

## Supplier Relationship Agreement

Using this Supplier Relationship Agreement (**SRA** or **Agreement**), In.Te.S.A. S.p.A. (INTESA) may order Deliverables and/or Services available from [Name of Supplier entity] (**Supplier**) for itself, Intesa Affiliates or on behalf of parties procuring products, solutions, or services from Intesa (**Customers**). Details regarding the Deliverables and Services are provided in Supplier Offer Form (**MPO**, or **Statement of Work** or **SOW**) and/or Work Authorization (**WA**, as better defined below).

**Affiliates** are entities that control, are controlled by, or are under common control with, a party to the Agreement. **Personnel** are individuals who are (i) employees of a party, (ii) agents appointed by a party, (iii) independent contractors engaged by a party, or (iv) provided to a party by a Subcontractor. A **Subcontractor** is an individual (independent contractor), a corporation, a partnership, a limited liability company or other entity to which (or to whom) work to be performed under the Agreement has been subcontracted by Supplier to the extent permitted under the Agreement.

This Agreement, applicable MPOs, together with any Attachments and the quantity, payment and delivery terms of the Work Authorization along with the applicable PA that incorporates the terms of the SRA, are the complete agreement (**Agreement**) regarding transactions hereunder. The effective date of this Agreement will be the date of the last party's signature.

### 1. *Deliverables and Services*

#### 1.1 Deliverables

**Deliverables** include Programs, Products, Developed Works, or other items that Supplier prepares for or provides to INTESA, as described in an Attachment or MPO. A **Program** is a software program and related material available for license from Supplier. Programs are copyrighted and licensed (not sold). A **Product** is a tangible item (other than a Program) that Supplier prepares for or provides to INTESA. A **Developed Work** is a work of authorship that Supplier develops for INTESA under the Agreement. Developed Works exclude Preexisting Works and Tools. Preexisting Works include works of authorship delivered to INTESA, but not developed by Supplier specifically for INTESA under the MPO, and any modifications or enhancements of such works made under the MPO. **Tools** means software (and its Externals) provided by Supplier, other than a Program, required for the development, maintenance, or implementation of a software Deliverable. Externals means any pictorial, graphic, audiovisual works, reports or data generated by execution of code and any programming interfaces, languages or protocols implemented in the code to enable interaction with other computer programs or end users. Deliverables will be delivered as specified in an MPO and/or a WA.

#### 1.2 Services

Services include Cloud Services and other Services. A Cloud Service is an offering hosted or managed by Supplier and made available via a network. Other Services, in addition to Cloud Services, may include consulting, installation, customization and configuration, maintenance, staff augmentation, and business, technical or other services and combinations thereof. Applicable Service details are described in an MPO, WA, or Attachment.

Deliverables and/or Services will be delivered as specified in an MPO and/or WA. If Supplier cannot comply with a delivery commitment, Supplier will promptly notify INTESA and INTESA may cancel without charge Deliverables or Services not yet delivered and exercise any and all other remedies available to it.

Except as otherwise specified in a MPO or Attachment, Supplier will use the information, materials, assets, data (including any data that can identify or locate an individual (**Personal Data**)) and documents provided to Supplier or uploaded to or stored in a Cloud Service by INTESA or its users (collectively, **INTESA Materials**) only as needed to perform under the Agreement. Supplier will not disclose INTESA Materials to any third party and will return or destroy INTESA Materials (and certify to INTESA regarding the same) upon the earlier of the expiration of the relevant MPO or WA or INTESA's request.

## 2. ***Issuance of a Work Authorization and Pricing***

Unless otherwise set forth in an MPO, Supplier will begin work only after receiving a Work Authorization (WA) from INTESA. A WA is INTESA's authorization in either electronic or tangible form for Supplier to conduct transactions under this SRA in accordance with the applicable MPO (i.e., a purchase order (PO), bill of lading, or another INTESA designated document). An MPO is a WA only if designated as such in writing by INTESA. The agreed upon pricing and currency for Deliverables and Services, exclusive of Taxes but including all applicable fees (Prices), shall be set forth in the MPO and/or WA. The Prices for Deliverables and Services specified in an MPO and/or WA plus applicable Taxes will be the only amount due to Supplier from INTESA. Payment of invoices does not constitute acceptance of Deliverables or Services. Deliverables and Services are subject to inspection, test, acceptance or rejection in accordance with the relevant MPO and/or WA. Subject to applicable law, Supplier waives claims by failing to submit timely invoices for payment, or take action for any other claim, within twelve (12) months from the day of INTESA's receipt of Services or Deliverables or the event giving rise to the cause of action.

