl has performed at Client's request.

[Signature Page Follows]

Agreed to:

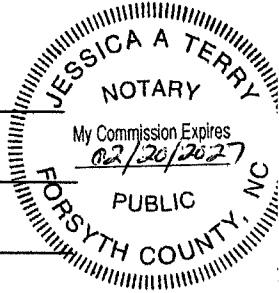
Forsyth County, North Carolina

This foregoing instrument was acknowledged before me this 16th day of September 2022 by Robin Whitley.

JAT
Notary Public

Kyndryl Inc.

By: Robin Whitley
Name: Robin Whitley
Date: 9/16/2022



Kyndryl Inc.

By: _____
Name: _____
Date: _____

City of Long Beach

By: Linda F. Tatum
Name: LINDA F. TATUM
Date: October 4, 2022

EXECUTED PURSUANT TO SECTION 301 OF THE CITY CHARTER.

APPROVED AS TO FORM

9.20.22
CHARLES PARKIN, City Attorney
By [Signature]
RICHARD ANTHONY
DEPUTY CITY ATTORNEY

Infrastructure Recovery Services - Data Center Floor Space Services

This Schedule provides additional details about the services to be provided under the associated Service Option Attachment for Data Center Floor Space Services.

Client Name and Address: City of Long Beach 333 W. Ocean Blvd, Lower Level Long Beach, CA 90802 Client Telephone: 562-570-5739 Client Point of Contact: Mark Del Castillo Services Site Address: 6300 Diagonal Highway Boulder, CO 80301	Agreement Number: FC52129 Agreement Name: ICA Statement of Work Number: S002642 SOA & Schedule Number: KAAACAD Client Number: 5274005 Enterprise Number: 5274000 Contract Period: Contract Period Start Date: 12/01/2018 Contract Period End Date: 12/31/2022 Revised Schedule (Yes or No): No Schedule Effective Date: 10/01/2022
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1. Charges

Services One-Time Charge:	\$9,755	12/01/2018
	\$11,072	01/01/2020
Services Monthly Charge:		
\$0	12/01/2018 – 12/31/2018 (Implementation Period)	
\$3,637	01/01/2019 – 12/31/2019	
\$4,495	01/01/2020 – 09/30/2022	
\$4,672	10/01/2022 – 12/31/2023	

Services Allocation: (included in the Services Monthly Charge) \$0 per month

Client may select from the list of available "Support Services" detailed in the SOW appendix, the Support Services Client request KYNDRYL to perform via the Services Request Tool.

KYNDRYL will debit from Client's Services Allocation the corresponding charge for each Support Service Client selects via the Services Request Tool. Client will be invoiced monthly for the additional charges for Support Services Client requests which exceed the Services Allocation.

2. Data Center Space Specification

2.1 Data Center Space Description

The Data Center Space description is as follows:

Item	Description	
Data Center Space Redundancy	Item	Redundancy Level
	Emergency generator	Normal ("N")+1
	Main switchgear	N+1
	Uninterruptible power supply	N+1
	Power distribution units	N+N
	Remote power panels	N+N
	Cooling pump	N+1
CRAC units	N+1	

Access Doors

Entry doors to the Data Center Space from common hallway.

Item	Description
Security	KYNDRYL-provided security access card terminal with biometric reader to mantrap and security access card reader on mantrap door to access the Data Center Space.
Video Monitoring & Recording	Surveillance camera positioned at the access doors into the Data Center Space. Recording 24 hours per day, 7 days per week.
Fire Detection	Under floor and ceiling smoke detection
Water Detection	Under floor leak detection
Fire Suppression	Zone managed wet pipe system
Shared Ancillary	Access to space for temporary storage and limited time staging
Staffing	Services site to be staffed 24 hours a day, 7 days a week
Data Center Space Security Access	KYNDRYL escort to be required to Customer for use by authorized Customer personnel requiring access.

