36381
Kyndryl Hosted Mainframe Services Statement of Work for City of Long Beach

1. Introduction

This Kyndryl Hosting Services Statement of Work ("SOW") and Client Services Agreement executed on September 16th, 2022 ("CSA") between Kyndryl, Inc. ("Kyndryl") and City of Long Beach ("Customer" or "Client" or "City"), sets forth the complete terms and conditions under which Kyndryl will provide hosting and related services ("Services") to Customer ("Agreement").

The Agreement includes the terms and conditions and the documents referenced in this SOW (the "Base Terms") and the following attachments:

Schedule A – Kyndryl Hosted Mainframe Services.
    Attachment A – Hosting Base Components and Maintenance Schedule
    Attachment B – Hosting Charges, Contractual Baselines and Rates
    Attachment C – Customer Components
    Attachment D – Service Level Agreements
    Attachment E – Additional Security Requirements

In the event of a conflict between the SOW and the CSA the SOW will prevail. In the event of a conflict between the SOW and a Schedule, a Schedule will prevail.

2. Definitions

a. "Affiliates" means entities that control, are controlled by, or are under common control with a party to this SOW.
b. "Base Components" means the hardware and software that Kyndryl makes available, if any, as specified as a Base Component in a Schedule.
c. "Burstable Bandwidth" means the bandwidth consumption in excess of the Committed Bandwidth.
d. "Committed Bandwidth" means the fixed circuit capacity that Kyndryl will make available to Customer for connectivity to the Internet.
e. "Content Administrator" means an employee or Subcontractor of Customer who is authorized by Customer to install, upload and/or maintain Content using a User Identification.
f. "Customer" has the meaning set forth in Section 1.0 above.
g. "Customer Components" means the hardware, software and other products, data, and Content that Customer provides, including those specified in a Schedule.
h. "Customer Initiated Changes" means patches or changes to the environment dictated to be installed by Customer and installed by either Customer or by Kyndryl.
i. "Customer Production Ready Date" or "CPRD" means the date (following the Hosting Service Ready Date) that the following items have been completed: (1) Customer has notified Kyndryl that Customer has completed application testing and loading of Customer Content, and (2) Kyndryl has notified Customer that monitoring, and reporting have been enabled and end users may now begin using the Services. Commencing on the Customer Production Ready Date, Customer will not have administrative access for fully managed devices, unless specifically requested for a limited period of time mutually agreed between the parties, using the established change management procedures.
j. "Hosting Environment" or "Private Cloud Hosting Environment" or "Mainframe Hosting Environment" each means (on an interchangeable basis) — the mainframe Servers and the associated hardware and software, which are used to host Customer's mainframe LPARs within the Hosting. The Hosting Environment includes, but is not limited to the mainframe Servers, FICON Directors, OSA network cards, storage hardware, Hosting Software Products, and tape controllers.
k. "Hosting Service Ready Date" means a date when Kyndryl notifies Customer that Services are available for Customer use, Kyndryl installation responsibilities have been completed for such Services and the installation has been accepted by the Customer within a time period agreed to by Kyndryl and the Customer. Customer

will be part of the installation process and will have the opportunity to accept the Kyndryl date or suggest additional changes that may be required to the configuration of the Hosting Environment. Services may be initiated in stages and monthly recurring charges will begin for any portion of Services specified in such notification and accepted by Customer.

l.   "Key Person" means the Kyndryl Project Manager.

m. "Kyndryl Hosting Center" means a facility used by Kyndryl to provide Services.

n.   "Internet" means the public worldwide network of TCP/IP-based networks.

o.   "Materials" means literary or other works of authorship (such as programs, program listings, programming tools, documentation, reports, drawings, and similar works) that Kyndryl may deliver to Customer as part of Services. "Materials" does not include licensed program products available under their own license agreements or Base Components.

p.   "Middleware" means any programming that serves to "glue together" or mediate between two separate and often already existing programs. A common application of middleware is to allow programs written for access to a particular database to access other databases. The systematic tying together of disparate applications, often through the use of middleware, is known as "Application Integration."

q.   "Operational Assistance" means the additional operational and physical assistance Services provided by Kyndryl.

r.   "Operational Events" means the activities related to physical operations of an unmanaged Customer environment. These activities can include:
   1. Device reboot or restart
   2. Changing a tape
   3. Changing a CD or a disk floppy
   4. Preparing tapes for sending them offsite
   5. Vendor management for hardware repair or replacement
   6. Other types of events with the prior approval of the Kyndryl PM

s.   "Operating System" or "OS" means the master control program (for example, zOS or VSE) that manages a computer's internal functions and provides a means of control to the computer's operations and file system.

t.   "OS Image" means the initial binary image that a boot loader loads into memory and transfers control to start an operating system. The OS image is typically an executable containing the operating system kernel.

u.   "OS Instance" means an occurrence of the OS Image.

v.   "Required Consents" means any consents or approvals required to give Kyndryl and its Subcontractors the right or license to access, use and/or modify in electronic form and in other forms, including derivative works, the Customer Components, without infringing the ownership or intellectual property rights of the providers, licensors, or owners of such Customer Components.

w.   "Services Recipients" means any external agents of Customer accessing the Hosted Environment or otherwise receiving or using the Services and any other entities or individuals which are authorized to receive or use, and are receiving or using, the Services, or the results of products of the Services.

x.   "System Administration" means day-to-day routine tasks performed in a production environment by a system administrator.   This does not include, re-carving storage sub-systems, re-building enterprise class systems, major upgrades to the environment, major security services, database administration, application development, systems integration, or extensive performance tuning responsibilities.

y.   "Subcontractor" means a contractor, vendor, agent, or consultant selected and retained by Kyndryl or Customer, respectively.

z.   "TCP/IP" means Transmission Control Protocol/Internet Protocol.

aa. "Time and Materials (T&M)" means the additional operational, systems administrative and technical, physical, and logical assistance Services provided by Kyndryl that are not included with the services set forth in a Schedule.

bb. "User Identification" or "User ID" means a string of characters that uniquely identifies a Content Administrator.

cc. "Virtual Local Area Network (VLAN)" means a logical grouping of two or more devices which are not necessarily on the same physical network segment, but which share the same network segment.

dd. "Virtual Private Network (VPN)" means a private network that uses a public network (usually the Internet) to connect remote sites or users together.

3.   Kyndryl Responsibilities

3.1   Kyndryl Services
Kyndryl will perform the Services described in this SOW and the applicable Schedule and Attachments.

3.2   Kyndryl Project Manager
Kyndryl will designate an Kyndryl Project Manager ("PM") to whom Customer will address communications specific to the provision of the Services provided under this SOW. An Kyndryl PM will be associated through the life cycle of this project. The Kyndryl PM will:
- Be responsible for service delivery and customer satisfaction;
- Coordinate and participate in ongoing account status calls on a monthly basis to;
  - Review monthly reports;
  - Review open incidents;
  - Review service levels;
  - Review client satisfaction;
  - Review monitoring/utilization statistics;
  - Review recommendations for improvement/new technology;
  - Address any billing questions;
- Participate, as needed, in the monthly Change Advisory Board meetings for the City of Long Beach;
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- Coordinate all identified tasks/and the required resources;
- Ensure incidents and requests are timely addressed; and
- Assist client with future systems planning.

3.3   Insurance
The insurance provisions outlined in CSA Section 1.12 shall extend to the Services under this SOW.

4.   Term and Termination

4.1   Term
This SOW will be effective beginning on October 1, 2023, at 12:01 a.m., Pacific Standard Time ("Effective Date"). This SOW shall terminate at 11:59 p.m. Pacific Standard Time on September 30, 2026, with the option to renew at then current pricing for two (2) additional one-year period, at the discretion of the City Manager (the "Term") unless terminated earlier in accordance with the terms herein. The parties anticipate that the Hosting Service Ready Date will be three months after the Effective Date. The CSA is hereby extended as co-terminous with this SOW.

4.2   Termination for Cause
Customer or Kyndryl may terminate this SOW for material breach of this Agreement by the other upon written notice containing the specific nature and dates of the material breach. The breaching party will have thirty (30) days from receipt of notice to cure such breach, except for nonpayment by Customer of any undisputed amount due, which must be cured within five (5) days from receipt of written notice. If such breach has not been timely cured, then the non-breaching party may immediately terminate this Agreement upon written notice.

4.3   Termination for Convenience
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, Customer shall pay Kyndryl for services satisfactorily performed and incurred up to the effective date of termination for which Kyndryl has not been previously paid. In addition, Customer shall pay Kyndryl for costs including committed licensing costs and committed labor costs.

4.4   Effect of Termination

In the event of any termination of Services for any reason, (i) Customer will pay charges for Services provided through the effective date of termination; (; and (ii) Kyndryl shall refund any prepaid amounts for the Services relating to any period after the effective date of termination.

4.5 Post-Termination Return and Erasure of Content

Following expiration or termination of the SOW or the Agreement for any reason (including termination for breach by Customer), Kyndryl shall permit Customer to download a complete copy of all Content in the possession of Kyndryl for a period of thirty (30) days after such expiration or termination. If Kyndryl stores any Content on Kyndryl computing resources, Kyndryl will return or remove Content from Kyndryl computing resources upon the expiration or cancellation of the Services, or earlier upon Customer's request. Kyndryl may charge for certain activities performed at Customer's request (such as delivering Content in a specific format). Kyndryl does not archive Content; however, some Content may remain in backup files until expiration of such files as governed by Kyndryl's backup retention practices.

5. CHARGES, PAYMENT, TAXES

5.1 Charges

Customer will pay to Kyndryl all applicable charges specified in Attachment B. Charges may be specified as one-time, recurring, or usage. Kyndryl will invoice such charges when they begin or are due as set forth in Attachment B.

5.2 Payment

Kyndrly shall furnish the Services described in this SOW, in accordance with the standards of the profession, and City shall pay for these services in the manner described below, in an annual contract amount for all Services performed on or before September 30, 2026, not to exceed One Million Eight Hundred Forty One Thousand Seven Hundred Seventy two dollars ($1,841,772).

Kyndryl invoices will specify the amount due in accordance with Section 5.1. Payments shall be paid by Customer within thirty (30) days of the invoice date and to the account specified by Kyndryl subject to approval by Customer of invoices which shall not be unreasonably withheld. Payment will be made in United States dollars. Customer agrees to pay accordingly including any late payment fees due as provided in Attachment B.

5.3 Taxes

Charges are exclusive of any customs or other duty, tax, and similar levies imposed by any authority resulting from Customer's acquisitions under the Agreement, excluding tax or levies based on Kyndryl's net income or arising from Kyndryl's use of personal property or Kyndryl's employment or engagement of its personnel. Customer agrees to: i) pay withholding tax directly to the appropriate government entity where required by law; ii) furnish a tax certificate evidencing such payment to Kyndryl; iii) pay Kyndryl only the net proceeds after tax; and iv) fully cooperate with Kyndryl in seeking a waiver or reduction of such taxes and promptly complete and file all relevant documents.

