



# Kyndryl standard purchase order terms and conditions

August 2024

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## **Agreement documents:**

This Purchase Order (PO), any attachments made a part of this PO and any documents or clauses incorporated by reference into this PO are the sole and exclusive agreement of the company Kyndryl France S.A.S. ( Buyer) and Supplier for the products and services in this PO, and no other document, including the Supplier's proposal, quotation or acknowledgement form, will be part of this PO, unless specifically agreed to in writing by Buyer. Terms contained in the Supplier's response to, or acknowledgement or acceptance of, this PO, if any, that are additional to, or different from, the terms set forth herein (which terms would constitute a counter-offer by Supplier) are specifically rejected by Buyer. Buyer's offer to purchase as provided in this PO may not be modified by Supplier counter-offers. Notwithstanding the foregoing, if this PO is deemed an acceptance by Buyer of a Supplier offer or counter-offer, then such acceptance is expressly made conditional on Supplier's assent to all of the terms of this PO, including those that are additional to, or different from, the terms of Supplier's offer or counter-offer. The terms and conditions of this PO are subject to change without notice.

## **Prices:**

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

## **Taxes:**

Supplier is responsible for and will pay all applicable taxes, charges, fees, levies, or other assessments imposed or collected by any governmental entity (or political subdivision thereof) worldwide on sales of products or services, or sales, use, transfer, goods, and services or value added tax or any other duties or fees related to any payment by Buyer to Supplier for products and/or services provided to Buyer under or pursuant to this PO. If Buyer provides a direct pay certificate, certification of an exemption from tax, or reduced rate of tax imposed by an applicable taxing authority, then Supplier agrees not to invoice, nor pay, any such tax unless and until the applicable taxing authority assesses such tax, at which time Supplier shall invoice and Buyer agrees to pay any such tax that is legally owed. Buyer shall withhold taxes as required under applicable law on payments made to Supplier hereunder and shall be required to remit to Supplier only the net proceeds thereof.

## **Terms of payment and acceptance:**

Unless this PO states otherwise, payments will be made in compliance with French law at 60 calendar days as of the invoice date. In the event the Supplier has not received payment on due time, the Supplier will inform the Buyer and the Buyer will pay without further delay. For any payment made after the maximum applicable payment date, the Supplier may claim, on top of the due amounts, for payment of penalties by



the Buyer amounting to an interest of three times (3) the applicable legal interest rate for the period between the due payment date and the effective payment date. According to the decree n° 2012-1115 dated October, 2nd 2012 creating the article D441-5 of the French Commercial Code and defining the compensation for the recovery of expenses in the commercial transactions under article L. 441-6 of the French Commercial code, the Supplier may claim a fixed compensation for the recovery of expenses for a minimum amount of 40€ H.T. Payment will not be deemed acceptance of products or services, and such products or services will be subject to inspection, test, acceptance or rejection. At Buyer's option, Buyer may reject products or services that do not comply with Buyer's acceptance criteria for a refund, or require Supplier to repair or replace such products or re-perform such services without charge and in a timely manner. Buyer may return nonconforming products to Supplier at Supplier's expense.

**Termination:**

This PO may be terminated by Buyer or by Supplier with cause after a two (2) working day prior notice if the cause remains uncured. This PO may be terminated by Buyer or by Supplier without cause after a fifteen (15) day prior notice. If Buyer terminates without cause, Buyer will pay Supplier for Supplier's actual and reasonable expenses for work that has been satisfactorily completed as of the date of termination, but in no event will such payment exceed the agreed upon prices.

**Imports and exports:**

Supplier is the importer and exporter of record. Supplier will comply with all import and export laws and administrative requirements, including the payment of all associated duties, taxes and fees and all applicable laws, regulations, certifications and registrations associated with the import or export of Supplier's products including but not limited to product safety, electromagnetic compatibility, telecommunications, product takeback/recycling and environmental requirements. Upon Buyer request, Supplier will promptly provide all information necessary to export and import products, including, as applicable, the Export Control Classification Numbers (ECCN) and subheadings or munitions list category number, certification and or test results relating to the products or services and any other and will notify Buyer in writing of any changes to the information provided by Supplier to export and import products. For products that will be imported by the Buyer, Supplier will provide promptly any requisite information, documentation, certification and/or test results for Buyer to comply with applicable import laws and administrative requirements. In all instances, Supplier may not undertake any routed export transactions, as defined in the United States Export Administration Regulations { 15 CFR, Part 758.3(b) }, for any US export shipment, or undertake a similar arrangement for any export shipments originating outside of the United States, that name Buyer as a party to such shipments. Shipment terms in all cases are Delivered Duty Paid ("DDP"). Supplier shall retain and discharge all import, export, customs, and insurance obligations.

