

STATE OF CALIFORNIA
PARTICIPATING ADDENDUM NUMBER 7-22-70-40-15
AMENDMENT 1
CLOUD SOLUTIONS
Utah NASPO ValuePoint Master Agreement Number AR3710
Kyndryl, Inc. (Contractor)

The parties mutually agree to amend Participating Addendum 7-22-70-40-15 as follows:

1. Section 16. CONTRACT MANAGEMENT, subparagraph A is revised to read as follows:

A. The primary Contractor Contract Manager for this Participating Addendum shall be as follows:

| Contractor | Contract Manager |
|-------------------|---|
| Name: | John McCready |
| Phone: | (916) 947-4399 |
| Fax: | N/A |
| Email: | John.McCready@kyndryl.com |
| Address: | Kyndryl, Inc. Attn: John McCready One Vanderbilt Avenue, 15 th Floor New York, NY 10017 |

2. Section 21. EXECUTIVE ORDER N-6-22 – RUSSIA SANCTIONS is hereby added to read as follows:

21. EXECUTIVE ORDER N-6-22 – RUSSIA SANCTIONS

On March 4, 2022, Governor Gavin Newsom issued Executive Order N-6-22 (the EO) regarding Economic Sanctions against Russia and Russian entities and individuals. “Economic Sanctions” refers to sanctions imposed by the U.S. government in response to Russia’s actions in Ukraine, as well as any sanctions imposed under state law. The EO directs state agencies to terminate contracts with, and to refrain from entering any new contracts with, individuals or entities that are determined to be a target of Economic Sanctions. Accordingly, should the State determine Contractor is a target of Economic Sanctions or is conducting prohibited transactions with sanctioned individuals or entities, that shall be grounds for termination of this Participating Addendum. The State shall provide Contractor advance written notice of such termination, allowing Contractor at least thirty (30) calendar days to provide a written response. Termination shall be at the sole discretion of the State.

**Participating Addendum 7-22-70-40-15
Amendment 1**

All other terms and conditions of the Participating Addendum shall remain in full force and effect.

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

STATE OF CALIFORNIA

Department of General Services

Agency Name

Julie Matthews Digitally signed by Julie Matthews
Date: 2023.05.17 13:42:21 -0700 5/17/2023

Authorized Signature Date Signed

Julie Matthews, MAU2 Supervisor

Printed Name/Title of Person Signing

707 Third Street
West Sacramento, CA 95605

Address

CONTRACTOR

Kyndryl, Inc.

Contractor Name

DocuSigned by:
John McCready 5/16/2023 | 07:48 PDT

Authorized Signature Date Signed

John McCready Client Partner

Printed Name/Title of Person Signing

One Vanderbilt, 15th Floor New York, NY, 10017

Address

STATE OF CALIFORNIA
PARTICIPATING ADDENDUM NUMBER 7-22-70-40-15
CLOUD SOLUTIONS
Utah NASPO ValuePoint Master Agreement Number AR3710
Kyndryl, Inc.

This Participating Addendum Number 7-22-70-40-15 is entered into between the State of California, Department of General Services (hereafter referred to as “State” or “DGS”) and Kyndryl, Inc. (hereafter referred to as “Contractor”) under the lead state of Utah NASPO ValuePoint Master Agreement Number AR3710.

1. SCOPE

- A. This Participating Addendum covers the purchase of Cloud Solutions under the Utah NASPO ValuePoint Master Agreement. The Utah NASPO ValuePoint Master Agreement is hereby incorporated by reference. The cloud solutions services are identified in Section 5 (Available Products and Services).
- B. This Participating Addendum is available for use by California state agencies and local governments. A local government is defined as any city, county, city and county, district, or other local governmental body, school district or corporation empowered to expend public funds. The [State Agency Listing](https://www.ca.gov/agenciesall/) (https://www.ca.gov/agenciesall/) provides a comprehensive list of state agencies.
- C. Each local government is to make its own determination whether this Participating Addendum and the Utah NASPO ValuePoint Master Agreement are consistent with its procurement policies and regulations.

2. TERM

- A. The term of this Participating Addendum shall begin upon signature approval by the State and will end September 15, 2026, or upon termination by the State, whichever occurs first.
- B. Lead state amendments to extend the NASPO ValuePoint Master Agreement term date are not automatically incorporated into this Participating Addendum. Extension(s) to the term of this Participating Addendum will be through a written amendment upon mutual agreement between the State and the Contractor.
- C. Order placement and execution shall be on or before the expiration of this Participating Addendum. However, delivery of products or completion of services may be after the Participating Addendum expiration date.

3. TERMS AND CONDITIONS/INCORPORATION OF DOCUMENTS

A. Terms and conditions listed below are hereby incorporated by reference and made a part of this Participating Addendum as if attached herein and shall apply to the purchase of goods or services made under this Participating Addendum.