2.2 Client Space Description

The initial Client Space description is as follows:

Item	Description
Client Space	Space to support one (1) KYNDRYL provided cabinet. The Data Center Space has a 36" Raised Floor with maximum floor loading of 250 lbs per square foot.
Access Doors	Entry to Client Space through Data Center Space.
Security	KYNDRYL-provided security electronic lock on the doors to each cabinet.
Client Space Power	Total of 2.214 kilowatts of protected power
Electrical Circuits	One (1) pair of electrical circuits (from primary and secondary PDUs for redundancy), for a total of two (2)30AMP/208v with L6-30r receptacles.
Patch Panels	KYNDRYL provided patch panels sufficient for the installed cabling as determined by
Cabinets	One (1) KYNDRYL provided standard computer cabinets with electronic locks.
Inter Cabinet/Rack Data Cabling	None
Patch Cables	None
Tile Cuts	Tile cuts with seals (for cabling).
Circuit Extension Cabling	Two (2) FICON ports and cabling for connectivity to Hot Site. Two (2) fiber cable to extend KYNDRYL Provided Internet circuit to the Customer Space.
Analog line	None
Infrastructure Monitoring	Continuous monitoring of the environmental performance using building management systems (BMS) and electrical management systems (EMS) for all installed power and cooling.

3. Support Services

3.1 Scheduled Support Services

The initial Scheduled Support Services are detailed below. Client may select additional Support Services from Exhibit A to this Schedule that Client requests KYNDRYL to perform during the Contract Period. If applicable, KYNDRYL will debit from Client's Services Allocation the corresponding charge for each Support Service.

Item	Description
none	

3.2 Reporting Services

Item	Description
Support Services Reporting	KYNDRYL will provide a monthly report that summarizes the service requests, if any, the service hours used to complete the requests, and the net remaining Services Allocation (if applicable).
Power Load	KYNDRYL will report when the power load of Client's IT and network equipment is reaching the Client Space Power allocation.

4. Facility Specification

The initial facility specifications are as follows:

Item	Description
Water/Lavatory	Hot and cold water for lavatory and drinking purposes at the Services Site commonly accessible to all customers.
Janitorial	Janitorial services appropriate for maintaining a clean work environment, based on anticipated and normal business use. Standard trash removal (no packing material) is provided within the Data Center Space. Cardboard and packing material must be disposed of at installation time. If required, additional cleaning may be requested through the Services Request Tool.
Common Space Maintenance	Cleaning and maintenance of all interior and exterior common areas (including bathroom facilities), and removal of snow and ice from the parking areas.
Parking	Non-reserved parking spaces available on-site.
Security Access	KYNDRYL will provide escorted security access to the Customer Space.

5. KYNDRYL-Provided Equipment and Network Circuits Specification

5.1 KYNDRYL-Provided Equipment

Item	Qty	Description
NA		

5.2 KYNDRYL-Provided Network Circuits

Item	Qty	Demarcation	Description
NA			

5.3 Optional Internet Access (Yes No)

5.3.1 KYNDRYL-Provided Internet-Access Specifications

Item	Bandwidth	Demarcation	Description
Internet Access	200 Mbps	Boulder	Dedicated Protected Internet access distributed from a shared KYNDRYL Internet service, presented via an Ethernet RJ45 interface. 5 Internet routable IP address is provided. (/29)

5.3.2 Client-Provided IP Addresses.

Quantity	Range
NA	

6. Client-Provided Circuits and Equipment Specification

6.1 Client-Provided Network Circuits

Item	Qty	Demarcation	Description
NA			

6.2 Client-Provided Equipment

Item	Qty	Description
Luminex MVTi	1	Luminex MVTi Mainframe Virtual tape
CISCO Cisco SR4431	1	Router
CISCO ISR 4431	1	Router
Cisco C3850	2	24 port switch
Dell DD9400	1	EMC Data Domain DD9400
Dell DS60	3	DS60 Storage Expansion shelves

KYNDRYL agrees to provide the Services described in this Schedule provided Client accepts this Schedule, without modification, by signing in the space provided below on or before October 31, 2022.

Customer acknowledges and agrees that KYNDRYL may have offers outstanding to other potential KYNDRYL customers for the same space necessary to deliver the Selected Services described herein. As such, Customer acknowledges that KYNDRYL's obligation to provide such Selected Services is conditional upon:

- Customer's acceptance of this DCFS Schedule without modification on or before October 31, 2022; and
- the availability of said space and power at the time of Customer's acceptance of this DCFS Schedule; and
- KYNDRYL's formal approval and acceptance of this DCFS Schedule.