6. Warranties and Disclaimers

6.1 Kyndryl Representations and Warranties

Kyndryl represents and warrants that it has the requisite corporate power and authority and the requisite authorizations, permits and licenses to execute, deliver and perform its obligations under this SOW and that Kyndryl has no contractual or other obligation that (i) restricts or prohibits Kyndryl's execution or performance of this SOW, or (ii) Customer will breach in connection with the execution or performance of this SOW; and.

Kyndryl further warrants that it shall a) provide the Services in a professional and workmanlike manner, using commercially reasonable care and skill, and as described in this Agreement and b) that all Materials will comply with any specifications or requirements set forth in this Agreement.

6.2   Exclusivity of Warranties

Kyndryl warrants that it provides Services using commercially reasonable care and skill and as described in the applicable TD, including any completion criteria, Project Materials will comply with the applicable TD at the time of delivery. The warranty for a Service ends when the Service ends. b. Kyndryl does not warrant uninterrupted or error-free operation of Services or that Kyndryl will correct all defects. While Kyndryl endeavors to provide security measures to keep all data secure, Kyndryl does not warrant Kyndryl can prevent third party disruptions or unauthorized third party access to Services. These warranties are the exclusive warranties from Kyndryl and replace all other warranties, including the implied warranties or conditions of satisfactory quality, merchantability, noninfringement, and fitness for a particular purpose. Kyndryl warranties will not apply if there has been misuse, modification, damage not caused by Kyndryl, failure to comply with written instructions provided by Kyndryl. Non-Kyndryl Products are sold under the Agreement as-is, without warranties of any kind. Third parties may provide their own warranties to Customer for Non-Kyndryl Products.

6.3   Disclaimers

Kyndryl does not operate as a provider of services regulated by the Federal Communications Commission (FCC) or state regulatory authorities (State Regulators) and does not intend to provide any Services which are regulated by the FCC or State Regulators. If the FCC or any State Regulator imposes regulatory requirements or obligations on any of the Services, Kyndryl may change the way in which such Services are provided to Customer to avoid the application of such requirements or obligations to Kyndryl (e.g., by acting as Customer's agent for acquiring such Services from a third party common carrier).

6.4   Security

6.4.1   Customer acknowledges that Kyndryl does not control the transfer of data over telecommunications facilities, including the Internet. Notwithstanding Kyndryl will perform its obligations specified in the Agreement with respect to the encryption and other security measures to be undertaken by Kyndryl as specified in the Agreement. Kyndryl does not warrant that it will be able to prevent third party disruptions of the Hosted Mainframe Environment or Customer Components.

6.4.2   Customer acknowledges that Kyndryl offers numerous security options, and it is Customer's responsibility to select the set of security options that it determines meet Customer's needs. Kyndryl covenants that Kyndryl will implement the security options specified in Attachment F. However, Customer agrees that Kyndryl shall have no liability for any provision of security-related services or advice that Kyndryl may voluntarily provide outside the scope of Services specified herein.

6.5   Other Disclaimers

Kyndryl does not make any representation or warranty beyond those set forth in this Section 6.

Kyndryl does not operate as a provider of services regulated by the Federal Communications Commission (FCC) or state regulatory authorities (State Regulators) and does not intend to provide any services which are regulated by the FCC or State Regulators. If the FCC or any State Regulator imposes regulatory requirements or obligations on any Services provided by Kyndryl hereunder, Kyndryl may, change the way in which such Services are provided to Customer, and other similarly situated customers, to avoid the application of such requirements or obligations to Kyndryl (e.g., by acting as Customer's agent for acquiring such Services from a third-party common carrier).

7.   Confidentiality

Kyndryl will not access, use, alter, sell or share Customer's data With respect to any confidential information contained in or traveling through the Hosted Mainframe Environment or Customer Components, as is contemplated herein, the provisions of sections 9 and 10 of this SOW will prevail to the extent of any inconsistent provisions in any agreement between the parties.

8.   Indemnification

8.1   Indemnification by Kyndryl for IP Infringement

If a third-party claims that Materials or Base Components Kyndryl provides to Customer, or the performance by Kyndryl of the Services hereunder, infringe that party's patent or copyright, Kyndryl will defend the Customer and their respective employees, officers, and directors against that claim at Kyndryl's expense and pay amount , excluding consequential damages as provided for in Section 10 and the limitation of liability as provided for in Section 9, that a court finally awards (or which Kyndryl agrees to in any final settlement) provided that Customer: (a) promptly notifies Kyndryl in writing of the claim; and (b) allows Kyndryl to control, and cooperates with Kyndryl in, the defense and any related settlement negotiations.

If such a claim is made or appears likely to be made, Customer agrees to permit Kyndryl to enable Customer to continue to use the Materials or Base Components, or to modify them, or replace them with non-infringing Materials or Base Components that are at least functionally equivalent. If Kyndryl reasonably determines that none of these alternatives is reasonably available, Customer agrees to return the Materials or Base Components (if in Customer's possession) to Kyndryl on Kyndryl's written request. Kyndryl will give Customer a credit equal to the amount Customer paid Kyndryl for the applicable Materials or for use of the applicable Base Components up to a maximum of twelve (12) months of applicable charges. This is Kyndryl's entire obligation to Customer with regard to any claim of infringement. Notwithstanding the foregoing, Kyndryl is not responsible for third party claims based on:

1.   any Customer Component which is incorporated into the Materials or Base Components;

2.   Customer's modification of the Materials or Base Components; or

3.   the combination, operation, or use of the Materials or Base Components with any product, data, or apparatus that Kyndryl did not provide, if the infringement would not have occurred were it not for such combination, operation, or use;

4.   any non-Kyndryl hardware, software within the Base Components.

8.2   Indemnification by Customer

Customer will defend Kyndryl and its Affiliates and their employees, officers, and directors, at Customer's expense, and pay all costs, damages, and reasonable attorneys' fees, excluding consequential damages as provided for in Section 10, that a court finally awards (or which Customer agrees in any final settlement) for any third-party claim:

1.   that Content or Customer's use of the Services violates a Customer's obligation in Sections 11.3(2) or 11.5(2);

2.   that Customer Components infringe that party's patent or copyright;

3.   that is brought by a Services Recipient other than Customer and is related, directly or indirectly, to the Services; or

4.   arising out of or related to a mechanics' lien Customer is required to cancel and discharge pursuant to this SOW.

For indemnification under this section 8.2, Kyndryl will: (a) promptly notify Customer in writing of the claim; and (b) allow Customer to control and cooperate with Customer in, the defense and any related settlement negotiations.

9.   Limitation of Liability

Circumstances may arise where, because of a default on either party's part or other liability, a party is entitled to recover damages from the other party. Regardless of the basis on which any party is entitled to claim damages (with exception of payments for Services rendered) from the other party (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), each party's entire liability for all claims in the aggregate arising under this SOW will not exceed the amount of any actual direct damages up to the greater of U.S. $450,000, or three times the charges paid by Customer to Kyndryl for the Services in the twelve (12) months immediately preceding the subject of the claim. Notwithstanding the foregoing, the following amounts are not subject to the foregoing cap on the amount of damages:

1. the obligations of the parties under Sections 8.1 or 8.2 above;

2. damages for bodily injury (including death) and damage to real property and tangible personal property for which a party is legally liable;

3. in the case of Customer, the charges due and payable under this SOW for Services provided under this SOW.

For the avoidance of doubt, Sections 9.0 and 10.0 of this SOW supersede the CSA with respect to this SOW.

10. Disclaimer of Consequential Damages

In no event will either party be liable to the other for special, incidental, exemplary, or indirect damages or for any economic consequential damages (including, without limitation lost profits, business, revenue, goodwill, or anticipated savings), even if they are informed of their possibility; provided that this Section 10.0 does not limit (i) Customer's obligations to pay any early termination charges expressly payable pursuant to Section 4.3 or (ii) amounts payable to third party claims under Section 8 (Indemnification).

11. Other Customer Obligations

11.1 Customer Contact

Customer will designate an individual to whom all of Kyndryl's communications will be addressed and who has the authority to act and make decisions for Customer in all aspects of the Services, including requesting changes, problem resolution, Service requests, assignment of Customer focal points with authority over specific Services, and designation of customer authorized representative ("Customer Authorized Contact").

11.2 Services Support

Customer will comply with its responsibilities to support the Services as specified in applicable Schedules. Such obligations are to be performed at no charge to Kyndryl. Kyndryl's obligations are contingent on Customer meeting such support obligations.

11.3 Representations and Warranties

Customer represents and warrants that:
1. it has the requisite corporate power and authority to execute, deliver and perform its obligations under this SOW; Customer has no contractual or other obligation that (i) restricts or prohibits Customer's execution or performance of this SOW, or (ii) Customer will breach in connection with the execution or performance of this SOW; and
2. its use of the Services and all Content will comply with the Acceptable Use Policy.

11.4 Suspected Violations

Kyndryl reserves the right to investigate potential violations of the representations and warranties in Subsection 13.2. If a breach of any such warranty has occurred then Kyndryl may, in its sole discretion:
1. restrict Customer's access to the Services;
2. remove or require removal of any offending Content; and/or
3. exercise other rights and remedies, at law or in equity.

Except in an emergency or as may otherwise be required by law, before undertaking the activities in Subsection 11.4(1) or 11.4(2), Kyndryl will attempt to notify Customer by any reasonably practical means under the circumstances, such as, without limitation, by telephone or e-mail, and provide the Customer an opportunity to respond to or remedy any such potential violation within a reasonable amount of time.

Each party will promptly notify the other party of any event or circumstance related to this SOW, Customer's use of the Services, the Materials or Base Components or Content of which such party becomes aware that could lead to a claim or demand against the other party by a third party.

11.5 Customer Components

1. Customer (or its Affiliates or third parties) retains all right, title, and interest or license in and to the Customer Components.
2. Customer hereby grants to Kyndryl, its Affiliates and Subcontractors all rights and licenses to, or agrees to promptly obtain and keep in effect Required Consents for all Customer Components, necessary for Kyndryl to perform all of its obligations as set forth in this SOW. Upon request, Customer will provide to Kyndryl evidence of any such rights, licenses, or Required Consents. Kyndryl will be relieved of its obligations to the extent that they are affected by Customer's failure to promptly obtain and provide to Kyndryl any such rights, licenses, or Required Consents. Kyndryl will adhere to reasonable terms and conditions pertaining to Customer Components as notified in writing to Kyndryl.
3. Kyndryl agrees not to remove or alter any copyright or other proprietary notice on or in any Customer Component without Customer's consent.