**Packages/transportation:**

Supplier will comply with: (i) all country of origin marking instructions and all Buyer instructions for exports to Buyer; (ii) all packaging and labeling requirements set out in this PO; and (iii) the transportation routing guidelines in this PO and pursuant to the Shipping transportation guidelines

<https://www.kyndryl.com/procurement/shtrg>

Default minimum requirements for (i) and (ii) are found under Instructions for cross-border shipments to IBM Corporation

<https://www.kyndryl.com/procurement/shtrg>



**Social and environmental management system:**

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

<https://www.kyndryl.com/procurement/sems>

**Risk of loss; delivery:**

Title and risk of loss remain with Supplier until products purchased under this PO have been delivered to Buyer at the location specified in the PO and accepted by Buyer. For Supplier's delivery of products, time is of the essence. If Supplier fails to deliver on time, Buyer may purchase replacements elsewhere, and Supplier will be liable for actual and reasonable costs and damages Buyer incurs. Supplier will promptly notify Buyer if it is unable to comply with the delivery date specified in this PO.

**Warranties:**

Supplier warrants that:

- i. It has the right to enter into this PO;
- ii. it is knowledgeable with, and is and will remain in full compliance with (at its own expense) all laws, rules and regulations that are, or may become, applicable in the provision of products and services hereunder including, without limitation,
  - a. labor and employment laws,
  - b. applicable export and import laws, regulations, orders, and policies, including, but not limited to:
    - i. securing all necessary clearance requirements, export and import licenses and exemptions from, and making all proper filings with appropriate governmental bodies and/or disclosures relating to the release or transfer to non-U.S. nationals of technology and software in the U.S., or outside the U.S., release or transfer of technology and software having U.S. content or derived from U.S.-origin software or technology);
    - ii. being knowledgeable with applicable supply chain security recommendations issued by applicable governments and industry standards organizations and making best efforts to comply with such recommendations;
    - iii. agreeing not to transfer to IBM any hardware, software, technical data or services controlled under the U.S. International Traffic in Arms Regulations ("ITAR");
  - c. environmental laws, regulations or ordinances governing product environmental and energy characteristics, product content prohibitions, product end-of -life management/product take-back, and/or product safety related to Buyer's transport, import, export, distribution, sale and/or use of Supplier's products as, or as part of, a Buyer product;
  - d. anti-corruption laws; and
  - e. laws and regulations regarding data privacy and data protection;
- iii. its execution of this PO will not result in a breach of any other agreements or contracts to which it is a party;
- iv. no claim, lien, or action exists or is threatened against Supplier that would interfere with Buyer's rights under this PO;
- v. products and services do not infringe any privacy, publicity, reputation or intellectual property right of a third party;