This Schedule, its associated SOA, the SOW and the KYNDRYL Customer Agreement (or any equivalent agreement in effect between us) identified above ("Agreement"), are the complete agreement regarding the Services, and replace all prior oral or written communications, representations, undertakings, warranties, promises, covenants, and commitments between Client and KYNDRYL regarding this transaction. In entering into this Schedule, neither party is relying on any representation that is not specified in this Schedule, or the Agreement, including applicable Attachment and Transaction Documents. Additional or different terms in any written communication from Client (such as a purchase order) are void. Each party agrees that no modifications have been made to this Schedule or its associated SOA.

Each party accepts the terms of this Schedule by signing this Schedule (or another document that incorporates it by reference) by hand or where recognized by law, electronically. The SOW is incorporated by reference into this Schedule. Once signed, please return a copy of this document to the KYNDRYL address shown below. Any reproduction of this Schedule made by reliable means (for example, electronic image, photocopy or facsimile) is considered an original and all Services ordered under this Schedule are subject to it. If there is a conflict among the various documents then, the terms of this Schedule prevail over the terms of the SOA and SOW or the Agreement.

Agreed to: City of Long Beach	Agreed to: Kyndryl, Inc.
By <u>Linda F. Tatum</u> Authorized signature	By <u>Robin Whitley</u> Authorized signature
Title: <u>ASST CITY MANAGER</u>	Title: <u>Account Manager</u>
Name (type or print): <u>LINDA F TATUM</u>	Name (type or print): <u>Robin Whitley</u>
Date: <u>10-4-2022</u>	Date: <u>9/15/2022</u>
Client identification number: 5274005	
EXECUTED PURSUANT TO SECTION 301 OF THE CITY CHARTER.	KYNDRYL Company address Attn: Contract Operations KYNDRYL Business Resiliency Services P.O. Box 700 Suffern, NY 10901-0700

APPROVED AS TO FORM

9.20.2022
CHARLES PARKIN, City Attorney
By [Signature]
RICHARD ANTHONY
DEPUTY CITY ATTORNEY

KYNDRYL BUSINESS RESILIENCY SERVICES

**MULTIVENDOR INFORMATION TECHNOLOGY RECOVERY SERVICES
CONTRACT DOCUMENTS**

FOR

CITY OF LONG BEACH

**411 W OCEAN BLVD
LONG BEACH, CA 90802-4664**

SUBMITTED BY:

**Attn: Contract Operations
KYNDRYL Business Resiliency Services
PO Box 700
Suffern, NY 10901-0700**

Supplement Number:	KAAACAN
Package ID:	20211019180552
Date Generated:	09/15/2022
This offer is good until:	11/15/2022

Supplement for Multivendor Information Technology Recovery Services

The terms of the KYNDRYL Customer Agreement and its Attachment for Multivendor Information Technology Recovery Services (or an equivalent agreement signed by both parties) apply to this transaction.

Customer Name and Address

CITY OF LONG BEACH
411 W OCEAN BLVD
LONG BEACH, CA 90802-4664

REFERENCE NUMBERS

Attachment: B000433
Agreement: FC52129
Customer: 5274005
Enterprise: 5274000

KYNDRYL Address for Notices:

Attn: Contract Operations
KYNDRYL Business Resiliency Services
PO Box 700
Suffern, NY 10901-0700

CONTRACT PERIOD

Start Date: 01/01/2014
End Date: 12/31/2023

SUPPLEMENT

Number: KAAACAN
Effective Date: 01/01/2022

Covered Address:

411 W OCEAN BLVD
LONG BEACH, CA 90802-4664

Revision (yes/no): Yes
Renewal (yes/no): No

Primary Recovery Site

Boulder, CO

Monthly Charges

Total Monthly Charge: \$3,989
Minimum Total Monthly Charge: \$2,992

Recovery Charges

Initial Recovery Charge: \$5,873
Day(s) Included in Initial Recovery Charge: 2
Daily Recovery Charge per day thereafter: \$2,936

Recovery Exercise

Initial Contract Period Year 1 – Total Hours: 72
Number of Exercises: 1
Each subsequent twelve-month period – Total Hours: 52
Number of Exercises: 2
Additional Recovery Exercise Time, per 4-hour block: \$600
Additional Recovery Exercise, per Exercise: \$1,200

Telecommunications

One-Time Charge: \$0
Usage charges are billed separately.