11.6   Capacity Planning
Customer acknowledges it is its responsibility to determine whether the Services, Hosting Environment, Customer Components and their combination will meet Customer's capacity, performance, or scalability needs. Customer is responsible for planning for and requesting changes to the Hosting Environment, including any additional capacity required to support anticipated peaks in demand that may significantly increase web site hits, transaction volumes, or otherwise increase system resource utilization.

11.7   Content
Customer is solely responsible for:
1. all Content including, without limitation, its selection, creation, encryption, transmission, transfer, design, licensing, installation, accuracy, maintenance, testing, backup, and support;
2. all copyright, patent and trademark clearances in all applicable jurisdictions and usage agreements for any and all Content;
3. the selection and implementation of controls on the access and use of Content; and
4. the selection, management, separate storage of keys, and use of any public and private keys and digital certificates held by Customer that Customer may use with the Services.

12.   Other License and Rights

12.1   License for Base Components
1. Kyndryl (or its Affiliates or subcontractors) retains all right, title, and interest in Base Components.
2. Kyndryl grants Customer a nonexclusive, nontransferable, revocable license to access and use the Base Components solely in connection with the Services as provided under this SOW. Customer agrees not to download or otherwise copy, reverse assemble, reverse compile, decompile, or otherwise translate the software portions of the Base Components, other than to make one copy for backup purposes.
3. If Kyndryl provides as a Base Component a Microsoft Corporation product, the terms and conditions of the Microsoft Customer License Terms will also apply for such products. Such Terms are located on the Internet at https://www.microsoft.com/en-us/licensing/product-licensing/products.
4. Customer agrees not to remove or alter any copyright or other proprietary notice on or in any Base Component without Kyndryl's consent.

12.2   No Sale or Lease of Goods
As between Customer and Kyndryl, Kyndryl retains all right, title and interest in the Base Components. No goods are sold or leased by Kyndryl under this SOW. If Customer desires to purchase or lease goods from Kyndryl, such purchase or lease will be governed by a separate mutually acceptable written agreement between Customer and Kyndryl or an Kyndryl Affiliate.

12.3   No Lease of Real Property
This SOW is a services SOW and not a lease of any real property.

13. Changes

13.1 Service Description

Kyndryl, in its reasonable discretion, may (subject to Section 2 of the CSA) change the terms and conditions of this SOW upon at least ninety (90) days prior notice to Customer if such change was the result of:
1. law, regulation, or similar governmental action;
2. a ruling by a court of competent jurisdiction; or
3. changes in the method of service delivery that affect similar Kyndryl hosting customers.

Changes as a result of 1, 2, or 3 above will be effective on the date Kyndryl specifies in the notice.

13.2 Acceptable Use Policy

The following acceptable use terms apply for Client's use of the Remote Services where a cloud platform is used as part of the infrastructure. Remote Services may not be used for unlawful, harmful, obscene, offensive or fraudulent Content or activity. Examples of prohibited activities are advocating or causing harm, interfering with or violating the integrity or security of a network or system, evading filters, sending unsolicited, abusive or deceptive messages, introducing viruses or harmful code, or violating third party rights ("Acceptable Use Policy"). Kyndryl, in its reasonable discretion, may modify the Acceptable Use Policy. If such modification has a material adverse effect on the Customer's use of the Services, Customer's sole remedy is to terminate this SOW pursuant to the termination terms of this SOW..

13.3 Project Change Control Procedure

This SOW may be amended only by a writing signed by authorized representatives of both parties. Requests for such amendment ("Project Change Request" or "PCR") should be submitted in writing by the requesting party. The PCR should reference this SOW, describe in a reasonable level of detail the proposed change, the rationale for the change, and the impact the proposed change may have on the SOW. The parties will review the PCR and will do one of the following:
a. authorize the change by signing the PCR;
b. agree in writing to submit the PCR for further investigation; or
c. reject the PCR. If the PCR is rejected, the rejecting party will inform the requesting party of the reason for the rejection.

A mutually signed PCR will be deemed an amendment to this SOW. Any modification of this SOW requested by Customer as a result of laws applicable to Customer will be considered a PCR covered by this Subsection. Until a change is agreed in writing, both parties will continue to act in accordance with the latest agreed version of the Agreement.

14.0 General

14.1 Headings

The headings of the various sections of this SOW have been inserted for convenience only and shall not affect the interpretation of this SOW.

14.2 Survival

Any of these terms and conditions which by their nature extend beyond the SOW termination or expiration remain in effect until fulfilled, and apply to both Customer's and Kyndryl's respective successors and assignees.

14.3 Compliance with Laws

Kyndryl will comply with laws applicable to Kyndryl generally as a provider of information technology products and services and applicable to Kyndryl's provision of the Services. Kyndryl is not responsible for determining the requirements of laws applicable to Customer or the Customer's business, including those relating to Customer's receipt of under this SOW. It is Customer's responsibility to determine if Customer's utilization of Services under

this SOW are sufficient to allow Customer to comply with laws applicable to Customer and its business. Neither party is obligated to take any action that would violate applicable law.

Each party will comply with applicable export and import laws and regulations, including those of the United States that prohibit or limit export for certain uses or to certain end users.

14.4 Governing Law

The laws of the State of California govern this Agreement and the venue for any legal actions brought by any party with respect to this agreement shall be the County of Los Angeles, State of California for state actions and the Central District of California for any federal actions. Nothing in this Agreement affects any statutory rights of consumers that cannot be waived or limited by contract.

14.5 Severability

If any provision of this SOW shall be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions of this SOW shall in no way be affected or impaired thereby, so long as the remaining provisions of this SOW still express the original intent of the parties. If the original intent of the parties cannot be preserved, this SOW shall either be renegotiated or terminated.

14.6 Publicity and Trademarks

Neither party grants the other the right to use its or any of its Affiliates' trademarks, trade names, or other designations in any promotion, publication, or Web site without prior written consent. Except as may be required by law or as may be required by Kyndryl to perform the Services, neither party may disclose to any third-party the terms and conditions of this SOW, without prior written consent.

14.7 No Third-Party Beneficiaries

Except as expressly provided in Section 8, this SOW does not create any intended third-party beneficiary rights.

14.8 Personnell

Each party is responsible for the supervision, direction, and control of its respective personnel. Kyndryl reserves the right to determine the assignment of its personnel. Kyndryl may subcontract portions of the Services to Subcontractors and Affiliates selected by Kyndryl.

Key Persons are subject to the following: (a) they shall have access to a pool of resources that are knowledgeable and experienced in the Services that Customer is obtaining from Kyndryl and can ensure the quality and continuity of the delivery of the services; (b) they will follow the Customer Care criteria for response to incidents or questions and (c) they are familiar with the services contracted for by Customer.

A Key Person shall not be removed from their position supporting Customer during the term except:

(1) at Customer's request for any lawful and non-discriminatory reason;

(2) if the Key Person terminates their employment with Kyndryl, is unable to perform their duties, or becomes unavailable for service to Kyndryl for an extended period;

(3) if the Key Person is transferred within Kyndryl to a different role; or

(4) if the Key Person demands to be removed from Customer's account.

When necessary, Kyndryl shall replace a Key Person with a qualified Key Person.

14.9 No Agency

This SOW does not create an agency, joint venture, or partnership between the parties.

14.10 Assignment

Neither party may assign this SOW, in whole or in part, without the prior written consent of the other unless otherwise permitted by this paragraph. Any attempt to do so is void. Neither party will unreasonably withhold such consent. Kyndryl may assign rights to receive payments, provided that Kyndryl will remain responsible to perform its obligations and Client retains all rights and remedies in the event of any failure of Kyndryl to perform its obligations. Assignment by either party (a) in conjunction with the sale of the portion of such party's business that includes the provision or usage of a Service, (b) to any Affiliates in the United States, or (iii) to a successor organization by

merger or acquisition is not restricted and such party may share this Agreement and related documents in conjunction with any such assignment.

14.11 No Rsale

Customer shall not resell the Services, in whole or in part, outside of Customer's Affiliates. This does not prevent Customer and its Affiliates from making their Content available to Customer's end users.

14.12 Risk of Loss

Risk of loss for all Base Components shall at all times remain with Kyndryl. Risk of loss for all Customer Components shall at all times remain with Customer.

14.13 Force Majeure

If any party fails to perform its obligations because of strikes, lockouts, labor disputes, embargoes, acts of God, governmental restrictions, governmental regulations, governmental controls, judicial orders, enemy or hostile governmental action, civil commotion, fore 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 for such cause for failure to perform.

14.15 Waiver

The failure of one party to insist upon strict adherence to any term of this SOW on any occasion shall not be considered a waiver, nor shall it deprive that party of the right to insist later on adherence thereto. Any waiver must be in writing and signed by an authorized representative of the waiving party.

14.16 Freedom of Action

Each party is free to enter into similar agreements with others.

14.17 Limitation of Licenses

Each party grants only the licenses or rights expressly specified herein. No other licenses or rights (including licenses or rights under patents) are granted, either directly, by implication, estoppel, or otherwise.

14.18 Materials

For Materials that Kyndryl delivers to Customer that are created during the performance of Services or otherwise (such as those that preexist the Services), Kyndryl or third parties have all right, title, and interest (including ownership of copyright). Kyndryl will deliver one copy of the Materials to Customer. Kyndryl grants Customer an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, and perform copies of such Materials and distribute to only to Customer and Customer's Affiliates and only in connection with the Services. Customer agrees to reproduce the copyright notice and any other legend of ownership on any copies made. Customer may share such Materials with Customer third party subcontractors or its regulated mandated entity subject to the provisions of Agreement for Exchange of Confidential Information (AECI) executed between the parties.

14.19 Business Contact Information

Kyndryl, its affiliates, and contractors of either require use of business contact information and certain account usage information. This information is not Content. Business contact information is used to communicate and manage business dealings with the Client. Examples of business contact information include name, business telephone, address, email, user ID and, and tax registration information. Account usage information is required to enable, provide, manage, support, administer, and improve Services. Examples of account usage information include information related to diagnostics, configurations, capacities, components, system health and performance, and digital information gathered using tracking technologies, such as cookies and web beacons. The Kyndryl Privacy Statement at https://www.Kyndryl.com/privacy/ provides additional details with respect to Kyndryl's collection, use, and handling of business contact and account usage information. When Client provides information

to Kyndryl and notice to, or consent by, the individuals is required for such processing, Client will notify individuals and obtain consent.

14.20 Data Protection

Client agrees that no Client personal data that is subject to i) the European General Data Protection Regulation (E/2016/679) (GDPR); or ii) any other data protection laws identified at https://www.kyndryl.com/terms/dpl will be provided to Kyndryl for processing on behalf of the Client under this transaction. In the event of a change, Client will notify Kyndryl in writing and Kyndryl's Data Processing Addendum (DPA) at https://www.kyndryl.com/terms/dpa and the applicable DPA Exhibit will apply for personal data subject to such applicable laws and prevail over conflicting terms in the SOW.
The DPA prevails over any conflicting term of the SOW.