- vi. (A) it has disclosed to Buyer in writing the existence of any third party code, including without limitation open source code, that is included in or is provided in connection with the product(s) or services and (B) it and the products and services comply fully with all licensing agreements applicable to such third party or open source code;
- vii. all authors have agreed not to assert their moral rights in the products and services, to the extent permitted by law;
- viii. products are free from defects in design and free from defects in material and workmanship;
- ix. products are safe for use consistent with and will comply with the warranties, specifications and requirements of this PO;
- x. products do not contain harmful code and Supplier will not engage in electronic self-help;
- xi. products do not contain (and products are not manufactured using) ozone depleting substances known as halons, chlorofluorocarbons, hydro chlorofluorocarbons, methyl chloroform and carbon tetrachloride as defined by the Montreal Protocol and as specified by Buyer in writing;
- xii. products are new and do not contain used or reconditioned parts unless Buyer agrees otherwise in writing;
- xiii. it will not use, disclose, or transfer outside the French territory any personal data to which it has access except to the extent when such transfer is within the European Union in order for the Supplier to perform under this PO, in compliance with all applicable laws, rules and regulations. Regarding any personal data supplier intends to transfer to a country other than a member state of the European Union, Supplier undertakes to obtain the prior written consent of IBM to perform such transfer and to comply with all applicable laws, rules and regulations and in particular, without limiting the foregoing, with the directive 95/46/EC;
- xiv. it will not offer, promise or make, directly or indirectly any payment for the purpose of improperly influencing (or inducing anyone to influence) decisions or actions of any official of a government controlled entity or public international organization.
- xv. (A) it will implement and maintain appropriate technical and organizational measures and other protections for Personal Data (including, without limitation, not loading any Personal Data provided to Supplier on (a) any laptop computers or (b) any portable storage media that can be removed from Supplier's premises unless each case (i) such data has been encrypted and (ii) such data is loaded onto portable storage media solely for the purpose of moving such data to off-site storage), (B) it will report to Buyer any breaches of security of Personal Data immediately after discovery ("Security Incident"), (C) it will cooperate fully with Buyer in investigating any Security Incidents, (D) it will cooperate fully with Buyer's requests for access to, correction of, and destruction of Personal Data in Supplier's possession, and (E) it will comply with all instructions or other requirements provided or issued by Buyer from time to time relating to Personal Data;
- xvi. it will not export, directly or indirectly, any technology, software or commodities of U.S. origin or having U.S. content provided by Buyer or their direct product to any of the countries or to nationals of those countries, wherever located, listed in U.S. Export Administration Regulations, as modified from time to time, unless authorized by appropriate government license or regulations;
- xvii. it will not, nor will it authorize or permit Supplier Personnel to, disclose, export or re-export any of Buyer's information, or any process, or product that is produced under this PO, without prior notification and compliance with all applicable Federal, State and local laws, regulations and ordinances, including U.S. export control regulations.

**Intellectual property:**

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



**Ownership of products:**

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

**Indemnification:**

Supplier agrees to defend, hold harmless, and indemnify Buyer and its affiliates from any claim (including without limitation costs, expenses and attorneys fees) arising from (a) claims that any product infringes any intellectual property rights, (b) the failure of Supplier to comply with its warranties and obligations under this PO or (c) a Security Incident. If a claim of infringement is made, Supplier will, at its own expense, exercise the first of the following remedies that is practicable: (i) obtain for Buyer the rights granted under this PO; (ii) modify the product so it is non-infringing and in compliance with this PO; (iii) replace the product with non-infringing ones that comply with this PO; or (iv) accept the return or cancellation of the infringing product and refund any amount paid.

**Limitation of liability:**

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

**Assignment:**

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

**Exchange of information:**

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

**Ethical Dealings:**

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

**Audit Rights :**

Upon Buyer's notice to Supplier and at no additional charge to Buyer, Supplier shall provide Buyer (including its auditors and any regulators) access at reasonable times (or in the case of



regulators, at any time designated by such regulators), to any facility at which Supplier is providing services under this PO and to all systems, data and records relating to such services for purposes of auditing Supplier's performance of its obligations under this PO, including to verify compliance with applicable laws and the protection and integrity of Buyer and Buyer's customer data. Supplier shall also identify a focal point to support the audit and promptly respond to all reasonable requests for information from Buyer regarding the foregoing, including completing periodic compliance-related questionnaires and providing supporting documentation and other data.

**Record Keeping :**

Supplier will maintain (and subject to applicable law provide to Buyer upon request) relevant business, technical and accounting records to support Supplier's invoices and to demonstrate compliance with Supplier's performance of its regulatory compliance and security-related obligations under this PO, and proof of required permits and professional licenses, for a period of time as required by applicable local law, but not for less than six (6) years following completion or termination of this PO. All accounting records will be maintained in accordance with generally accepted accounting principles

**Insurance:**

Supplier shall obtain and maintain all applicable and appropriate insurance, (including, without limitation, business, workers' compensation, auto, errors and omissions, professional and commercial general and liability insurance) in an amount consistent with Supplier's industry practice. Each policy shall name Buyer as a loss payee or additional insured, as appropriate.