## 3. ***Warranties***

3.1 Supplier warrants on an ongoing basis that: (i) its performance of the Agreement will comply with all applicable laws and the terms of any contracts applicable to it (including licensing agreements); (ii) Deliverables and Services do not infringe any privacy, intellectual property or other right of a third party; (iii) Deliverables are safe for use consistent with, and will comply with, the warranties and requirements in the Agreement; (iv) it has disclosed to INTESA in writing the existence of third party or open source code in, or provided with, Deliverables; (v) Deliverables and Services do not contain harmful code; (vi) Programs and Services conform to their official published specifications and Supplier will not electronically or otherwise disable, remove or otherwise prevent the use of a Program or Service; (vii) it, and its Personnel, will use all INTESA Materials and Developed Works under the Agreement solely in the performance of the Agreement; (viii) it has implemented and will maintain technical and organizational security measures to protect INTESA Materials against loss, alteration, unauthorized disclosure, access or other unlawful forms of processing including, without limitation, not loading any INTESA Materials provided to Supplier on any laptop computers or portable storage media unless such materials have (or the device itself has) been encrypted; (ix) it will report to INTESA any actual or suspected breaches of security of INTESA Materials immediately after discovery thereof if the INTESA Materials were, or could be, accessed, used or acquired by an unauthorized person or entity or otherwise compromised; (x) Services are provided using reasonable care and skill in accordance with the Agreement; (xi) all authors have agreed not to assert their moral rights (personal rights associated with authorship of a work under applicable law) in the Deliverables, to the extent permitted by law; (xii) it will complete all applicable INTESA integrity questionnaires, integrity training or related Supplier information request requirements within thirty (30) days of receipt of request; and (xiii) it will comply with import, export control and economic sanction laws and regulations, including those of the United States, that prohibit or restrict the export, re-export, or transfer of products, technology, services or data, directly or indirectly, to or for certain countries, end uses or end users. Supplier will not export, directly or indirectly, any technology, software or commodities provided by INTESA under the Agreement to any prohibited destination or for any prohibited end use. Supplier will provide INTESA with information about Deliverables and Services necessary for export compliance. Unless agreed to in writing by INTESA and authorized by applicable government license or regulation, Supplier will not provide to INTESA any Personnel, articles, materials, services or any components thereof that Supplier knows or has reason to believe originated in, or was sourced from, a country subject to a comprehensive U.S. embargo as described in applicable export, embargo, and economic sanctions regulations (including, without limitation Cuba, Russian controlled regions of Ukraine, Iran, North Korea or Syria).

3.2 THE WARRANTIES IN THE AGREEMENT ARE IN LIEU OF ALL OTHER WARRANTIES AND CONDITIONS, EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

3.3 Subject to the Indemnity section, if Deliverables or Services do not comply with the warranties in the Agreement or the acceptance or completion criteria, INTESA may reject the Deliverables or Services and Supplier will repair, replace or re-perform the Deliverables or Services without charge and in a timely manner. If Supplier cannot do so within ten (10) business days or any mutually agreed upon (in writing) time period, Supplier will refund all fees paid by INTESA for such Deliverables and/or Services.

#### **4. 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 INTESA or 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. INTESA shall not reimburse Supplier for any such political contributions, payments or gifts.

#### **5. Taxes**

Prices are exclusive of Taxes which, except as otherwise specifically provided herein, are the responsibility of INTESA to pay. Supplier's invoices shall state all applicable Taxes, if any, by tax jurisdiction and with a proper breakdown between taxable and non-taxable Services and Deliverables. Supplier shall timely issue a tax invoice to INTESA that complies with applicable invoicing and tax laws. Supplier shall also bear sole responsibility for all taxes, assessments, or other levies on its own income, leased or purchased property, equipment or software and employment taxes and corporate costs related to Supplier's personnel regardless of the jurisdiction in which it is due. If INTESA provides a certification of exemption from Tax, then Supplier agrees not to invoice or pay any such Tax. INTESA 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. INTESA agrees to remit in a timely manner all Taxes withheld to the appropriate government authority in each respective jurisdiction. Upon Supplier request, INTESA will deliver the appropriate documentation as required by the corresponding jurisdictional tax laws, within a reasonable time from such request. Each party agrees to cooperate to pay the correct applicable Taxes, including reasonable notice and cooperation in connection with any audit. **Taxes** means any and all applicable taxes, charges, fees, levies or other assessments, including sales, use, value added, goods and services and other similar taxes, imposed or collected by any governmental entity worldwide or any political subdivision thereof arising from the performance of Services or provision of Deliverables pursuant to the Agreement, exclusive, however, of any taxes imposed upon the net income or capital of Supplier, any taxes in lieu of such net income taxes and any other taxes which are to be borne by Supplier under law.

#### **6. Intellectual Property**

Supplier owns all rights, title, and interest in and to any Programs, Preexisting Works, and Tools. INTESA owns all rights, title, and interest in and to INTESA Material. INTESA will own the copyright in Developed Works and all such works are works made for hire. If any Developed Works are not considered works made for hire owned by operation of law, Supplier hereby assigns the ownership of copyrights in such works to INTESA. The Agreement does not grant either party the right to use the other party's or their Affiliates' trademarks, trade names or service marks, or other designations in any promotion or publication, without prior written consent.

#### **7. Liability**

7.1 Neither party will be liable to the other for special, incidental, exemplary, indirect, or economic consequential damages, or lost profits, business, value, revenue, goodwill, or anticipated savings.

7.2 Neither party's liability for damages arising in any event shall exceed the greater of: (i) if the fees are recurring, five (5) times the amount paid or payable to the Supplier in the twelve (12) months preceding the date of the first event giving rise to liability under the applicable MPO or WA; or (ii) if the fees are not recurring, five (5) times the amount paid or payable to the Supplier under the applicable MPO or WA; or (iii) 5,000,000 USD (or local currency equivalent).

7.3 Sections 7.1 and 7.2 above shall not apply to (i) damages arising out of Supplier's obligations in Section 8 (Indemnity); (ii) damages arising out of Supplier's breach of its data privacy and security obligations, and Supplier's obligations to remediate in the event of a Supplier security breach; (iii) damages arising out of Supplier's gross negligence, willful misconduct, fraud, or abandonment; (iv) damages arising out of bodily injury (including death), to the extent a party is legally liable; (v) damage to real property and tangible personal property, to the extent a party is legally liable; and (vi) damages that cannot be limited by applicable law.

## **8. Indemnity**

8.1 Supplier will defend, hold harmless and indemnify, including legal fees, INTESA against third party claims (including Customer's claims) that arise or are alleged to have arisen, and/or government fines and penalties that are imposed, as a result of negligent or intentional acts or omissions of Supplier or Supplier Personnel or breach by Supplier of any term of the Agreement.