14.21 Notices

Any notices required or permitted hereunder will be effective upon receipt and will be personally delivered; mailed via the postal service; sent by reliable overnight courier; or transmitted by confirmed facsimile. All notices will be in writing and addressed to the applicable party's designated representative at the address specified in this Agreement. Except as to notices permitted or required under Sections 4 or 8, the parties agree that electronic mail messages sent between them using security procedures sufficient to reasonably authenticate them will be deemed writings.

Kyndryl agrees to provide Services to Customer upon acceptance of this SOW by signing below on or before October 4, 2023.

By signing below, Customer and Kyndryl agree that this SOW, including these Base Terms and Schedules, is the complete agreement between the parties relating to this subject matter. Once signed, 1) any reproduction of this SOW or a Schedule made by reliable means (for example, photocopy or facsimile) is considered an original and 2) all Services ordered under this SOW are subject to it.

Agreed and Accepted:

City of Long Beach
411 W. Ocean Blvd., Office of the City Manager, 10th Floor
Long Beach, CA 90802

By: _Linda J. Tatum_
Customer Authorized Signature

LINDA F. TATUM   _10/3/2023_
Name (type or print):   Date:

Customer Identification Number: **5274005**

EXECUTED PURSUANT TO SECTION 301 OF THE CITY CHARTER.

Kyndryl, Inc.
1 Vanderbilt Avenue, Fifteenth Floor
New York, NY 10017

By: _Joe D Briggs_
Authorized Signature

Joe D Briggs III   10/02/2023
Name (type or print):   Date:

California Government Customer Partner
Title

Agreement name: Kyndryl Client Service Agreement
Agreement date: September 16, 2022
Kyndryl Hosted Mainframe Services SOW number:
Contract support:
     Joe Briggs
     Government and Education Partner – Kyndryl
     Joe.Briggs.III@Kyndryl.com

After signing, please return a copy of this SOW to the Kyndryl or partner sales representative listed above.

APPROVED AS TO FORM
October 2 , 20 23
DAWN MCINTOSH, City Attorney
By_____
TAYLOR M. ANDERSON
DEPUTY CITY ATTORNEY   6/8/2023

Schedule A

Attachment A Kyndryl Hosted Mainframe Services

Definitions

a. "Alternate Server" means — the Server within the Hosting Environment which has been assigned to host a Customer LPAR during Disaster Recovery.
b. "Assigned Resource Units" means — the number of Resource Units assigned to Customer.
c. "Base Component" has the meaning set forth in the SOW.
d. "Cap" means — a Server or LPAR capacity limit (Hard Cap) that is established for the Customer environment.
e. "Change Management Process" means — the process agreed to by the parties in the SOW for handling changes to the Services.
f. "Customer Component" has the meaning set forth in the SOW.
g. "DASD" means — Direct access storage device or disk storage.
h. "Disaster Recovery LPAR" means — an inactive LPAR on an Alternate Server within the Hosting Environment at the Secondary Site that is initiated at the declaration of a disaster recovery event or for testing purposes, with an identical configuration to the Standard LPAR which can host the workload normally running on the Standard LPAR.
i. "Forecasted Monthly Usage" means — a twelve (12) month rolling forecast of anticipated Resource Units provided by Customer to assist Kyndryl with capacity planning.
j. "Gigabytes or GB" means — 1,000,000,000 bytes of data.
k. "Global Mirror" means — a type of disk storage data replication described in Section 2.3.2 of this Schedule.
l. "ISV" means — the independent software vendor for software products which are licensed for use by Customer within its assigned LPAR(s).
m. "Large System Performance Reference (LSPR)" means — the set of relative performance indicators for System z published by IBM.
n. "LPAR" means — a logical partition of the mainframe in which physical resources are assigned and a unique instance of the operating system is installed.
o. "MIPS" means — millions of instructions per second and is a standard measure of capacity for mainframes. Each System z server model will have a stated MIPS rating.
p. "MSU" means — millions of service units and is a capacity measurement used for licensing software by some vendors including IBM. IBM defines the ratio between MSU and MIPS. This ratio varies between processor families and models. Each System z server model will have a stated MSU rating.
q. "Primary Server" means — the Server within the Hosting Environment which has been assigned to host a Customer LPAR(s) during normal operation.
r. "Primary Site" means — the Kyndryl Delivery Partner Data Center hosting the Customer Primary Server.
s. "Reduced Resource Credit ("RRC") means — the credit, as set forth in Attachment B (Hosting Charges, Contractual Baselines and Rates), to Customer if Assigned Resource Units are below the applicable Hosting Contractual Baseline.
t. "Resource Unit or (RU)" means — units of resource for which Kyndryl and Customer have established a Hosting Contractual Baseline.
u. "Secondary Site" means — an Kyndryl Delivery Partner Data Center that is geographically separate from the Primary Site from which Hosting services may also be provided.
v. "Server" means — the physical processor and processor components that are in the Hosting Environment.
w. "Service Build" means — the activities to be performed by Kyndryl and Customer described in Section 3.2 of this Schedule.
x. "Short Term Resource Flex Up Rate" means — the MIPS rate specified in Attachment B (Hosting Charges, Contractual Baselines and Rates) for short term increases to MIPS.
y. "Software Stack" means — the software available and listed in Section B-2 of Attachment B, (Hosting Charges, Contractual Baselines and Rates).
z. "Standard Disk" means — a type of disk in which Customer data will reside in a storage sub-system connected to the Hosting with no mirroring.
aa. "Standard LPAR" means — an LPAR that is hosted on a single Server within the Hosting Environment.

bb. "Standard Tape" means — a physical tape in a single shared automated tape library.

cc. "Sub Capacity Licensing Agreement" means — means the licensor of a software product agrees that a subset of the Server's overall capacity can be a valid measure of the capacity upon which such software is licensed.

dd. "Virtual Network Addressing" means — network definitions automatically detect an application's location within the Hosting Environment.

ee. "Hosting" means — the Kyndryl Managed Services which provides the hardware, software, and management processes upon which the Customer mainframe LPARs will operate.

ff. "Hosting Contractual Baseline" means — the quantity of Hosting Resource Units assigned to Customer utilized for calculating charges as set forth in Attachment B, (Hosting Charges, Contractual Baselines and Rates).

gg. "Hosting Custom Software" means — the IBM or Independent Software Vendor (ISV) software products which are licensed as customer-specific for use by Customer for operation within its assigned LPARs.

hh. "Hosting Disk Storage Service" Type means — the type of disk storage available to Customer described in Section 2.3 of this Schedule.

ii. "Hosting Hardware Levels" means — the provided hardware levels of the Base Components as published in the Hosting Service Plan as described in Section 3.2.

jj. "Hosting LPAR Service Type(s)" means — the type of LPARs described in Section 2.2 of this Schedule.

kk. "Hosting Maintenance Schedule" means — the schedule of Hosting Maintenance Window.

ll. "Hosting Maintenance Window" means — the period(s) of time and date(s) upon which one or more Servers in the Hosting Environment will undergo hardware maintenance which may result in Hosting Service Outages for Customer standard LPAR(s).

mm. "Hosting Server Outage" means — that period of time being the duration of a planned Hosting Maintenance Window or an unscheduled failure of a Server within the Hosting Environment hosting any Customer LPAR.

nn. "Hosting Service Criteria" means — those Service Criteria which must be continuously met in order for Customer's systems to be eligible to reside on a Hosting Environment, as more fully described in the Hosting Service Plan.

oo. "Hosting Service Hours" means — the hours of normal operations as defined in the Hosting Service Plan.

pp. "Hosting Service Plan" means — the document defined in Section 3.2 of this Schedule.

qq. "Hosting Software Levels" means — the permitted software levels of the Hosting Software Products as published in the Hosting Service Plan described in Section 3.2.

rr. "Hosting Software Product" means — a software product centrally licensed as part of the Hosting service. Kyndryl and Customer will agree to and document the level (version, release, and modification) as described in Section 3.3 to which Customer LPARs hosted on the Hosting service must be maintained.

ss. "Hosting Storage Outage" means — the duration of a planned Hosting Maintenance Window or an unscheduled failure of a storage device within the Hosting Environment holding the data for any Customer LPAR.

tt. "Hosting Tape Service Types" means – the type of tape services described in Section 2.4 of this Schedule.

1. General Services

1.1 Introduction

The following sections include the specific terms and conditions for the provision of Mainframe as a Service. These terms and conditions include Kyndryl and Customer rights and responsibilities. Kyndryl's performance is dependent upon Customer's fulfillment of its responsibilities at no charge to Kyndryl. Any delay in performance of Customer's responsibilities may result in additional charges and/or delay of the completion of Services and will be handled in accordance with the Project Change Control Procedure.

1.2 Scope - Hosting LPAR Service Types

Kyndryl will provide Hosting LPAR Service Types to Customer as set forth in Attachment B, (Hosting Charges, Contractual Baselines and Rates).

Changes in the Hosting Service Type assigned to an LPAR will be handled in accordance with the Change Management Process.

Each Customer LPAR may be assigned to a specific named Server within the Hosting Environment (the "Primary Server"). Kyndryl reserves the right to change the Primary Server via the Change Management Process. Kyndryl will provide the customer with a timely written notification related to all changes that affect the process of providing the services to the customer.

1.2.1 Standard LPAR

A Standard LPAR is the Hosting Service Type in which the Customer workload is hosted on a single Server within the Hosting Environment for which there is no alternate server to run the workload during a Hosting Server Outage.

In the event of a Hosting Server Outage on the Server hosting a Customer Standard LPAR that LPAR will be unavailable until the event has completed.

For each Standard LPAR Kyndryl will perform Service Build activities described in Section 3.1 below to create a Standard LPAR on the Primary Server to meet Customer's Hosting Contractual Baseline MIPS set forth in Attachment B; (Hosting Charges, Contractual Baselines and Rates).

1.2.2 Scope - Hosting Disk Storage Service Types

Kyndryl will provide Hosting Disk Storage Service Types available to Customer according to the Hosting Contractual Baselines as set forth in Attachment B, (Hosting Charges, Contractual Baselines and Rates). Changes in the Hosting Disk Storage Service Types will be handled in accordance with the Change Management Process. The following Hosting Disk Storage Service Types are available to Customer:

1.2.3 Standard Disk

Standard Disk is the Hosting Disk Service Type in which the Customer data will reside in a storage sub-system(s) connected to the Hosting via fiber connection ("FICON") with no mirroring.

Hardware based data encryption will be included if specified in Attachment A.