General

Work area space allocated at time of Event.

In entering into this agreement, you are not relying upon any representation made by or on behalf of KYNDRYL that is not specified in the Agreement or the Attachment, including, without limitation, the actual or estimated completion date, number of hours to provide any of the Services, charges to be paid, or the results of any of the Services to be provided under this Attachment.

KYNDRYL agrees to provide the Services described in this Supplement provided you accept this Supplement, without modification, by signing in the space below on or before 09/30/2022.

Agreed to:
CITY OF LONG BEACH

Agreed to:
Kyndryl, Inc.

By _____
Authorized signature

By _____
Authorized signature

Title:
Name (type or print):

Title:
Name (type or print):

Date:

Date:

Customer Number: 5274005

Attachment Number: B000433

Supplement for Multivendor Information Technology Recovery Services (Continued)

Customer Name: CITY OF LONG BEACH

Processor type/model: 2964 401

Customer Number: 5274005

Address: 411 W OCEAN BLVD

LONG BEACH, CA 90802-4664

Primary Recovery Site: Boulder, CO

Contract Number: KAAABJ9.7.1.1

Equipment Configuration

Quantity Or Units	Type	Model	Product Description

2964/401[1]			
1	2964	401	KYNDRYL zEnterprise z 13
32	2964	GB1	KYNDRYL 2964 Memory Provides 1 GB of processor memory on the 2964.
2	MAINFRAME	VM	VM Guest Selection (No cost)
17	DSDISK9A	FCFN	KYNDRYL Disk System Includes: 250 GBs of RAID protected Tier 1 IBM disk, with PTC, PAV, HPAV authorization and Fibre Channel and FICON host connectivity
1	XRX DP180	000	Xerox DocuPrint CS Prt 180IPM Xerox cut sheet, laser, 180 Pages Per Minute, 5M Monthly. BCRS delivery personnel set up the hardware environment. The customer is responsible for the software and software config. The printer supports AS400/iSeries, S390/zSeries Open Systems can use Sun Workstation frontend, interface: TCP/IP This printer and features are not eligible for Temporary Transfer.
6	3270	PC	VDI with 3270 emulation VDI with 3270 emulation Prerequisite: 9074 Ethernet port with KYNDRYL assigned TCP/IP address.
1	9074	005	Non-SNA 3270 Controller Includes: 2 FICON ports and 3 Ethernet ports Prerequisite: A "3270 PC" solution is required for local non-SNA support. Support for any other PC connection requires a "REMCONS PKG1" solution.
4	2964OE5S	GBSX	2964 OSA-Express5S GbE SX Includes: Two 2964 OSA-Express5S Gigabit Ethernet SX ports (OSAPORT= and OSAPORT= on one OSA PCHID.
2	INT/MMM	VPN	Site to Site IP VPN Tunnel Includes: <ul style="list-style-type: none">- IPsec VPN tunnel at KYNDRYL Resiliency center- Inside interface IP addressing provided by customer- KYNDRYL design of IPsec VPN tunneling and encryption function between customer premise VPN Device and VPN infrastructure at KYNDRYL Resiliency center.- Configuration at KYNDRYL recovery center with up to 5 remote peers (VPN Tunnels)- Written instructions for appropriate customer premise IP router configuration for customer implementation.- Customer is responsible for supplying and configuring VPN device at remote end.- KYNDRYL written instructions are based on information customer agrees to provide within two weeks of KYNDRYL request. It is customer's responsibility to verify the accuracy of such information.- Customer agrees to comply with prerequisites and implement instructions provided.

Note:

- This Internet solution uses shared resources available to customers at all KYNDRYL RS locations in the U.S.

1 REMCONS PKG1 Hotsite Remote Console Access

Includes: - Console infrastructure access

- Support for Serial and GUI Users
- Secure Access/Firewall Front End

- Each entry includes (1) REMCONS Context

1 QSSRVSP 000 Space For Quick Ship Server

Includes: Work area and power for server equipment.