8.2 Supplier will defend, hold harmless and indemnify, including legal fees, INTESA from third party claims that Supplier's Deliverables or Services infringe the intellectual property rights of a third party. In addition, Supplier, at its own expense, will: (i) obtain for INTESA the right to continue to use, sell and license the Deliverables or Services; (ii) modify the Deliverables or Services so they are non-infringing; or (iii) replace the Deliverables or Services with non-infringing ones that comply with the Agreement. Alternatively, at INTESA's request, Supplier will accept the cancellation of infringing Deliverables or Services without any cancellation liability and Supplier shall refund any amounts previously paid by INTESA. INTESA will give Supplier prompt notice of third party claims against INTESA, and cooperate in the investigation, settlement and defense of such claims.

## **9. Term and Termination**

9.1 This SRA will remain in effect until terminated. Either party may terminate this SRA for cause if the other (Defaulting Party) is in material breach of the Agreement or, to the extent permitted by law, if the Defaulting Party becomes insolvent or files or has filed against it a petition in bankruptcy, provided the one who is not in breach (Non-Defaulting Party) gives written notice (with the termination date) and, when in INTESA's discretion a material breach can be cured, a reasonable opportunity to cure.

9.2 Supplier's breach (or INTESA's reasonable belief based on credible information that Supplier has breached or is likely to breach) of Section 4 (Ethical Dealings) provision or clause (xii) in Section 3 (Warranties) of this SRA constitutes a material breach of the Agreement and, in such event, INTESA may terminate this SRA and any MPO or WA immediately on written notice to Supplier, without any liability to INTESA, provided Supplier has a reasonable opportunity to cure after written notice when in INTESA's discretion such material breach can be cured. When there are no WAs in place between the parties, INTESA may terminate this SRA without cause by providing written notice to Supplier.

9.3 INTESA may, upon written notice to Supplier, terminate a MPO or WA i) for cause upon material breach by Supplier or ii) without cause, in each case with termination effective on the date set forth in the notice. Upon termination, in accordance with INTESA's written direction, Supplier will cease work under the relevant MPO or WA and deliver to INTESA, among other things, all Deliverables completed as of the date of termination and all works in progress. In the event Buyer terminates without cause, INTESA will compensate Supplier for the actual and reasonable expenses incurred by Supplier for work in process up to and including the date of termination, provided such expenses do not exceed the Prices.

## **10. Insurance**

10.1 Supplier will maintain at its expense (and provide certificates of insurance at INTESA's request) (i) all statutory mandated insurance such as workers' compensation and employer's liability, (ii) commercial general liability insurance including products liability and completed operations with a minimum per occurrence limit of 5,000,000 USD (or local currency equivalent), and (iii) automobile liability insurance (if a vehicle is to be used in performance of the Agreement) of at least 5,000,000 USD (or local currency equivalent). Commercial general liability insurance and automobile insurance policy limits may be met through a combination of primary and umbrella/excess liability insurance and must name INTESA as an additional insured. Insurance required under a MPO, WA or Attachment must be purchased either from insurers with an AM Best Rating of A- or better, or with a Standard & Poor's rating of BBB and 50,000,000 USD (or local currency equivalent) in policy holder's surplus or greater.

10.2 If Supplier accesses INTESA Materials under the Agreement, Supplier will maintain at its expense a Cyber liability insurance policy for up to 10,000,000 USD (or local currency equivalent) per claim and in the aggregate which shall cover all Supplier costs, including damages it is obligated to pay Buyer or any third party, which are associated with any Security Breach (as hereafter defined) or loss of Personal Data, regardless of cause, including,

but not limited to, third party claims arising from the Security Breach or loss of Personal Data, including litigation costs and settlement costs. For the purposes of this Insurance section only, "Security Breach" means (1) the failure by the Supplier to properly handle, manage, store, destroy or otherwise control, or the unauthorized disclosure or unauthorized access or use of: (a) Personal Data in any format or (b) third party corporate information in any format specifically identified as confidential and protected under a confidentiality agreement or similar contract; (2) an unintentional violation of the Supplier's privacy policy or misappropriation that results in the violation of any applicable data privacy laws or regulations; or (3) any other act, error, or omission by Supplier in its capacity as such which is reasonably likely to result in the unauthorized disclosure of or access to Personal Data (or a reasonable belief there has been an unauthorized disclosure).

#### **11. Record Keeping and Audit Rights**

11.1 Supplier will maintain (and subject to applicable law provide to INTESA upon request) relevant business, technical and accounting records (i) to support Supplier's invoices; (ii) show proof of required permits and professional licenses and (iii) to demonstrate compliance with Supplier's performance of its obligations under the Agreement, for not less than six (6) years following completion or termination of the relevant Services. All accounting records will be maintained in accordance with generally accepted accounting principles.

11.2 Upon INTESA's reasonable advance notice, INTESA may, audit Supplier's compliance with its obligations under the Agreement, including verifying compliance with applicable laws and the protection and integrity of INTESA Materials. Each party will bear its own cost relating to the audit. In connection with an audit, Supplier shall provide INTESA (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 or any Subcontractor is providing or has provided Services or Deliverables under the Agreement and to all systems, data and business, technical and accounting records relating to Supplier's (and any Subcontractor's) compliance with its obligations. Supplier shall provide its reasonable cooperation in any such audit, including by designating a focal point to support an audit and, if required by INTESA, promptly securing the rights for INTESA to directly request from any Subcontractor, and for the Subcontractor to promptly provide to INTESA, access to such systems, data and records relating to the work performed by such Subcontractors. Such audit will be conducted during normal business hours in a manner designed to minimize interference with Supplier's business operations. It is understood that Supplier will not be required to disclose attorney-client or other privileged information, or information protected from disclosure by applicable law, regulation or government authority.