In the event of a Hosting Storage Outage on the disk sub-systems hosting Customer's Standard Disk allocation, the data on those disk sub-systems will be unavailable until service has been restored.

In the case of an unplanned outage, Customer will, if necessary, recover the data from a back-up copy.

For each Standard Disk footprint Kyndryl will perform the activities described in the Service Build Section 3.1 below to create a Standard Disk allocation on the primary disk sub-system to meet Customer's Hosting Contractual Baselines for Gigabytes as set forth in the Attachment B, (Hosting Charges, Contractual Baselines and Rates).

1.2.4 Global Mirror

Kyndryl will provide global mirror processing on the DASD that provides a remote copy solution from the Primary Site to the Secondary Site by using asynchronous technology. With Global Mirror, the data at the Secondary Site is maintained to be a point-in-time consistent copy of the data at the Primary Site.

1.3 Scope - Hosting Tape Service Types

Kyndryl will provide Hosting Tape Services to Customer as per the Hosting Contractual Baselines set forth in Attachment B, (Hosting Charges, Contractual Baselines and Rates). Changes to the Hosting Tape Service Type will be handled in accordance with the Change Management Process. The following Hosting Tape Service Types are available to Customer.

1.3.1 Virtual Tape

Kyndryl will provide a virtual tape environment to perform backups of the customer data and to be used for daily operations. The virtual tape will be replicated to the Secondary Site to create an offsite copy of the backed up data and the virtual tape environment will be available in the event of a disaster.

2. Preparing Hosting Infrastructure for Customer

2.1 Service Build

Service Build is the process of preparing the Hosting Environment to create Customer LPARs.

a. Kyndryl will:

   (1) assign a project manager to manage the transition of Customer into the Hosting Environment;

   (2) setup calls and meetings as needed with Customer representatives to gather and verify system specifications;

   (3) create new LPARs, configure storage, install any Base Component as listed in Attachment A, (Hosting Base Components and Maintenance Schedule) and set forth in the Hosting technical solution design document;

   (4) customize hardware configuration for the Customer LPAR(s);

   (5) perform data migration via method described in Attachment A;

   (6) perform handover to Customer for Customer to perform further content load activities and the operations, administration, and management of the LPARs; and

   (7) provide IPL assistance via the HMC.

b. Customer will:

   (1) assign Customer key contact for Hosting transition. This person will serve as main Customer contact for Kyndryl to work project schedule, questions, and issues;

   (2) review and assist Kyndryl as needed with the build of the Customer Hosting LPARs and storage configurations;

   (3) approve the Hosting configuration and deployment;

   (4) configure unique Customer application parameters of Customer Components;

   (5) deliver any Customer Components as outlined in Attachment C, (Customer Components) to Kyndryl;

   (6) confirm Customer has the license rights for Customer Components prior to delivery to Kyndryl; and

   (7) for all ISV software for which Customer is the licensee:

      (a) Customer is responsible to confirm that Customer license to use such ISV software allows for Sub Capacity Licensing;

      (b) Customer is responsible to confirm that the license to use such ISV software is hardware characteristic (e.g. serial number, software model type) agnostic permitting use on any of the Servers within the Hosting Environment, and charging is based on the sum of MIPS required across all Customer LPARs in the Hosting Environment including;

      (c) Customer is responsible to confirm that the software authorization process to use such ISV software is not dependent on keys or other mechanisms that are dependent on hardware specific information such as hardware model, software model or serial number. Where this is not possible and software keys containing hardware specific information are required to execute ISV software, make available to Kyndryl at all times, keys for each of the Servers in the Hosting Environment;

      (d) define, install, and validate the operation of Customer Components; and

      (e) perform operational and application functional testing.

      (f) Customer will continue to be responsible to meet the conditions and requirements for their ISV licenses and IBM licenses not included as supplied by the Kyndryl hosting service within this contract.

   (8) All Customer's responsibilities of this section are contingent upon the reasonable cooperation and support of Kyndryl where applicable.

2.2   Hosting Service Plan

The Hosting Service Plan is a document that is agreed to by the Customer and Kyndryl and maintained by Kyndryl which defines:

1. the supported Hosting Hardware Levels;
2. the supported Hosting Software Levels;
3. the current Hosting Maintenance Schedule;
4. the Hosting Service Criteria; and
5. The Hosting Hardware Levels, Software Levels and Maintenance Schedule current at the time of this SOW are listed in Attachment A, (Hosting Base Components and Maintenance Schedule).

2.3   Hosting Service Tasks

The Hosting Environment is a shared information technology computing environment. This section outlines the tasks Kyndryl, and Customer will perform as it relates to general services in the Hosting Environment.

2.3.1   Kyndryl Responsibilities

To maintain consistent service delivery for a complete Mainframe Infrastructure as a Service users Kyndryl will:

1. Provide all physical devices and manage the physical Hosting Environment;
2. provide, operate, maintain, and support the Base Components as listed in Attachment A; (Hosting Base Components and Maintenance Schedule) as defined in the Hosting Service Plan;
3. provide no less than three (3) months written notice to Customer of any changes to the Hosting Service Plan;
4. provide reasonable prior notice to Customer of any change to the Servers in the Hosting Environment which are likely to require new or replacement software keys;
5. publish and be responsible for managing changes to the Hosting Maintenance Schedule as defined by Kyndryl in the Hosting Service Plan;
6.   Kyndryl will support connected devices, as identified in Attachment A;
7. reserve the right to use the hardware within the Hosting Environment, in the sole discretion of Kyndryl, to host LPARs which are owned and used by Kyndryl, or by other Customers of Kyndryl, including competitors of Customer, and notwithstanding any other provision of this SOW, Customer irrevocably waives any right to object to, or to prevent the hosting of any internal Kyndryl or Kyndryl Customer LPAR(s) on any Server in the Hosting Environment, and agrees to share the Hosting Environment with such LPAR(s);
8. reserve the right to perform, in Kyndryl's sole discretion, dynamic hardware changes (i.e., those which do not require Customer's LPARs to be re-started or otherwise interrupted), during the Hosting Service Hours; and
9. reserve the right to change Customer's Primary Server to another Server within the same Hosting Environment at Kyndryl's cost.
10. IBM MLC Software stack provided (by Kyndryl) per list.
11. Migration assistance is included (up to 100 hours) and will be accomplish via data replication from client storage system to FNTS storage system utilizing IBM TDMF Software.
12. Kyndryl will continue to use virtual tape in steady state.
13. A site-to-site VPN is included for connectivity to client's primary site/network, subject to availability of client's internet bandwidth.
14. All printing is assumed to be over IP.

15. Solution sizing is for estimated capacities based on information provided by Customer. Further Due Diligence will be required to "right-size". If additional resources are required, client may contract for those additional resources.

2.3.2 Customer Responsibilities

In order to be eligible to board and continue utilizing the Hosting, Customer must:

a. agree to adhere to Kyndryl's release level requirements as specified in the Hosting Service Plan;

b. maintain all software:

    (1) Kyndryl will support the OS and MLC Software release and levels specified in Attachment A for the term of the contract unless the customer requests an upgrade via the PCR process (as defined in Attachment B), and

    (2) for software other than the Kyndryl Hosting software:

        (a) at a level which is supported by the vendor at the Hosting Software Level of the Hosting Software Products on which those software product(s) are dependent. For example, an upgrade to CICS may need several ISV products updated to keep the ISV support valid; and

        (b) Customer is responsible for any software component which is no longer supported and must maintain it to a level which does not interfere with the operation, maintenance or upgrading of the Hosting Environment. Customer is responsible for the risk of running such unsupported software.

    (3) for all ISV software for which Customer is the licensee:

        (a) Customer is responsible to confirm that the license to use such ISV software is in compliance with the Sub Capacity License Agreement;

        (b) Customer is responsible to confirm that the license to use such ISV software permits use on any of the Servers within the Hosting Environment, and charging is based on aggregated use across the Hosting Environment including, if applicable, use across multiple Servers in a load balancing Sysplex;

        (c) Customer is responsible to confirm that the software authorization process to use such ISV software is not dependent on keys or other mechanisms that are dependent on hardware specific information such as hardware model, software model or serial number. Where this is not possible and software keys containing hardware specific information are required to execute ISV software, make available to Kyndryl at all times, keys for each of the Servers in the Hosting Environment;

c. make any changes necessary as a result of an Kyndryl change to the Mainframe Service Criteria set forth in the Hosting Service Plan;

d. agree to allow Kyndryl to perform HW maintenance of the Servers within the Hosting Environment in accordance with such Hosting HW Maintenance Schedule in the Hosting Service Plan;

e. within thirty (30) days of receipt by Customer of an updated Hosting HW Maintenance Schedule, Customer may raise any reasonable concerns it has with such Hosting HW Maintenance Schedule and Kyndryl will give due consideration to any such objection and may, but shall not be obliged to, make changes to the Hosting HW Maintenance Schedule;

f. confirm that Customer Components are compatible with the Base Components;

g. procure and provide Customer Components and be responsible for all applications software related services, such as:

    (1) acquisition and asset management;

    (2) maintenance (including upgrades as required to maintain applications software currency) in accordance with the Base Components currency requirements;

    (3) performance and tuning;

    (4) testing and user acceptance;

    (5) help desk support for Customer's end users;

       (6)   problem management and root cause analysis;

       (7)   change management and scheduling including coordinating applications software change management and the associated integration with Hosting shared environment change management and Hosting Maintenance Windows; and

       (8)   third party supplier and associated contract management including vendor interface for problem management/resolution.

h.   register all Customer Components with the applicable vendors, in accordance with the applicable vendor's license terms and conditions and adhere to all vendor license terms and conditions;

i.   Within 30 days upon termination or expiration of this SOW, confirm removal and/or erase Customer Components from any Servers and disk space that Kyndryl provides as Base Components. If Customer does not remove and/or erase Customer Components within such period, Kyndryl may:

       (1)   move any and all Customer Components to storage and charge Customer all associated costs; and

       (2)   permanently erase all Customer Components from such Servers and disk space without any liability to Customer.

       (3)   Kyndryl will provide Customer seven (7) days written notice prior to removing and/or securely erasing Customer Components.

j.   if at the time of contract signature, the LPARs hosting Customer's applications are not running at Hosting compatible Software Levels stated in the Hosting Service Plan then, prior to migrating the Customer LPAR to a Server in the Hosting Environment, Customer assumes financial and technical responsibility for upgrading the software to compatible levels, or for running software that is either unsupported or requires separate version licenses than provided by Hosting. Customer and Kyndryl must agree on a plan to migrate to the Hosting Software Levels within six (6) months of boarding;

k.   Customer must test their LPARs and applications to ensure they run properly with their provided Hosting Software Levels; and

l.   procure and provide network access from Customer's site to each of the Kyndryl Hosting Sites to enable Customer Components to run in the Kyndryl hosting environment and retain responsibility for all Customer network management.

m.   Client will retain Systems Administration/Management.

n.   Client will retain all Database Administration.

o.   Client will retain all Application Support.

p.   Client will retain all Operational Support.

q.   Client will retain all remaining 3rd party (ISV) software licenses and continue to pay maintenance.

r.   Client will use FNTS supported Virtual Tape platform.