Setup support to unpack, connect power, keyboard, and LAN cabling.

Removal support to disconnect, de-install, and re-pack quickship server/peripheral equipment shipped to an KYNDRYL Recovery Center.

Amendment to the KYNDRYL Customer Agreement Attachment for Multivendor Information Technology Recovery Services

Applicable Supplement Number(s): All in U.S.

CITY OF LONG BEACH ("you") and Kyndryl, Inc. ("KYNDRYL ") agree that the following terms and conditions amend the KYNDRYL Customer Agreement Attachment for Multivendor Information Technology Recovery Services, specifically for the above Supplement Number(s) as follows:

1. In Section 7, "Other Terms", following the third paragraph, insert the following new paragraphs:

As KYNDRYL has announced that it will transfer to another entity Kyndryl that portion of its business operations responsible for the Services, provided Kyndryl irrevocably accepts all of KYNDRYL 's rights, title and interests and assumes all of KYNDRYL 's duties, liabilities and obligations under this Agreement as of the date of such transfer (the "Transfer Effective Date"), Client hereby agrees that all of KYNDRYL 's rights, title and interests and duties, liabilities and obligations under the Agreement may be freely assigned, novated and transferred to Kyndryl as of the Transfer Effective Date without further consent from Client. In addition, as of the Transfer Effective Date, Client hereby agrees that Newco may subcontract portions of its obligations under this Agreement to KYNDRYL without further consent from Client. As of the Transfer Effective Date, Client hereby releases KYNDRYL from all duties, liabilities and obligations under the Agreement. Prior to the Transfer Effective Date, KYNDRYL shall provide Client with a notice specifying the Transfer Effective Date. As a part of such novation, the base agreement applicable to the novated transaction document shall remain in effect between KYNDRYL and Client, but will apply to Kyndryl's performance as if such base agreement was executed between Kyndryl and Client.

If there is a conflict between the terms and conditions of this Amendment and those of 1) the KYNDRYL Customer Agreement, 2) the KYNDRYL Customer Agreement Attachment for Multivendor Information Technology Recovery Services, or its 3) Supplement(s) and any Addendum(a) and Statement(s) of Work, those of this Amendment prevail. Except as modified by this Amendment the terms and conditions of such Amendment, Attachment, and Supplement(s) and Addendum(a) and Statement(s) of Work for Multivendor Information Technology Recovery Services remain in full force and effect.

Each party acknowledges that it has read this Amendment and any attached Addenda, Supplements, and Statements of Work, understands them, and agrees to be bound by their terms and conditions. Further, both parties agree that the complete agreement between the parties about Multivendor Information Technology Recovery Services will consist of 1) this Amendment including any Addendum(a), Supplement(s), and Statement(s) of Work, and 2) the KYNDRYL Customer Agreement, 3) the KYNDRYL Customer Agreement Attachment for Multivendor Information Technology Recovery Services and 4) its Supplement for Multivendor Information Technology Recovery Services, and other Supplement(s), Addendum(a) and Statement(s) of Work, if any. This statement of the agreement supersedes all proposals or other prior agreements, oral or written, and all other communications between the parties relating to the subject.

Agreed to:
CITY OF LONG BEACH

Agreed to:
Kyndryl, Inc.

By Linda F. Jabum
Authorized signature

By Robin Whitley
Authorized signature

Title: ASST CITY MANAGER
Name (type or print):

Title: Account Manager
Name (type or print): Robin Whitley

Date: Linda F. Jabum
10-4-2022

Date: 9/15/2022

Customer identification number: 5274005

Attachment number: B000433

Customer address:
411 W OCEAN BLVD
LONG BEACH, CA 90802-4664

EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER.

KYNDRYL address:
Attn: KYNDRYL Resiliency Services - Contract
Operations
KYNDRYL Inc.
P.O. Box 700
Suffern, NY 10901-0700

APPROVED AS TO FORM

9.20, 2022
CHARLES PARKIN, City Attorney

By [Signature]
RICHARD ANTHONY
DEPUTY CITY ATTORNEY