#### **12. Governing Law**

Except as otherwise set forth in an MPO or in a Participation Agreement, if any, the parties agree to: (i) the application of the laws of the State of New York for all Agreements executed by KYNDRYL, Inc. or Affiliates of KYNDRYL, Inc. located in the U.S. or (ii) for Affiliates of KYNDRYL, Inc. not located in the U.S., the laws of the country where such Affiliate is located, without regard to conflict of law principles. If any provision of the Agreement is invalid or unenforceable, the remaining provisions remain in full force and effect. Nothing in the Agreement affects statutory rights that cannot be waived or limited by contract. The United Nations Convention on Contracts for the International Sale of Goods does not apply to transactions under the Agreement. The parties waive the right to a jury trial regarding disputes related to the Agreement. No right or cause of action for any third party is created by the Agreement or any transaction under it. Except as otherwise set forth in an MPO or in a Participation Agreement, if any, the parties irrevocably agree any action, claim, dispute, or enforcement of, under, or in any way relating to this agreement shall be subject to the sole and exclusive jurisdiction of (i) the state and federal courts within the State of New York, USA, with respect to any claims relating to KYNDRYL, Inc. or Affiliates of KYNDRYL, Inc. located in the U.S., or (ii) for Affiliates of KYNDRYL, Inc. not located in the U.S., the courts having jurisdiction over the Affiliate's headquarters location within the country where such Affiliate is located. Supplier shall continue performing the Services under this Agreement, including during the pendency of any dispute, except as specifically and expressly agreed in writing by Supplier and Buyer.

#### **13. Business Continuity**

Supplier agrees to have and maintain a business continuity plan and business continuity testing procedures, which include but are not limited to the areas of disaster recovery planning and pandemic planning, and cyber security. Cyber security programs must include, at a minimum, provisions to prevent, detect and respond to cyber security incidents. Supplier agrees to provide the specific recovery targets of the business continuity plan and to review, update, and test the business continuity plan annually and, upon INTESA's request, Supplier will provide a summary of the business continuity plan and test results. INTESA may, from time to time, provide feedback regarding the plan and requests that Supplier take INTESA's comments into consideration when updating the plan. However, Supplier remains solely responsible for the performance of its responsibilities under the Agreement and the adequacy of the business continuity plan regardless of whether INTESA has reviewed or commented on the plan.

#### **14. Supplier and Supplier Personnel**

14.1 If Supplier is providing a Cloud Service or performing Services, Supplier agrees that Supplier:

(a) is an independent contractor and the Agreement does not create an agency, partnership, or joint venture relationship between INTESA and Supplier or Supplier Personnel. INTESA assumes no liability or responsibility for Supplier Personnel

(b) shall, upon request of INTESA and to the extent permitted by applicable law, provide to INTESA (I) written confirmation (i) that Supplier Personnel are eligible to work in the country where the Services are being provided and (ii) to the extent required by applicable law, that Supplier participates in eVerify pursuant to applicable Executive Order(s) and United States Department of Homeland Security, (II) if specific education requirements are required by INTESA, proof of completed education for Supplier Personnel; (III) if Supplier Personnel will have access to any INTESA or Customer IT system, platform, application, network, or similar tool including those located on or accessible through INTESA or Customer intranet, the Internet, or other network, proof that Supplier Personnel have reviewed and agreed to the INTESA Ethical code (available at <https://www.intesa.it/en/ethical-code/>) and (V) evidence that Supplier Personnel have successfully completed all cybersecurity, privacy and other education identified by INTESA as mandatory in a timely manner;

(c) shall instruct its Personnel that employment related issues should be brought forward to Supplier (and not INTESA) and shall notify INTESA promptly where such issues relate to actions which are alleged to have been taken by INTESA or its Personnel to enable INTESA to investigate as necessary;

(d) is and shall remain responsible for the day to day supervision, control, terms and conditions, hiring, verification of eligibility to work, discipline, performance management, skills training, termination, counseling, scheduling, compensation, benefits and other activities, withholdings, health and safety of Supplier Personnel, and shall ensure Supplier Personnel do not seek to obtain the same from INTESA. To avoid any confusion, Supplier always remains the employer of Supplier Personnel. Further, the Agreement does not create an employment relationship between INTESA and Supplier Personnel;

(e) shall provide written confirmation to each Supplier Personnel that Supplier remains the employer of Supplier Personnel, assignment to INTESA does not create an employer/employee relationship, INTESA is not their employer, and they are not entitled to INTESA benefits. Supplier is obligated to provide such notice upon request by INTESA.

(f) acknowledges that INTESA has no responsibility for reviewing or approving timesheets; however, INTESA may review such timesheets for billing verification purposes only;

(g) is responsible for the actions and inactions of Supplier Personnel and compliance by Supplier Personnel with the requirements of the Agreement;

(h) agrees that INTESA retains the right to refuse to accept Supplier Personnel made available by Supplier to perform Services hereunder and may request the removal of Supplier Personnel from assignment under the Agreement, for any lawful reason at INTESA's sole and reasonable discretion.