3.   Ongoing Services and Support Responsibilities

3.1   Hosting Capacity Management

a.   Kyndryl will:

       (1)   when requested via the Change Management Process, increase, or decrease Assigned Resource Units as set forth in Attachment B, (Hosting Charges, Contractual Baselines and Rates). For the increase or decrease of Assigned Resources Units, Kyndryl will target a two-week window to implement the requested change. Requests for major changes, may require a longer lead-time.

b.   Customer will:

       (1)   provide and maintain a twelve (12) month rolling forecast of anticipated monthly capacity needed ("Forecasted Monthly Usage" or "FMU") which will include forecasted usage of Hosting Resource Units for the coming twelve (12) months including:

           (a)   the total MIPS capacity required by each of Customer's LPARs by service type;

(b)   the disk capacity required by service type;

(c)   the software capacity required by each of Customer's LPARs;

(d)   any short-term MIPS resource requirements and dates required;

(e)   the tape capacity required by tape service type; and

(f)   forecast of growth in use of network cards and FICON I/O cards.

(2)   request any increase or decrease in Resource Units or changes in capping or other resources via the Change Management Process.

3.2   Hosting Server Maintenance and Outages

The Hosting Maintenance Schedule will be made available to Customer by Kyndryl in the Hosting Service Plan and reviewed by Customer and Kyndryl as needed during scheduled service review meetings.

3.3   Hosting Resource Units (RU)

The following Resource Units are used to measure Hosting resources assigned to Customer.

3.3.1   Server Processor LPAR MIPS

The RU for the Server processor LPAR resource shall be the MIPS specified in the Hosting Contractual Baseline.

If required for ISV purposes, Kyndryl will report the Peak 4 Hour Rolling Average using SCRT or another mutually agreeable reporting tool or process. The SCRT monthly measurement period shall begin at 12:00AM the second day of the month through 11:59PM on the first day of the following month.

3.3.2   Disk Space (DASD) Gigabytes

The RU for the disk space resource category shall be the number of DASD Gigabytes assigned by Kyndryl to Customer LPAR(s). DASD Gigabytes include all space (e.g., assigned, used, free, work, and system) and will be viewed at the full volume level.

Kyndryl will periodically run the standard utilities and commands to gather and report on Gigabytes assigned to Customer.

The monthly measurement period shall begin at 12:00AM the first day of the month through 11:59PM on the last day of the month.

3.3.3   Increments for Increases or Decreases in Resource Units

The minimum increases/decreases for any change are as follows:

1.   MIPS are rounded to nearest MSU equivalent. Eight (8) MIPS is equivalent to one (1) MSU. The increment for increases or decreases will be 1 MSU and

2.   disk and tape storage are allocated in volumes. Increases or decreases will be in increments of 1GB rounded at closest full volume boundary.

3.4   Hosting LPAR Definition

Customer may choose how Kyndryl will define the LPAR(s) capacity requirement from the following options per LPAR.

3.4.1   Soft Cap

Soft Cap technology allows an LPAR to burst for brief workload spikes above its defined cap (as specified in Customer's Hosting Contractual Baseline) based on the 4HRA (4-Hour Rolling Average). This enables a more optimal use of available resources and also enables more responsive performance.

3.5   Internet Connectivity

Kyndryl will provide a primary connection between the Kyndryl Hosting Center and the Internet with Internet Committed Bandwidth in increments of one (1) Mbps as selected by Customer and specified in Attachment B. Customer will provision and manage all SSL certificates.

Kyndryl will assign private IP addresses for Customer's servers at the Kyndryl Hosting Center. Customer is responsible for working with Kyndryl during the technical discovery phase to ensure that these IP addresses do not pose any conflicts with Customer's existing IP addressing schema.

Customer's data traffic between the Kyndryl Hosting Center and the Internet may exceed Committed Bandwidth, if capacity is available from the Kyndryl Hosting Center network infrastructure.

Each calendar month, Kyndryl will measure Customer's actual bandwidth usage by sampling the inbound and outbound data traffic volume between the Kyndryl Hosting Center and the Internet every five (5) minutes. At the end of the month, Kyndryl will discard the five percent (5%) of the samples with the highest data traffic volume. Customer's "Peak Bandwidth Usage" for that month is the remaining sample with the highest data traffic volume. If Customer's Peak Bandwidth Usage for the month exceeds Committed Bandwidth, Customer will incur a Peak Bandwidth Usage charge, for the amount of usage that exceeds Committed Bandwidth, at the rate specified in Attachment C.

In addition, Kyndryl will provide access to bandwidth utilization reports through a Customer accessible web portal.

3.6 Virtual Private Network

Kyndryl will configure and manage the number of VPNs identified in Attachment B. The VPNs will consist of an IPSec tunnel-based technology in the firewall at the Kyndryl Hosting Center. Kyndryl will configure and manage the VPN tunnel at the Kyndryl Hosting Center. Customer will configure and manage a corresponding IPSec tunnel based on technology at Customer's location.

The IPSec connection will be from specified devices at Customer's site to specified devices at the Kyndryl Hosting Center as defined by Customer.

3.7 Technical Due Diligence Period

One (1) technical due diligence period commencing within two (2) weeks following contract signature by all parties to this SOW may be required. During this technical due diligence period Customer and Kyndryl technical teams will work together and determine specific detail regarding the environment and the configurations including mainframe and mainframe associated components, networking components and SAN components.

Any changes as a result of the technical due diligence period will be handled as follows:

1. Any delays in the schedule will be documented in the project plan by the Kyndryl project manager and communicated to Customer in a timely manner; and

2. Kyndryl and Customer will use the Change Order process to make any changes to this SOW as a result of this technical due diligence period. Changes may result in adjustments to pricing.

3.8 Customer Care

Kyndryl will provide a toll-free number (inside the US) to receive problem notifications and service requests 7x24 each day of the year from authorized Customer representatives regarding Services provided under this SOW. Customer representatives shall be identified via email to the Kyndryl project manager. Changes or additions to the Customer representatives will also be made to the Kyndryl project manager via email.

a. Kyndryl will document Customer or Kyndryl internally generated call identification data in their Customer Care (Technical Support) System.

b. Kyndryl will provide monthly reports showing service request, resolution, call aging data, and other call report information within fifteen (15) business days from the end of the calendar month. The reports will be provided via the web portal.

c. Kyndryl will direct Customer calls, as appropriate, to an Kyndryl technical specialist, coordinate problem determination, attempt resolution, perform root cause analysis, make ticket history available via the web portal and log and track calls to closure.

d. Kyndryl will assign the following priority levels to each reported problem:

1. Severity 1 – Critical impact problem that makes the Customer Kyndryl Hosting Environment unavailable. Kyndryl will respond to all Severity 1 problems within fifteen (15) minutes. Severity 1 problem support is available 24x7 each day of the year.

2. Severity 2 – Major Impact. A non-essential function or service is not available. Kyndryl will respond to all Severity 2 problems within thirty (30) minutes. Severity 2 problem support is available 24x7 each day of the year.

3. Severity 3 – Minor impact. The Customer environment is not seriously affected. Kyndryl will respond to all Severity 3 problems within one (1) hour. Severity 3 problem support is available during Kyndryl's normal business hours which are 8:00 a.m. to 5:00 p.m., Eastern Time, Monday through Friday, excluding holidays.

4. Severity 4 – No impact. Short coming, dissatisfaction, or question. Kyndryl will respond to all Severity 4 problems within twenty-four (24) hours. Severity 4 problem support is available during Kyndryl's normal business hours which are 8:00 a.m. to 5:00 p.m., Eastern Time, Monday through Friday, excluding holidays.

5. Emergency – Ability to conduct business is not being affected, however due to other business driving decisions, the request needs to be handled as quick as possible. Kyndryl's object is to respond to Emergency requests within thirty (30) minutes. Emergency request support is available 24x7 each day of the year.

In the event that Kyndryl detects a problem which impacts system availability or batch processing, Kyndryl will notify the Customer Command Center personnel via email and or text message.

3.9   Relocation of Managed Hosting Services

In the event that Kyndryl determines that it is necessary to relocate Managed Hosting Services within the same or to another Kyndryl Hosting Center, Customer will cooperate in good faith with Kyndryl to facilitate such relocation, provided that such relocation is based on reasonable business needs of Kyndryl (including the needs of other Kyndryl customers), or the Customer. Kyndryl will use commercially reasonable efforts, in cooperation with Customer, to minimize any interruption to Services in the event of such relocation. Kyndryl will be responsible for associated costs to Customer.

4. Responsibilities of Kyndryl and Customer

4.1 Overall

Responsibilities	Kyndryl	Customer
- Installation -		
Designate an individual to whom all of Kyndryl's communications will be addressed and who has the authority to act and make decisions for Customer in all aspects of the Services, including requesting changes, problem resolution, Service requests, assignment of Customer focal points with authority over specific Services, and designation of Customer Authorized Representatives		Perform
Designate an individual to whom Customer will address communications specific to the provision of the Services. Kyndryl's call management center may be the Kyndryl Contact for some Services ("Kyndryl Contact")	Perform	
Assign authorized representatives with appropriate functional knowledge and technical skill who may submit problems or Service requests to the Kyndryl call management center by calling an Kyndryl-provided toll-free telephone number or by e-mail		Perform
Perform the configuration and setup activities specified herein	Perform	
Register domain names with an accredited domain name registrar and pay all charges associated with such registration (if applicable)		Perform
Install Customer applications		Perform
Perform system operational, administrative and management tasks		Perform
Provide e-mail addresses for Customer notifications		Perform
Notify Customer when Kyndryl installation activities are completed (Hosting Service Ready Date)	Perform	
Provision all SSL certificates (if necessary)		Perform
Inform Kyndryl in writing within five (5) business days following Kyndryl's notification of the completion of Kyndryl installation activities, if Customer believes Kyndryl has not satisfactorily completed Kyndryl installation activities		Perform
- Ongoing Management and Support -		
Provide the ongoing Services specified herein	Perform	
Provide ongoing administration, tailoring, or maintenance of Customer applications		Perform
Provide first level of support for problems with Customer Components and transfer problems related to Kyndryl's responsibilities to the Kyndryl call management center		Perform
Assist Kyndryl in the investigation of problems, to the extent such investigation involves Customer's or its Subcontractors' responsibilities, and exercise commercially reasonable efforts to resolve problems related to such responsibilities		Perform
Update Base and/or Customer Components with agreed to applicable fixes (patches, hotfixes, program temporary fixes and service packs) as determined by Kyndryl	Perform	
Maintain responsibility for all labor and expenses associated with full version operating system software upgrade and other program products.		Perform