**Supplier's subcontractor obligations:**

Supplier shall enter into a written contract with each subcontractor it is authorized to retain under this PO, if any, with such contract committing each such subcontractor to comply with all of Supplier's obligations and responsibilities under this PO. By way of example but not limitation, those obligations and responsibilities include those contained in the Ethical Dealings and Record Keeping and Audit Rights provisions of this PO. In addition, in such written contract, Supplier shall identify Buyer as a direct and intended third-party beneficiary of the Record Keeping and Audit Rights provision, with the effect that Buyer shall have all of the same rights under that provision as Supplier has with subcontractor. Notwithstanding the foregoing, Supplier's use of a subcontractor will not relieve Supplier of its obligations under this PO or its responsibilities for the subcontractor's performance.

**Applicable laws:**

This PO and the execution of the transactions at the end of the PO are governed by the laws of the country where the Buyer concluding this PO is located: in case of conflict concerning the interpretation or the execution of this agreement, the Commercial court of Paris will be only competent, except : (i) in Australia, this PO will be governed by the laws of the State or Territory in which the transaction occurs; (ii) in the United Kingdom, this PO will be governed by the laws of England; (iii) in Albania, Armenia, Bosnia-Herzegovina, Former Yugoslav Republic of Macedonia, Georgia, Kyrgyzstan, Moldova, Montenegro, Tajikistan, Turkmenistan, Ukraine and Uzbekistan, this PO will be governed by the laws of Austria; (iv) in Russia, Azerbaijan, Belarus, and Kazakhstan this PO will be governed by the laws of Russia; (v) in Canada, the laws of the Province of Ontario govern this PO; and (vi) in the United States (including if any part of the transaction occurs within the United States), Puerto Rico, and People's Republic of China, the laws of the State of New York applicable to contracts executed in and performed entirely within that State govern this PO.



**General:**

Any reproduction of this PO by reliable means will be considered an original of this PO. The United Nations Convention on Contracts for the International Sale of Goods does not apply. The parties expressly waive any right to a jury trial regarding disputes related to this PO. Unless otherwise provided by local law without the possibility of contractual waiver or limitation, any legal or other action related to this PO must be commenced no later than two (2) years from the date on which the cause of action arose. No modification, amendment, supplement to, or waiver of this PO by Buyer shall be binding upon the parties unless made in writing duly signed by both parties and specifically referencing this PO. Buyer's failure to exercise any right hereunder shall not operate as a waiver thereof. Both shrink-wrap and click-wrap licenses accompanying any product consisting of software and online Terms of Use or Terms of Service relating to services provided online are null and void, and the terms and conditions of this PO prevail.

Any services performed by Supplier shall be performed as an independent contractor, and Supplier is solely liable for applicable payroll or income taxes.

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

**Supplier's personnel and Compliance with French labor regulations:**

Supplier represents that the performance of its obligations shall be carried out by lawfully employed personnel in accordance with applicable French Labor regulations. Any person who participates, on behalf of the Supplier, in the performance of services, shall remain under the Supplier's authority, direction and supervision, and as such has the status of employee of the Supplier, and therefore shall have no entitlement at any time to become an employee or agent of the Buyer. Hence, the Buyer shall not, as a result of this PO, incur any liability or obligation with respect to the persons who are working on behalf of the Supplier.

The Supplier undertakes not to employ, for the tasks conferred upon it by the Buyer, employees of IBM (e.g.: pre-retired or inactive personnel). If, however, constraints with respect to the performance of services lead him to make use of IBM personnel, the Supplier shall notify the Buyer as soon as possible.

The Supplier undertakes that services performed for the Buyer will be performed by persons or companies with respect to which the Supplier has carried out the checks required by the laws and decrees relating to the fight against undeclared employment and undertakes to provide the Buyer with the following documents in accordance with law n°91-1383 of December 31st 1991 and its implementing provisions, law n° 97-210 of March 11<sup>th</sup> 1997 and the decree n° 97-638 of May 31st 1997, law n° 2004-810 of August 13<sup>th</sup> 2004, decree n° 2005-1334 of October 27<sup>th</sup> 2005 and decree n° 2007-801 of May 11<sup>th</sup> 2007, law n° 2010-1594 of December 20<sup>th</sup> 2010, law n° 2011-672 of June 16<sup>th</sup> 2011 and decree n° 2011-1601 of November 21<sup>th</sup> 2011.