(i) to the extent that Supplier Personnel or Subcontractors employee persons residing in California, Supplier will provide INTESA with data necessary for its reporting in accordance with applicable law, including California Labor Contractor reporting; and

(j) will upon request, solely in connection with INTESA's regulatory export evaluation obligations, provide the country of citizenship and permanent residency status of those Personnel with a role with technology or data access

#### 14.2 INTESA Assets

If Supplier Personnel will have access to INTESA Assets (as defined below), Supplier shall instruct Supplier Personnel to: (a) use INTESA Assets only for purposes of the Agreement and Supplier will reimburse INTESA for any unauthorized use; (b) only connect with, interact with or use programs, tools or routines that INTESA agrees are needed to provide Services; (c) not copy, disclose or leave INTESA Assets unsecured or unattended; (d) promptly notify INTESA of any accident or security incidents (such as those involving loss or misuse of, or damage to, INTESA Assets (as defined below), and Supplier will provide INTESA with a copy of any accident or security incident report involving the above.

INTESA may periodically audit Supplier's use of INTESA Assets. **"INTESA Assets"** means INTESA's or Customer's computer systems and/or networks, INTESA's or Customer's property that is accessed or used by Supplier Personnel or materials, data, documents or information provided to Supplier Personnel by (or on behalf of) INTESA.

#### 14.3 Supplier Access to INTESA or Customer Premises or INTESA Assets

If Supplier Personnel will have access to INTESA or Customer premises,

(a) Supplier shall conduct orientation sessions with its Personnel before placement on an assignment with INTESA or Customer and identify and provide contact information (which shall be updated by Supplier as necessary) for all supervisor(s) for Supplier Personnel. Such orientation session shall include instruction to comply with the obligations set forth in this section.

(b) Supplier agrees that: **(I)** Supplier Personnel on INTESA's or Customer's premises may not (i) bring weapons of any kind onto such premises; (ii) possess, use or be under the influence of controlled substances or alcoholic beverages; (iii) have in their possession hazardous materials of any kind without INTESA's authorization; (iv) send or receive non-INTESA or Customer email through INTESA's or Customer's mail systems; (v) sell, advertise or market any products or distribute printed, written or graphic materials without INTESA's written permission; or (vi) conduct any non-INTESA or non-Customer related business activities while assigned to work under the Agreement. **(II)** Supplier Personnel on INTESA's or Customer's premises must (i) obtain a valid identification badge from INTESA or Customer and return identification badges upon completion or termination of assignments; (ii) remain in authorized areas only (limited to work locations, cafeterias, restrooms and parking lots); (iii) access and use for work only the materials, documents, information and data necessary to perform and (iv) immediately report to Supplier any incidents (such as actual or alleged physical altercations, assaults, harassment and/or inappropriate behavior) so that Supplier can promptly notify INTESA and provide INTESA with a copy of any incident report. **(III)** Supplier Personnel in possession of INTESA Assets must cooperate with and return such INTESA Assets in a timely manner as requested by INTESA.

#### 14.4 Criminal and other Background Checks

If Supplier is providing a Cloud Service or otherwise has access to INTESA or Customer network or INTESA Materials or, in the event that Supplier is performing Services or has other responsibilities at INTESA or Customer facility, Supplier agrees that:

(a) Supplier shall inform INTESA if any Supplier Personnel to be assigned to perform Services hereunder are former employees of INTESA, which assignment is subject to INTESA's approval.

(b) To the extent permitted by local law, Supplier will provide certification/attestation that Supplier Personnel has valid 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).

(c) To the extent permitted by local law, Supplier will conduct or otherwise obtain criminal background checks on Supplier Personnel and/or Subcontractor who is required to perform the Services or Deliverables under this Agreement. The criminal background check will be performed as defined in section (d) below. Where a criminal

conviction is identified, Supplier may not assign Supplier Personnel where Supplier Personnel is disqualified from performing Services based on Supplier's individualized assessment of the conviction against the Services to be performed in accordance with applicable law and guidance, which may include but is not limited to the Equal Employment Opportunity Commission's promulgated guidance in the United States or similar state or other government promulgated guidance, as applicable.

(d) For Supplier Personnel in the United States, a Federal background check must be conducted as well as a county or state background check, whichever is more comprehensive. In other countries, background checks may be at the county, state, province and/or country level, whichever is most comprehensive.

(e) Upon INTESA request and subject to applicable law, Supplier will provide documentation to INTESA to verify its compliance with this section.

## **15. Privacy and Security Terms**

15.1. The INTESA Privacy and Security Terms, at <https://www.kyndryl.com/procurement/privacy-and-security-terms.html> (the "Terms"), apply with respect to the Deliverables and Services. In the event of any conflict between the Terms, or this Agreement (including any Attachments to this Agreement) or the MPO and/or WA (including any Attachments to the MPO and/or WA), the Terms will prevail.

15.2. INTESA or its Customers may be or become subject to laws that require INTESA to place certain obligations on Supplier and other service providers, in particular with respect to privacy or cybersecurity, data security, source code security or similar matters. INTESA may update the Terms from time to time to include such obligations, by providing notice of those updated Terms to Supplier in writing. Supplier agrees to comply with those obligations, which will become effective on the later of the date mandated by those laws or 30 days after the date of INTESA's written notice.

15.3. INTESA may otherwise update the Terms from time to time, by providing notice of those updated Terms to Supplier in writing. Supplier will inform INTESA within 90 days after the date of INTESA's written notice if Supplier objects to the updates, by conveying its objection in writing to INTESA, together with the detailed basis for that objection.

(a) If Supplier does not so object, then the updated Terms are effective at the end of the 90 day period. If Supplier does so object, the parties will in good faith work together to resolve Supplier's concerns.

(b) If, despite such good faith efforts, INTESA and Supplier are unable to resolve Supplier's concerns, then INTESA may terminate the applicable MPO on written notice to Supplier, with such termination taking effect 60 days after the date of that written notice. INTESA commits that it would only exercise this termination right if it reasonably believed that Supplier's concerns were incapable of practical resolution.