Responsibilities	Kyndryl	Customer
Manage all SSL certificates (if used)		Perform
Customer is responsible for requesting reports and information including, but not limited to, information on incidents, alerts, events (including minor events for which there is no email notification) and more		Perform

4.2 Switch and Customer managed Firewalls

Responsibilities	Kyndryl	Customer
- Installation, Configuration and Setup -		
Configure the local VLANs	Perform	
Specify switch and firewall settings specific to the application		Perform
Configure VLANs and zones for the SAN switches	Perform	
Configure firewall settings	Perform	
Test a single path to switch and firewall Base Components	Perform	
Enable switch and firewall monitoring	Perform	
- Ongoing Management and Support -		
Operate and monitor availability of the switches and firewalls 7x24 each day of the year	Perform	Perform at Customer locations
Assist Kyndryl in the investigation of problems with the Services to the extent such investigation involves Kyndryl's, Customer's or its subcontractors' responsibilities		Perform
Request changes to firewall settings		Perform
Administer changes to firewall	Perform	
Backup Customer-specified switch and firewall settings and restore settings in the event of a failure	Perform	

4.3 Mainframe Services

Responsibilities	Kyndryl	Customer
Service Management		
Authorize and approve technology solution		Perform
Recommend policies and procedures related to mainframe services	Perform	
Authorize and approve policies and procedures		Perform
Define services and standards		Perform
Operate, administer, and manage the environment		Perform
Assist with IPL of the customer LPAR environment performed via the common HMC	Perform	
Asset Management		
Procure assets if needed	Perform	Assist
Terminate, dispose of, relocate assets as needed at the Kyndryl Hosting Data Centers	Perform	Assist
Engineering		
Perform capacity monitoring & planning for the Hosting complex	Perform	
Install/test/maintain hardware system facilities	Perform	

Responsibilities	Kyndryl	Customer
Perform capacity monitoring & planning for the customer's environment	Assist	Perform
Operations		
Define dataset ownership and retention requirements		Perform
Operate console & monitor service		Perform
Identify and resolve problems with the Kyndryl service / operations	Perform	Assist
Identify and resolve problems with the Customer tasks	Assist	Perform
Define backup/recovery requirements		Perform
Perform periodic incremental and full backups		Perform
Production Control		
Migration to production	Assist	Perform
Define test and demand batch schedule requirements		Perform
Submit test and on-demand batch jobs		Perform
Define job scheduling, re-run requirements for all production jobs		Perform
Maintain documentation of all job scheduling, re-run requirements		Perform
Maintain job scheduling tables		Perform
Prepare job run parameters		Perform
Validate job results		Perform
Re-run per instructions		Perform
Technical Services		
Install operating system software	Perform	
Install subsystem software including Customer provided ISV software as listed in Attachment C, Customer Components		Perform
Install application software as needed	Assist	Perform
Systems Administration and Database Administration		Perform
Retain Operational Support		Perform
Performance Management		
Develop improvement plans if needed	Perform	Perform
Authorize and approve improvement plans	Assist	Perform
Implement improvement plans	Perform	
Report on service level results	Perform	
Change Management		
Establish change requirements (application, user access)		Perform
Establish change requirements (system hardware, software, I/O tables)	Perform	Assist
Schedule and conduct change management meeting		Perform
Authorize and approve change		Perform
Participate in change management meetings as required	Perform	Perform
Implement change	Perform	Perform
Security (physical/logical access to systems/subsystems)		
Establish security requirements		Perform
Implement security requirements	Perform	
Authorize and approve logon/security level access of employees, agents, and subcontractors		Perform
Maintain physical security of assets	Perform	
Conduct periodic security checks per requirements	Perform	Perform
Report security violations	Perform	Perform
Resolve security violations	Perform	Perform

Attachment A: Hosting Base Components at the Kyndryl Hosting Primary Site

Kyndryl Hosting Primary Site: Omaha, NE

Mainframe Environment at Primary Site:

1. 2 z/OS LPARs on a shared mainframe CPU
2. 14 MSUs Mainframe CPU resources (Soft Capped with bursting capability, using "Group Defined Capacity")
3. 8 GB Mainframe Memory
4. 4,000 GB Mainframe DASD (encrypted)
5. 4,000 GB Mainframe DASD Flash Copy (encrypted) – Extra Copies

   z/OS will have the Flash copy feature for files and volume flash copies.
6. Virtual Tape Environment:
   a. 4,000 GB of Virtual Tape Storage - Useable (Post-Compressed), encrypted (will accommodate approx. 10x data, assuming 10:1 compression & deduplication)
   b. 16 Virtual Tape Drives
7. Redundant virtualized network, including fully managed Palo Alto Next Generation firewalls. Site to Site VPN with:
   a. 25 Mbps Internet CIR (steady state)
   b. Up to 100 Mbps Internet CIR if client can support up to 50 Mbps, for up to three (3) months during migration (for Virtual Tape and/or DASD replication).
8. One (1) IBM zVM Engine

Non-Kyndryl Products software stack provided with solution:

Customer agrees that Kyndryl will organize the procurement of services (or products) from third party vendors ("Vendors") solely as the Client's procurement agent for the below licenses. As the Client's buying agent, Kyndryl will, in the name and on behalf of the Client, execute the purchase contracts with the Vendors and Kyndryl will arrange for the delivery of the third-party services (or products) to the Client. Kyndryl may earn a fixed administrative fee (where applicable) as compensation for facilitating the transaction between the Vendor and the Client and does not assume responsibility for the delivery or performance of the Vendor's products or services nor directs the use of such products or services.

Customer holds 100% of the risk associated with IBM Software list price increases using the published price performance cost adders (SW Protection Factor) and the Software Price Adjustment (SPA) clause. The price adjustment is based on the difference between the actual IBM announced list price increase and the published price performance cost adders. Caps and sharing are not permitted.

IBM Products:

	z/OS Software Products Included in Pricing
PID	**Product Name**
5694A01	z/OS V2 Base
5694A01	z/OS V1 RMF
5694A01	z/OS V1 SDSF
5694A01	z/OS V2 Security Server
5694A01	z/OS V1 DFSMS DSS
5694A01	z/OS V1 DFSMS DSSHSM
5694A01	z/OS V1 DFSMS RMM
5694A01	z/OS V2 DFSORT
5694A01	z/OS V1 HCM
5694A01	z/OS V1 HLASM Toolkit
5694A01	z/OS V1 Infoprint Server
5655Y04	CICS TS for z/OS V5
5605DB2	DB2 V10 for z/OS
5605DB2	DB2 V10 for z/OS QMF Enterprise
5635A02	IMS V11 Database Manager
	z/OS Software Products Not included
5655W44	IBM 64-bit SDK for z/OS V7
5655J51	XML Toolkit z/OS V1
5655W43	IBM 31-bit SDK for z/OS V7
5655IMZ	Installation Manager z/OS V1
E0D6CLL	IBM Z Development and Test Environment Personal Edition Authorized User Single

BMC Products:

	UNIT OF MEASUREMENT	CLASSIFICATION	BASELINE CAPACITY
BMC Compuware FASTCPK	per MIPS (Soft Cap)	MSM Other	157
BMC Compuware FDRFDR	per MIPS (Soft Cap)	MSM Other	157
BMC Compuare FDRHDS INSTANT	per MIPS (Soft Cap)	MSM Other	157
BMC AMI Database Administration for Db2	per MIPS (Soft Cap)	MSM Other	157
BMC AMI Database Performance for Db2	per MIPS (Soft Cap)	MSM Other	157
BMC Advisor for IMS	per MIPS (Soft Cap)	MSM Other	157
BMC AMI Database Reorganization for IMS	per MIPS (Soft Cap)	MSM Other	157

BMC Online Reorganization and Restart for IMS	per MIPS (Soft Cap)	MSM Other	157
BMC AMI Ops for CICS	per MIPS (Soft Cap)	MSM Other	157
BMC AMI Ops for Db2	per MIPS (Soft Cap)	MSM Other	157
BMC AMI Ops for IMS	per MIPS (Soft Cap)	MSM Other	157
BMC AMI Ops for Networks	per MIPS (Soft Cap)	MSM Other	157
BMC AMI Ops Monitoring	per MIPS (Soft Cap)	MSM Other	157
Control-M Mainframe Extension Pack (MIPS)	per MIPS (Soft Cap)	MSM Other	157
Control-M Output Management	per MIPS (Soft Cap)	MSM Other	157
Control-M Platform (MIPS)	per MIPS (Soft Cap)	MSM Other	157

BMC PRODUCTS	LICENSED CAPACITY		
	UNIT OF MEASUREMENT	CLASSIFICATION	BASELINE CAPACITY
BMC Database Solutions for Db2	Per Enterprise	MSM Other	1
BMC AMI Solutions for IMS - Base	Per Enterprise	MSM Other	1
BMC AMI Ops Solutions	Per Enterprise	MSM Other	1
Control-M (Base)	Per Enterprise	MSM Other	1
Control-M Managed File Transfer (Task)	per Task	MSM Other	1900
Control-M Output Management WebAccess	per named user	MSM Other	239
Control-M Platform (Task)	per Task	MSM Other	1900

Migration from the customer data center to the Kyndryl Hosting Primary Site

- Source: Client MF environment

- Target: Kyndryl Hosting – Primary Site, Omaha Nebraska

Methodology: Migration of the Customer mainframe environment will be accomplished via DASD data replication from Client to Kyndryl. Kyndryl will work with Customer to install temporary IBM Global Mirror license (at no cost to the Customer) on Customer DASD to facilitate DASD Global Mirror replication from Customer DASD to target DASD system at the hosting facility.

a. Migration of the Customer mainframe tape environment will also be accomplished via virtual tape data replication using a virtual tape system (VTS) from Client to Kyndryl. Kyndryl will work with the Customer to replicate the backend Dell Data Domain utilizing the Dell/EMC proprietary data replication tool.

- Kyndryl will assist with physical tape to virtual tape conversion. Up to one hundred (100) hours for conversion assistance is included in the Services under this SOW at no additional charge.

- Kyndryl will ship pre-configured DLM and Data Domain to Customer's location.

- Customer will be responsible for physical installation and cabling of the DLM and Data Domain at Customer's location per Kyndryl design and instruction

- At the end of the virtual tape conversion, Customer will ship the Data Domain and DLm back to the FNTS Omaha, NE data center. Kyndryl will be responsible for the shipping and insurance costs.

- Postage paid return labels and insurance will be provided by Kyndryl for the VTS equipment being shipped back to FNTS Omaha, NE data center.