- 1) General Provisions – Information Technology (GSPD-401IT) effective 6/21/2022
- 2) Cloud Computing Special Provisions for Infrastructure as a Service (IaaS) & Platform as a Service (PaaS), effective 05/11/2016

B. Terms can be viewed on the [DGS Procurement Division website](https://www.dgs.ca.gov/PD/Resources/Page-Content/Procurement-Division-Resources-List-Folder/Required-Language-for-Solicitations-and-Contracts) (<https://www.dgs.ca.gov/PD/Resources/Page-Content/Procurement-Division-Resources-List-Folder/Required-Language-for-Solicitations-and-Contracts>).

4. ORDER OF PRECEDENCE

A. In the event of any inconsistency between the articles, attachments, or provisions which constitute this agreement, the following descending order of precedence shall apply:

- 1) California Participating Addendum Number 7-22-70-40-15
- 2) Utah NASPO ValuePoint Master Agreement Number AR3710

5. AVAILABLE PRODUCTS AND SERVICES

A. The following product and service offerings from the Utah NASPO ValuePoint Master Agreement Number AR3710 are allowed under this Participating Addendum:

- 1) Infrastructure as a Service (IaaS)

6. RESTRICTIONS/DISALLOWED PRODUCTS AND SERVICES (STATE AGENCIES ONLY)

A. The following restrictions apply to purchases under this Participating Addendum:

- 1) Software as a Service (SaaS)
- 2) Platform as a Service (PaaS)
- 3) Value Added Services, including Additional Value-Added Services such as Maintenance Services; Deployment Services; Consulting/Advisory Services; Architectural Design Services; Statement of Work Services; Partner Services, and Training Deployment Services

- B. Product and service categories that are available on mandatory California statewide contracts cannot be purchased from this Participating Addendum by State agencies without an exemption. Prior to issuing a purchase order, State Departments are responsible for obtaining an exemption from DGS, and/or California Department of Technology (CDT).
- C. State agencies must first obtain approval by the California Department of Technology (CDT) for Infrastructure as a Service (IaaS) and/or Platform as a Service (PaaS) purchases in accordance with [Technology Letter 17-06](http://www.cdt.ca.gov/wp-content/uploads/2017/08/TL-17-06.pdf) (www.cdt.ca.gov/wp-content/uploads/2017/08/TL-17-06.pdf) or its successor.
- D. These restrictions are not applicable to local governments.

7. PRICING

Contractor's pricing is outlined in the Utah NASPO ValuePoint Master Agreement Number AR3710.

8. AUTHORIZED RESELLERS

Authorized Resellers will not be used for this Participating Addendum.

9. SUBCONTRACTORS

Subcontractors will not be used for this Participating Addendum.

10. ORDERING AGENCY RESPONSIBILITIES

- A. State agency and local government use of this Participating Addendum is optional.
- B. State agencies and local governments must follow the ordering procedures outlined within the User Instructions guide, administered by the State Contract Administrator, to execute orders against this Participating Addendum. User Instructions are posted on the State's Cal eProcure website.
- C. All purchase orders executed under this Participating Addendum shall include the Participating Addendum Number 7-22-70-40-15.

11. STATE AGENCY BUY RECYCLED CAMPAIGN (SABRC)

SABRC is not applicable for this Participating Addendum.

12. DELIVERY

Delivery shall occur as negotiated between ordering agency and Contractor and included in the purchase order, or as otherwise stipulated in the NASPO ValuePoint Master Agreement.

13. INVOICING AND PAYMENT

- A. Payment will be made in accordance with IT General Provisions Paragraph 30 (Required Payment Date).
- B. Invoices shall be sent to the address identified in the ordering agency’s purchase order. The State Participating Addendum Number and ordering agency purchase order number shall appear on each invoice for all purchases placed under this Participating Addendum.
- C. Contractor does not accept the State of California credit card (CAL-Card) for payment of invoices.

14. USAGE REPORTING

- A. Contractor shall submit usage reports on a quarterly basis to the State Contract Administrator for all California entity purchases using the report template attached hereto as Attachment A. The report is due even when there is no activity.
- B. The State Contract Administrator reserves the right to modify Attachment A and require Contractor to provide additional order information during the course of this Participating Addendum.
- C. The report shall be an Excel spreadsheet transmitted electronically to the [DGS Cooperatives mailbox](mailto:PD Cooperatives@dgs.ca.gov) (PD Cooperatives@dgs.ca.gov).
- D. Any report that does not follow the required format or that excludes information will be deemed incomplete. Contractor will be responsible for submitting corrected reports within five (5) business days of the date of written notification from the State.
- E. Tax must not be included in the report, even if it is on the purchase order.
- F. Reports are due for each quarter as follows:

| Reporting Period | Due Date |
|--------------------------|------------|
| January 1 to March 31 | April 30 |
| April 1 to June 30 | July 31 |
| July 1 to September 30 | October 31 |
| October 1 to December 31 | January 31 |

- G. Failure to meet reporting requirements and submit the reports on a timely basis shall constitute grounds for suspension of this Participating Addendum.
- H. Time extensions may be approved only if all due reports have been submitted to the State.