(c) The prior version of the Terms will continue to apply through the termination date, and any provisions of those Terms that by their nature extend beyond termination will remain in effect until fulfilled and apply to each party's successors and assignees.

## **16. General**

16.1 Confidentiality. A party will not disclose confidential information to one another without a separate, signed confidentiality agreement governing such disclosures.

16.2 Void. Any licenses accompanying the Programs, and any shrink wrap, click wrap, cloud services, or online terms for Services are null and void, and the terms and conditions of the Agreement prevail.

16.3 No Publicity. The parties will not publicize their relationship in any advertising; marketing or promotional materials without prior written consent of the other party except as may be required by law.

16.4 Contact Information. INTESA may process and store business contact information of Supplier Personnel in connection with the performance of the Agreement wherever INTESA does business. For any Personal Data relating to Supplier Personnel that Supplier provides to Buyer, Supplier has obtained the agreement of the Supplier Personnel to release the data to Buyer and to allow Buyer to use, disclose and transmit such data in connection with the Agreement.



16.5 Non-exclusivity. The Agreement is nonexclusive and either party may design, develop, manufacture, acquire or market competitive products or services. Each party is responsible for determining the assignment of its Personnel.

16.6 Agreement Changes; Order of Precedence. All changes to the Agreement must be in writing signed by both parties. In the event of a conflict, the order of precedence will be: A) any price, payment, quantity or delivery terms contained in the WA; B) the relevant MPO (including Attachments thereto); and C) Any applicable PA and D) this SRA (including Attachments thereto).

16.7 Risk of Loss. Risk of loss and title to any tangible property will pass to Buyer or Customer at the delivery point. Parties shall be responsible for the damage, destruction, loss or theft ("**Loss**") of their respective tangible property (whether owned or leased). Parties shall look to their own insuring arrangements regarding such Loss.

16.8 Non-Assignability. Neither party may assign its rights under the Agreement to third parties or Affiliates without the prior written consent of the other party, such consent not to be unreasonably withheld; except that either party may assign the Agreement in conjunction with the sale of a substantial portion of its business utilizing the Agreement. Notwithstanding anything to the contrary set forth herein, in the event of a divestiture, spin-off or similar event, INTESA may assign, novate or otherwise transfer the Agreement, in whole or in part and without further consent, to an acquiring entity or to a new entity (prior to or after its formation), that has used or will use any of the Deliverables or Services. Any unauthorized assignment of the Agreement is void.

16.9 Subcontracting. Supplier shall not delegate or subcontract any of its duties or obligations under the Agreement to any third party, Subcontractor or Affiliate, except to the extent permitted in an MPO.

16.10 Effect of Waiver. An effective waiver under the Agreement must be in writing signed by the party waiving its right. A waiver by either party of any instance of non-compliance by the other will not be deemed a waiver of future instances of non-compliance.

16.11 Notices. All notices under the Agreement must be in writing and sent to the address below, unless a party designates in writing a different address (or an Affiliate designates a different address in a Participation Agreement). All notices shall be deemed effective when sent via email and receipt is electronically confirmed.

16.12 Contract Execution; Counterparts; Supersede The parties' consent to the use of electronic means and facsimile transmissions for communications as a signed writing. This SRA, and any MPOs and Attachments may be signed in one or more counterparts. Any reproduction of the Agreement made by reliable means is considered an original. The Agreement supersedes any prior course of dealing, discussions or representations between the parties regarding the subject matter hereof.

16.13 Force Majeure. Neither party will be in default or liable for any delay or failure to comply with the Agreement due to any act beyond the control of the affected party, excluding labor disputes, provided such party immediately notifies the other.

16.14 Participation Agreement. This SRA applies to INTESA and Supplier (the signatories below) and their respective Affiliates who avail themselves of the SRA by entering into a Participation Agreement under this SRA. Such Participation Agreements and WAs entered into by Affiliates of either of the parties are independent agreements between the signatories thereto. INTESA is not liable to Supplier or Supplier Affiliate for any actions or inactions of any Affiliate of INTESA, nor shall any action or inaction by Affiliates of INTESA constitute a breach of the Agreement between INTESA and Supplier. "**Participation Agreement**" or "**PA**" means an attachment signed by one or more Affiliates which contains additional agreed upon terms or amendments to the SRA for the Affiliates for local laws and practices and incorporates by reference the terms and conditions in this SRA, any relevant MPO and/or WA, and other attachments or appendices specifically referenced in the PA.

16.15 Parties. In situations where Supplier will be providing Services or Deliverables to a Customer of INTESA (whether directly or indirectly through INTESA), references to INTESA shall be deemed to include the Customer in the following sections of this SRA: Deliverables and Services; WA and Pricing (with respect to delivery and acceptance); Warranties, Intellectual Property; Indemnity; Supplier and Supplier Personnel; and Record Keeping and Audit Rights.

16.16 Survival. Any terms that by their nature extend beyond the Agreement termination remain in effect until fulfilled, including Warranties; Taxes; Intellectual Property; Liability; Indemnification; Record Keeping and Audit Rights; Governing Law; Supplier and Supplier Personnel; and General. Without limiting the foregoing, all licenses under the Agreement will survive to the extent necessary to allow INTESA to continue providing services to its Customers who are Supplier's licensees, notwithstanding the termination or expiration of the Agreement.

### **Amendments for Italy**

The following terms and conditions apply to transactions performed entirely within Italy or when the Buyer is located in Italy and amends the other provisions of this Agreement to bring the conduct of the parties' transactions into conformity with local law and practice.

#### **1.1. Deliverables and Services**

The following is added to Section 1 *“Deliverables and Services”* of the SRA:

Risk of loss and title to any tangible property will pass to INTESA or INTESA's Customer at the delivery point and/or at INTESA or INTESA's Customer service acceptance, as specified in the relevant MPO and/or WA.