Note:

A - 3 Maintenance Schedule at the Mainframe environment at the Kyndryl Hosting Primary Site

One (1) maintenance window for four (4) hours in duration, are required monthly to complete Kyndryl maintenance activities. Depending upon additional maintenance requests and tuning required, extended maintenance windows may be required. Kyndryl and Customer will review scheduled maintenance in advance and will agree to the window required to keep the system current.

A - 4 Connectivity

Customer will provision and manage the end point at their location of the VPN site-to-site connection from their location to the Kyndryl Hosting Primary Site.

Kyndryl will provision and manage the end point at Kyndryl Hosting Primary Site of the VPN site-to-site connection from the Kyndryl Hosting Primary Site to the Customer location.

Attachment B: Hosting Charges, Contractual Baselines and Rates

Hosting Contractual Baselines

Kyndryl and Customer agree that the Hosting Contractual Baseline types are as set forth in Attachment A.

Adjustments to the Hosting Resource Units: Flex Up and Flex Down

Introduction

To flex resources up and down from Customer's monthly Hosting Contractual Baselines as of the contract effective date and set forth in Attachment B, Customer shall submit a request through the Project Change Control Procedure below.

a. The prices in Appendix B are valid for the Term of this SOW. In addition to pricing in Exhibit B-3 the Change Order may contain additional project management charges.

b. Exhibit B-2-1 lists add / remove pricing for Base Components ("Base Component Add") at the Kyndryl Hosting Primary Site and Exhibit B-2-2 for the Secondary Site.

c. The cumulative Base Component addition or deletion of resources cannot increase or decrease the Baseline by more than the following:

Base Component	***Ceiling for resource additions**	***Floor for resource Reductions**
Baseline	50%	50%

Ceiling for resource additions: Maximum resources that can be added at the rates specified.

Floor for resource reductions: Maximum reduction in resources permitted at the rates specified.

* resources will be rounded to the nearest full resource.

Exhibit B-2-1 - Add / Remove Resources - Primary Site

OTC = One-time charge

MRC = Monthly recurring charge

Category	Unit Quantity	Unit Price per month	Baseline Amount
Mainframe CPU	Per MSU (1 MSU = 8 MIPS)	per MSU includes base software	14 MSUs
Mainframe Memory	1 GB	$177.00 per GB	8 GB
Mainframe DASD with hardware-based storage encryption enabled	1 GB	$0.81 per GB	4,000 GB
Mainframe Virtual Tape Storage – Useable (Post-Compressed), encrypted	1 GB	$0.23 per GB	4,000 GB

Mainframe Virtual Tape Drives	Virtual Tape Drive	$22 per virtual tape drive	16 virtual tape drives

Charges

B-3-1. One-time Charges

The One-time charges for Managed Hosting Services of $101,549 are due and payable upon the Effective Date.

B-3-2. Recurring Charges

Biannual recurring charges for Managed Hosting Services of $688,350 for the Primary Site will begin on the Hosting Service Order Ready Date (SORD) associated with the Kyndryl services for the Kyndryl Hosting Primary Site and may be prorated based on the date during the month that Managed Hosting Services commence.

Biannual recurring charges for all Managed Hosting Services for the Primary Site of $680,017 will begin after the Transition is completed or when SORD is provided to the Customer.

B-3-3. Usage Charges

Additional charges:

Mainframe System Programming outside the scope of the Services identified in this SOW and requested by Customer	Per Hour	$195

Charges for additional hourly support requested by Customer, if any, (support that is outside the scope of services included in the monthly recurring charges specified above) will be due as incurred. Kyndryl will charge for additional hourly support in fifteen (15) minute increments.

Other Charges

If at any time Customer fails to satisfy the Customer responsibilities for any of the Customer's LPARs through no fault of Kyndryl, and such failure either:

a. hinders, or prevents the normal operation, maintenance, or upgrading of any Server in the Hosting Environment, Kyndryl may, in its sole discretion, and upon six (6) month prior written notice to Customer, move Customer's LPARs to another mainframe server, and Customer shall pay Kyndryl's reasonable charges for any additional hardware, software and/or services required to perform such a move or to operate Customer's LPARs on such dedicated mainframe server per the contracted hourly rate in the Usage Charges; or

b. materially increases the cost to Kyndryl of keeping any or all of Customer's LPARs within the Hosting Environment, then Kyndryl shall be entitled to make such additional charges as are reasonable in the circumstances. For example, if additional software costs are incurred as a result of non-current Customer software, then Customer will be liable to pay for such charges.

Late fees which accrue for Customer's failure to timely pay its invoices in the amount two percent (2%) or the maximum provided by law.

Attachment C: Customer Components

This Attachment C, Customer Components, lists the software that Customer is to provide to Kyndryl for use in the Hosting Environment.

Customer Component Software

Programs that Customer Owns/Licenses. These will be retained by Customer who will continue to pay for licenses, Software Subscription and Support:

- Any software that is not mentioned as being provided by Kyndryl

Attachment D: Service Level Agreements

Hosting Service Availability

Hosting Service Availability will be measured by Kyndryl for the Kyndryl Hosting Primary data center facility and the hardware infrastructure and the associated storage on the mainframe server within the Kyndryl Hosting complex that hosts the mainframe LPAR(s) environment at the Kyndryl Hosting Primary Site. Service Availability is defined as follows when data replication by Kyndryl from the Kyndryl Hosting Primary Site to the Kyndryl Hosting Secondary Site is also included:

99.9% availability from unplanned outages (any outage other than a planned maintenance period for which the required notice is provided) during operating hours for the following components:

- Kyndryl Hosting Primary data center facility
- Kyndryl/FTNS Production server and storage hardware

Operating hours for the measured systems will be Monday to Sunday, 00.00-23:59, in the time zone for the Kyndryl Hosting Center, excluding maintenance windows for which the required notice is provided. The measurement will be for a calendar month and calculated on a monthly basis. The Standard LPAR solution means that the planned maintenance Windows have to be taken without exception.

Service Level Credits for Hosting Service Availability at the Kyndryl Hosting Primary Site

In the event that, Kyndryl fails to meet the target availability level for the Kyndryl Hosting Primary Hosting Center in any month after Customer Production Ready Date (a "Service Level Failure"), Kyndryl will provide service credits in accordance with the provisions of this clause. Any credit will be applicable only to the charges for the services provided at the Kyndryl Hosting Primary Site for that month and deducted from the next payment invoice after the root cause analysis has been completed where necessary.

Kyndryl will monitor, record, report to Customer, system unavailability based on the total minutes that the system was not available to support or run the Customer workload each month. System unavailability includes unscheduled outages that are under the control of Kyndryl. OS or application system outages will not be included in system unavailability as reported by Kyndryl. If Kyndryl fails to meet this service level System Availability during any given calendar month in accordance with the above, the Customer's account will be credited five (5) percent of the monthly charges for each Service Level Failure in any calendar month the maximum aggregate Service Level Credit will be five percent (5%) of aggregate Monthly Recurring Charges, "Maximum Service Level Credit Cap". Customer has the option to terminate Schedule A in the event: (i) there are four (4) consequential months of Service Level Failures; or (ii) there are four (4) repeated Service Level Failures attributable to a single event.

Excluded Events

The following exclusions apply:

a. Service Level measurements exclude planned maintenance periods, in accordance with Section A-3 which (1) shall not exceed 4 hours in any week, and (2) shall not take place during business hours in any US time zone and shall be scheduled between 7:00am (Eastern Time) on Saturday and 10:00am (Eastern Time) on Sunday, and (3) shall be identified by Kyndryl with at least 60 days advance notice of the commencement of such planned maintenance periods;

b. Kyndryl is not responsible for any Service Credit, Service Level Failure or outage where the Root Cause Analysis identifies the root cause arose from any of the following causes:

- as a result of any action or inaction by Customer or its subcontractors in breach of this SOW;
- as a result of any issues with out-of-support or down-level ISV software;
- where the incident follows an ISV software upgrade which is identified as being the cause;
- where the application or ISV software is identified as being the cause;
- Where Kyndryl propose a problem fix and Customer does not allow Kyndryl to implement the fix or unreasonably delays the fix then Kyndryl will not be responsible for any Service Credit, Service Level Failure or outage, where the failure is a direct result of the prevention or delay in implementing the fix; and
- Where Kyndryl propose a software patch and Customer does not allow Kyndryl to implement the patch or unreasonably delays the patch then Kyndryl will not be responsible for any Service

Credit, Service Level Failure or outage, where the failure is a direct result of the prevention or delay in implementing the patch.

c. Outage due to problems with Customer provided Content or programming errors including, but not limited to, Content installation and integration;

d. Outage due to system administration, commands, file transfers improperly performed by Customer representatives;

e. Outages caused by erroneous specification from Customer for tasks performed at Customer's request;

f. Outages caused due to Force Majeure which Kyndryl's business continuity plan and disaster recovery plan would not be reasonably expected to address;

g. Lack of availability or untimely response time of Customer to respond to incidents that require its participation for source identification and/or resolution, including meeting Customer responsibilities for any prerequisite Services;

h. Outage due to Customer breach of its material obligations under the Base Terms;

i. Outages caused by Customer Content improperly implemented by Customer or Customer initiated patches improperly implemented by Customer;

j. Outages caused by Customer not approving applying IBM recommended OS patches;

k. Outages caused by Customer not approving applying of OS maintenance releases;

l. Periods where the Customer may have been granted System Administration rights;

m. Outages caused by Customer denying IBM-recommended software patches, hardware and/or OS changes;

n. Outage due to failure of non- Kyndryl managed Customer Component hardware or software; and

o. Customer's performance of any technical security integrity review, penetration test, or vulnerability scan pursuant to security obligations set forth herein.

p. Failure to perform a data replication cycle due to the failure or unavailability of Customer Component hardware or software not managed by Kyndryl.

q. Notwithstanding the above, Customer may remain on existing operating system; however, Kyndryl will not be responsible for any service level failures or outage where the result is caused by Customer's responsibility for any action or inaction in support related to operating system performance.

Attachment E: Additional Security Requirements

An encrypted VPN (Virtual Private Network) connection between Customer and Kyndryl (where provided by Kyndryl as Base Component) shall be maintained by Kyndryl for system access during the host migration and after the migration. Kyndryl shall further ensure that the Mainframe Hosting Environment is maintained in a secure environment, that the global mirroring of the Customer disk system and VTS (virtual tape system) from Customer to Kyndryl (and mirroring of the disk system and VTS from the Kyndryl primary site to the Kyndryl secondary site) shall be accomplished through an encrypted secure connection.

All Content stored in the Mainframe Hosting Environment shall be treated as confidential and Kyndryl will perform its Services in accordance with CSA and this SOW in order to protect Content from unauthorized access and/or distribution.

All Content stored in the Mainframe Hosting Environment shall remain in the United States.