15. ADMINISTRATIVE FEE

- A. Contractor is required to remit to DGS an administrative fee amount equal to 1.25% of the sales for the quarterly reporting period less freight, taxes, returned products and credits. (For example, if the net sales for the reporting quarter totals \$100,000.00, the incentive fee due to DGS would be \$1,250.00.)
- B. The administrative fee shall not be included as an adjustment to Contractor’s NASPO ValuePoint Master Agreement pricing.
- C. The administrative fee shall not be invoiced or charged to the ordering agency.
- D. Payment of the administrative fee is due irrespective of payment status from ordering agencies.
- E. Payment may be made in the form of an electronic payment using the [LPA Payment Portal website](https://www.dgs.ca.gov/PD/Services/Page-Content/Procurement-Division-Services-List-Folder/Access-LPA-Payment-Portal) (https://www.dgs.ca.gov/PD/Services/Page-Content/Procurement-Division-Services-List-Folder/Access-LPA-Payment-Portal) or by submitting a check payable to the State of California, Department of General Services.
- F. Administrative fee payments made by check must include the Participating Addendum Number on the check and be submitted to the following address:

Department of General Services
Procurement Division
Attn: MAPS Payment Processing
707 Third Street, 2nd Floor
West Sacramento, CA 95605

- G. Administrative fee payments are due for each quarter as follows:

| Reporting Period | Due Date |
|--------------------------|------------|
| January 1 to March 31 | April 30 |
| April 1 to June 30 | July 31 |
| July 1 to September 30 | October 31 |
| October 1 to December 31 | January 31 |

- H. Failure to meet administrative fee requirements and submit fees on a timely basis shall constitute grounds for suspension of this Participating Addendum.

16. CONTRACT MANAGEMENT

A. The primary Contractor Contract Manager for this Participating Addendum shall be as follows:

| Contractor | Contract Manager |
|-------------------|---|
| Name: | Howard Bither |
| Phone: | (415) 652-7464 |
| Email | Howard.bither@kyndryl.com |
| Address: | Kyndryl, Inc. Attn: Howard Bither One Vanderbilt Avenue, 15 th Floor New York, NY 10017 |

B. The State Contract Administrator for this Participating Addendum shall be as follows:

| State | Contract Administrator |
|--------------|---|
| Name: | Yolanda Tutt |
| Phone: | (279) 946-8401 |
| Email | Yolanda.Tutt@dgs.ca.gov |
| Address: | State of California Department of General Services Procurement Division 707 Third Street, 2nd Floor, MS 2-202 West Sacramento, CA 95605 |

C. Should the contact information for either party change, the party will provide written notice with updated information no later than ten (10) business days after the change.

17. TERMINATION OF AGREEMENT

The State may terminate this Participating Addendum at any time upon 30 days prior written notice to the Contractor. Upon termination or other expiration of this Participating Addendum, each party will assist the other party in orderly termination of the Participating Addendum and the transfer of all assets, tangible, and intangible, as may facilitate the orderly, non-disrupted business continuation of each party. This provision shall not relieve the Contractor of the obligation to perform under any purchase order or other similar ordering document executed prior to the termination becoming effective.

18. AMENDMENT

No amendment or variation of the terms of this Participating Addendum shall be valid unless made in writing, signed by the parties, and approved as required. No oral understanding or agreement not incorporated in the Participating Addendum is binding on any of the parties.

19. NEWS RELEASES

Unless otherwise exempted, news releases, endorsements, advertising, and social media content pertaining to this Participating Addendum shall not be made without prior written approval from the State.

20. AGREEMENT

- A. This Participating Addendum and the Master Agreement together with its exhibits and/or amendments, set forth the entire agreement between the parties with respect to the subject matter of all previous communications, representations, or agreements, whether oral or written, with respect to the subject matter hereof. Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this Participating Addendum and the Master Agreement, together with its exhibits and/or amendments, shall not be added to or incorporated into this Participating Addendum or the Master Agreement and its exhibits and/or amendments, by any subsequent purchase order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this Participating Addendum and the Master Agreement and its exhibits and/or amendments shall prevail and govern in the case of any such inconsistent or additional terms.
- B. By signing this Participating Addendum, Contractor agrees to offer the same products/services available on the Utah NASPO ValuePoint Master Agreement Number AR3710, at prices equal to or lower than the prices on that agreement.

Participating Addendum 7-22-70-40-15

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

STATE OF CALIFORNIA

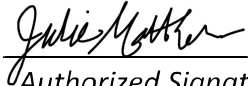
CONTRACTOR

Department of General Services

Kyndryl, Inc.

Agency Name

Contractor Name



12/15/2022

Howard Bither

12/11/2022

Authorized Signature

Date Signed

Authorized Signature

Date Signed

Julie Matthews, MAU2 Supervisor

Howard Bither / Partner, Business Development

Printed Name/Title of Person Signing

Printed Name/Title of Person Signing

707 Third Street
West Sacramento, CA 95605

One Vanderbilt Avenue, 15th Floor
New York, NY, 10017

Address

Address