#### **1.2. Issuance of an MPO, a Work Authorization and Pricing**

The following provision is added to Section 2 *“Issuance of a Work Authorization and Pricing”* of the SRA:

Supplier assumes any responsibility and/or expenses connected with the Deliverables and Services they provide to INTESA in other Sections of the SRA.

The following provision is added to Section 2 *“Issuance of a Work Authorization and Pricing”* of the SRA, where applicable:

If the contractual relationship is ruled by law 192/98 *“Disciplina della Subfornitura”*, the term of payment will be no more than 60 days from the date of delivery or from Supplier's notification that the work is complete. Nevertheless, Supplier will be obliged to deliver the related invoice at the same time of good's delivery or the communication of service rendered.

#### **1.3. Supplier Individual Requirements**

The following provisions are added to Section 3 *“Warranties”* of the SRA:

Supplier declares to have the mandatory requirements set forth in:

1. Legislative Decree n. 159/2011; and
2. Legislative Decree n. 50/2016 Article 85; and
3. Any further modifications thereto.

Supplier undertakes, upon INTESA request, to provide any documentation necessary to confirm the compliance of these requirements as well as the documentary evidence of the renewal, issued by the competent authorities, of any license required to carry out business activities with the public administration.

Supplier acknowledges that the assignment, in full or in part, of services and orders to its subsidiaries, even if fully owned by Supplier, or to any consultants, is to be deemed subcontracting and therefore forbidden by art. 105 Legislative Decree n. 50/2016.

In case of non-compliance with this provision and in case of rejection of Supplier by the Customer, due to:

4. the Supplier lacking the mandatory individual requirements as per the current laws to prevent mafia-crimes;
- or
5. issue by the Supplier of statements containing untrue data and information,

INTESA will be entitled to terminate this SRA, the MPO and/or the WA pursuant Article 1456 c.c., by means of a simple written notification.

#### **1.4. Limitation of Liability**

Section 7 “*Liability*” of the SRA on limitation of liability will apply within the limits of art. 1229 c.c.

#### **1.5. Term and Termination**

The following provision is added to the first paragraph of Section 9 “*Term and Termination*” of the SRA:

Should Supplier fail to comply with any obligations whatsoever undertaken, INTESA may request such compliance in writing. If Supplier fails to remedy such non-compliance within the period indicated by the request, the MPO and/or WA shall automatically terminate. In this event, INTESA is under no obligation to make any payment for the services performed. INTESA likewise reserves the right to return to Supplier all the components delivered under the WA and to obtain reimbursement of the amount paid to Supplier under the WA, or to withhold said components with payment to Supplier of a sum to be agreed in line with the Price indicated in the WA.

In addition to the liquidated damages provided for in the MPO and/or WA, INTESA at all events reserves the right to request compensation for any damage it may have suffered.

The following provision is added as the last sentence of the third paragraph of the Section 9 “*Term and Termination*” of the SRA:

In derogation of art. 1671 of the Civil Code, upon termination without cause, INTESA will compensate Supplier only for the actual and reasonable expenses incurred by Supplier for work in process up to and including the date of termination.

#### **1.6. Governing Law**

The following provision is added to Section 12 “*Governing Law*” of the SRA:

This SRA is subject to the laws of Italy. All disputes arising out of or in connection with the interpretation or performance of the Agreement shall be settled exclusively by Courts of Milan and the parties waive the right to resort to any other.

#### **1.7. Supplier and Supplier Personnel**

The following provision is added as subsection 14.5 “*Personnel*” to Section 14 “*Supplier and Supplier Personnel*” of the SRA:

Supplier cannot subcontract to third parties (both individuals or companies) all or part of the Services if not approved in advance by INTESA. Supplier will make available to INTESA all necessary information, including contract type and resources, related to the 3rd party which Supplier intends to use as a subcontractor. Notwithstanding this Section the usage of subcontractors will not relieve Supplier from its responsibility on the performance of subcontractors. Supplier will remain the sole responsible vs. INTESA for all obligations of this SRA. INTESA reserves the right, at its own discretion, to refuse the usage of subcontractors or any other 3rd party.

Personnel assigned to the Services, with the exception of possible consultants, must be regularly hired by Supplier, who undertakes to:

1. Comply with all the obligations arising out of the legal provisions and regulations on employment and social insurance, bearing the relative cost;
2. supervise the compliance of mandatory obligations in terms of remuneration, social security and tax contributions for the Supplier’s personnel and its sub-suppliers and shall hold the Purchaser harmless for any damage or liability the latter may incur as a result of any breach of the aforementioned obligations pursuant to Article 29 of Legislative Decree 276/2003 and any possible future amendment thereof;

3. apply vis-a'-vis said personnel, compensation and conditions of employment not inferior to those envisaged by employment contracts applicable, as of the date of the MPO, to the sector and the place where work is performed, in addition to conditions resulting from subsequent modifications and integrations and, in general, from any other employment contract subsequently executed for the sector, applicable in said place;
4. continue to apply said employment contracts until such time as they expire or are replaced. The above mentioned obligations relating to employment contracts is binding on the Supplier also in the event that Supplier no longer belongs to the associations executing said contracts or withdraws from said associations for all or part of the term of the contract. Supplier undertakes to provide written confirmation of the above, at any time, at INTESA's request;
5. maintain for the duration of the Agreement documents confirming the execution of payments by wire transfer of compensation payable to its employees and subcontractors during the performance of the Agreement. Supplier undertakes to provide written confirmation of the above, at any time, at INTESA's request;
6. draw up appropriate agreements with its employees that permit them to comply with all the obligations deriving from this SRA and any applicable MPO;
7. supervise the compliance with regulations protecting the health and safety of the Supplier's personnel pursuant to Legislative Decree 81/08;
8. guarantee furthermore its collaboration with INTESA for the purposes of the control and co-ordination of its personnel and the personnel of its Sub-suppliers in respect of the safety measures indicated in the Consolidated Document;
9. guarantee, amongst others, that in complying with the provisions set out under Article 26 of Legislative Decree 81/08, if it assigns personnel, they shall be provided with an adequate identification card containing their photo, personal details and indicating his/her employer. The Supplier, furthermore, guarantees that any such personnel shall carry such identification card at all times when completing his/her assigned tasks;
10. upon INTESA's request, provide documentation to verify compliance with this Section titled "Supplier and Supplier Personnel".