Please note that the Decree n° 2011-1601 of November 21<sup>th</sup> 2011 amends the decree n° 2005-1334 of October 27<sup>th</sup> 2005 which requires the buyers to verify to the Supplier, before the signature of the PO then every six (6) months until the term of the PO, that he has provided all the necessary social security payments and tax declarations and that he fully complies with applicable French labor regulations.

**Subsection entitled: Documents to be provided by the Supplier to the Buyer**

In accordance with articles aforementioned of the French labor code, the Supplier undertakes to provide the Buyer, on the date of reception of this PO, then every six (6) months until the term of the service, with the documents listed hereunder.

The documents and attestations provided by the Supplier must be written in French language or in original versions with a translation in French attached, and shall be provided again in case of change in the form of the Supplier.

Should the provisions of this subsection not be complied with by the Supplier, the Buyer shall be entitled to terminate this PO without notice and with exclusive liability of the Supplier.

**Sub Subsection entitled: If the Supplier is located in France:**

- An attestation by the Supplier:

O I hereby certify that I did not be, or the company which I represent, the object during the last five years of a condemnation registered on the bulletin n° 2 of the police record for the breaches of illegal work mentioned on the articles L 8221-1, L 8221-3, L 8221-5, L 8231-1, L8241-1, L 8251-1, L 8251-2 of the French labor code or for breaches of the same nature in another State of the European Union.

O I hereby certify or the company which I represent to have made the relevant declarations and made the payment of the taxes, penalties or either rules of equivalent effect in my country of origin or that of the company that I represent

- An attestation, less than six (6) month old, from the social security organization empowered to collect payment in compliance with article L243-15 of the social security code, certifying that the Supplier has provided all the necessary social security declarations;
- A list of names of the foreign employees whom you employ and subjected to working authorization (article D 8254 of the French labor code) established on your company headed paper, dated and signed by less than six months
- An excerpt copy of the Supplier's registration with the trade and companies registry K or K-bis, evergreen document;
- An estimate, an advertising document or a professional correspondence, provided that these documents mention the name, the complete address and the registration number to the trade and companies registry, trade repertory or professional list, or the reference of the authorization delivered by the competent authority, of the Supplier;
- An acknowledgement of receipt of the declaration with the competent formality center if the Supplier is in the process of registration;

**Sub Subsection entitled: If the Supplier is located outside France (article D 8222-7 of the French labor code):**

- A document mentioning the individual identification number of the Supplier's company given in accordance with article 286 ter of the French tax code; if the Supplier's company is not bound to have such number, a document mentioning its identity and its address or, as the case may be, the coordinates of its temporary tax representative in France;
- A document evidencing the regularity of the Supplier's social status in relation to the European rule (CE) n° 883/2004 of April 29<sup>th</sup> 2004 or a social security international convention and when the legislation of the country requests it, a document emanating from the compulsory local social security organization mentioning that your company is up to date of its social declarations and the payment of the concerned contributions or an equivalent document or, failing this, an attestation, less than six (6) months old, from the social security organization empowered to collect payment certifying that the Supplier has provided all the necessary social security declarations in compliance with article L243-15;
- When the Supplier's registration to a professional registry is compulsory in its home office country, one of the following documents:
  - O A document from the authority in charge of the professional registry or an equivalent document certifying such registration;





O An estimate, an advertising document or a professional correspondence, provided that these documents mention the name, the complete address and the registration details to the professional registry;

O For companies in the process of creation, a document less than six (6) month old from the authority empowered to enroll on the professional registry and certifying the request for such enrollment. When the Supplier hires employees for works to be performed in France for more than one (1) month, an attestation, less than six (6) month old, by the Supplier that these employees have been authorized to work in France and are in compliance with the French regulations and the French labor code.

### **Supplier and Supplier Personnel**

Supplier is an independent contractor and this Agreement does not create an agency, partnership, or joint venture relationship between Buyer and Supplier or Supplier Personnel. Buyer assumes no liability or responsibility for Supplier Personnel. Supplier will:

1. ensure it and Supplier Personnel are in compliance with all laws, regulations, ordinances, and licensing requirements;
2. be responsible for the supervision, control, compensation, withholdings, health and safety of Supplier Personnel;
3. inform Buyer if a former employee of Buyer will be assigned work under this Agreement, such assignment subject to Buyer approval;
4. upon request, provide Buyer, for export evaluation purposes, to the extent permitted by law, the country of citizenship and permanent residence and immigration status of those persons. Buyer retains the right to refuse to accept persons made available by Supplier for export control reasons;
5. not discriminate against any employees, applicants for employment, or any entity engaged in its procurement practices because of race, color, religion, sex, age, national origin, or any other legally protected status;
6. (a) be solely responsible for, and fully and properly complete and submit to the relevant government immigration authority, all required immigration forms and documents for all Supplier Personnel performing services hereunder, maintain such forms and documents as required by law and, subject to applicable laws (in particular laws regarding data privacy), make such forms and documents available to Buyer upon request, and (b) ensure that Supplier Personnel who do not meet all immigration requirements do not perform Services under this Agreement;
7. not assign to work under this Agreement any Supplier Personnel that are subject to any restrictive covenants that could limit such Supplier Personnel from performing Services for Buyer or Customer;
8. before assignment of Supplier Personnel to perform services for which Buyer has provided specific education requirements and to the extent permitted by law, Supplier shall review proof of education supplied by Supplier Personnel to confirm the Buyer's specific education requirements are satisfied, shall retain such proof of education and, subject to applicable law, shall make such proof of education available to Buyer upon request;
9. remove from any assignment under this Agreement, at Buyer's request in its sole discretion, any Supplier Personnel;
10. comply, at its own expense, with all laws (including Executive Orders), regulations and ordinances relating to verification of employment eligibility for Personnel to which it is or becomes subject to, such as participation in the United States Department of Homeland



Security's E-Verify program ("E-Verify") in the United States or similar state or other government sponsored programs, and verify employment eligibility of all Supplier Personnel performing services for, or providing Deliverables to, Buyer and/or its Customers through such programs, as applicable; and

11. upon Buyer's request, provide documentation to verify compliance with this Section titled "Supplier and Supplier Personnel".

**General Business Activity Restrictions :**

(a) Supplier will ensure that Supplier personnel assigned to work on Buyer's or customer's premises will not:

1. conduct any non-Buyer related business activities (such as interviews, hirings, dismissals or personal solicitations) on Buyer's or customer's premises;
2. conduct Supplier's personnel training on Buyer's or customer's premises, except for on-the-job training;
3. attempt to participate in Buyer or customer benefit plans or activities;
4. send or receive non-Buyer related mail through Buyer's or customer's mail systems; and
5. sell, advertise or market any products or distribute printed, written or graphic materials on Buyer's or customer's premises without Buyer's written permission.

(b) Supplier will, for Supplier personnel assigned to work on Buyer's or customer's premises:

1. obtain for each person a valid identification badge from Buyer and return identification badges upon completion or termination of Supplier personnel assignments;
2. ensure that each person with regular access to Buyer's and customer's premises complies with all parking restrictions and with vehicle registration requirements if any; and
3. ensure that each person remains in authorized areas only (limited to the work locations, cafeterias, rest rooms, and, in the event of a medical emergency, Buyer's or customer's medical facilities).

**Buyer's Safety and Security Guidelines :**

Supplier will ensure that Supplier personnel assigned to work on Buyer's or customer's premises:

1. do not bring weapons of any kind onto Buyer's or customer's premises;
2. do not manufacture, sell, distribute, possess, use or be under the influence of controlled substances (for nonmedical reasons) or alcoholic beverages while on Buyer's or customer's premises;
3. do not have in their possession hazardous materials of any kind on Buyer's or customer's premises without Buyer's authorization. Supplier will promptly notify Buyer of any accident or security incidents (such as those involving loss or misuse of, or damage to, Buyer's Assets (as defined below), physical altercations, assaults or harassment) and provide Buyer with a copy of any accident or incident report involving the above.

**Asset Control :**

For purposes of this Subsection, the term "Buyer Assets" means information, information assets, information systems, supplies or other property, including property owned by third parties (such as Buyer customers) that is accessed by Supplier personnel or provided to Supplier personnel by (or on behalf of) Buyer. Supplier personnel will:

1. not remove Buyer Assets from Buyer's or customer's premises without Buyer's authorization;
2. use Buyer Assets only for purposes of this PO and reimburse Buyer for any unauthorized use;



3. only connect with, interact with or use programs, tools or routines that Buyer agrees are needed to provideservices ;
  4. not share or disclose user identifiers, passwords, cipher keys or computer dial port telephone numbers;
  5. not copy, disclose or leave such assets unsecured or unattended, in the event the Buyer Assets are confidential; and
  6. immediately notify Buyer of any security incidents involving Buyer Assets and provide Buyer with a copy of any accident or incident report involving the above.
- Buyer may periodically audit use of Buyers Assets and Supplier's data residing on Buyer assets.

### **Supervision of Supplier's Personnel :**

(a) Supplier will:

1. provide consistent and effective supervision of its personnel provided under this PO, at no additional cost to Buyer;
2. conduct orientation sessions with its personnel before placement on an assignment with Buyer and identify and provide contact information (which shall be updated by Supplier as necessary) for all supervisor(s) for its personnel;
3. instruct its personnel that employment related issues should be brought forward to Supplier (and not Buyer). Where such issues relate to actions which are alleged to have been taken by Buyer or Buyer personnel, Supplier will notify Buyer immediately in order that appropriate investigative action be taken.

(b) Supplier's supervisor(s) shall:

1. exercise full supervisory authority over all day-to-day employment relationship decisions relating to Supplier's personnel, including those decisions relating to: wages, hours, terms and conditions of employment, hiring, discipline, performance evaluations, termination, counseling and scheduling; and
2. know each work location's planned holiday (and other closing) schedules and the impacts all such schedules have on Supplier personnel.

(c) Notwithstanding any other language or agreement to the contrary, Supplier agrees that Buyer has no responsibility to approve, and that Buyer will not approve, timesheets for any Supplier personnel. If Buyer should review, sign and/or submit timesheets for Supplier personnel, whether manually or electronically, as part of Buyer's billing verification processes, the parties acknowledge and agree that such review, signature and/or submission shall in no way constitute concurrence or approval of such timesheets, nor create any other commitment or obligation on the part of Buyer to Supplier or Supplier personnel.

### **Criminal Background Checks :**

(a) To the extent permitted by local law, Supplier will:

1. obtain from all Supplier personnel photographic proof of identity from an official government source (including but not limited to documentation such as a valid driver's license or government issued passport) and retain copies thereof;
2. to the extent permitted by local law, ensure that, prior to Supplier personnel being assigned to perform services under this PO on Buyer's or customer's premises and/or access Buyer's or customer's systems, Supplier personnel will participate in a criminal background check covering the jurisdictions (including but not limited to all counties or states (whichever is more comprehensive), countries (this would include a federal check in the United States) and provinces) in which the person was employed or resided for the past seven years (or longer as required by applicable law);



3. not assign Supplier personnel whose background checks show any of the following:

- (a) felony or misdemeanor convictions involving dishonesty (e.g. bribery, fraud, embezzlement, theft, violations of securities laws), violence (including but not limited to sexual or child abuse crimes), or computer related crimes and/or convictions that are employment-related;
- (b) the existence of restrictions (such as court orders) that would prevent, or impose limitations on, a person's ability to provide the services contemplated by this PO; or
- (c) that a person presents a higher than normal security risk to Buyer or customer.

Upon Buyer request and subject to applicable law, Supplier will provide documentation to Buyer to verify its compliance with this Subsection.

(b) Once a criminal background check is conducted for a particular individual, such background check may be used by Supplier to satisfy the requirements of this Section titled "Criminal Background Checks".

(c) Nothing in this Subsection titled "Criminal Background Checks" limits Buyer's ability to remove Supplier personnel from an assignment at Buyer's discretion.