To the extent art. 17-bis of Legislative Decree n. 241/1997 applies, within 5 days from the payment term of the salary deductions, Supplier shall provide to INTESA the following documents:

- Copy of payment delegations related to the remittance of salary deductions related to employees working in the Services (Modello F24)
  - List of employees' names, with fiscal code, engaged in the former month in the Services, specifying the amount of worked hours, the related salary, the amount of the fiscal deductions for each employee.
- Should Supplier provide the certification containing the requirements set forth in paragraph 5, art. 17-bis, within 5 days from the payment term of the salary deductions, the documentation above is not required.

In case of breach of the above obligations, INTESA shall suspend invoice payment to the extent provided by the legislation. In compliance with the legislation, Supplier shall provide the documentation of this clause directly to INTESA Customer when INTESA provides the Services to Customer. INTESA undertakes the responsibility to communicate the names of INTESA Customers to the Supplier. Upon Customer's request, INTESA may provide Supplier's documentation directly to the Customer. Supplier has obtained the agreement of the Supplier Personnel to release the data to INTESA and to allow INTESA to use, disclose and transmit such data in connection with this Agreement. Notice and information related to the processing of Personal Data by INTESA is available at <https://www.INTESA.com/it/it/privacy>.

INTESA has the right to terminate this SRA, the MPO and/or the WA according to art. 1456 of the Italian Civil Code if Supplier fails to comply with this Section.

The following provision is added as subsection 14.2 "Posted Workers" to Section 14 "Supplier and Supplier Personnel" of the SRA:

Where Supplier intends to use Supplier Personnel and/or subcontractors who are deemed posted workers (as defined in EC Posted Worker Directive 96/71/EC and/or any related or derived EC or national legislation) or temporary

agency workers (as defined in EC Directive 08/104/EC, and/or any related or derived EC or national legislation) (together hereinafter “Posted Workers”) for the provision of Services to INTESA and/or to INTESA’s Customer(s), Supplier will, prior to each Posted Worker commencing work in the country they are posted to, inform INTESA and provide to INTESA all statutorily required information, as well as evidence of compliance with the above-mentioned legislation. Supplier warrants that the information provided is at all times correct, accurate, and up to date, and Supplier agrees to provide updated information to the INTESA immediately at any time upon INTESA’s request. Should the Supplier’s, or the Supplier’s subcontractor’s, breach of this provision cause the INTESA or its personnel to be held liable or to be fined, Supplier shall indemnify the INTESA and its personnel against all claims and/or fines that arise or are alleged to have arisen as a result of such breach. Notwithstanding anything to the contrary in the Agreement, INTESA may terminate this SRA, any MPOs and/or WAs immediately for Cause in case of a breach of this provision or when INTESA reasonably believes such a breach has occurred or is likely to occur. In addition to this, the INTESA may request the immediate removal of Posted Workers from assignment under the Agreement.

#### **1.8. Assignment**

The following provision is added to Section *15 “General”* of the SRA:

If the contractual relationship is ruled by law 192/98 “Disciplina della Subfornitura”, Supplier may assign up to 50% of such works to third parties or Affiliates without the prior oral or written consent of INTESA. However, if the Supplier is assigning more than 50% of the works, Supplier must obtain the prior written consent of INTESA. Any unauthorized assignment of this SRA is void.

Nevertheless, if INTESA considers the contracted goods or services confidential, subcontractors to be engaged shall have prior written approval of INTESA and shall enter into a confidentiality agreement to a sample provided by INTESA to the Supplier.

#### **1.9. Tracing of Financial Flows**

Supplier undertakes to fully comply with the provisions of the Law August 13, 2010 n.136 (including but not limited to Article 3 of such Law) on Tracing of Financial Flows related to public contracts.

In case of breach by the Supplier of such provisions, this SRA, the MPO and/or any WA shall be terminated pursuant to art. 1456 civil code, without prejudice to the Supplier’s liability for any damages caused by such violation.

#### **1.10. Application of Health and Safety Laws**

The parties to this SRA, to the extent applicable to each, undertake to comply with, and guarantee the compliance with, applicable health and safety laws including by way of example but not limited to, the provisions set out by Legislative Decree 81/08 and any related amendment.

In this respect and furthermore, in order to allow INTESA and/or INTESA’s Customer to draft the document which evaluates the risks pursuant to Art. 26, third paragraph of the aforementioned Legislative Decree 81/08 as amended (hereinafter the “Consolidated Document”), Supplier shall provide to INTESA a document containing its evaluation of the risks and associated costs as well as the evaluation provided by its sub-suppliers, which indicates the measures necessary to eliminate any interference in their respective activities.

Supplier undertakes to provide its aforementioned evaluation of risks and associated costs and also the evaluation prepared by its sub-suppliers together with the offer it will submit to INTESA, under the express agreement that the validity of such offer is subject to the provision of the documentation evaluating risks and associated costs as described above.

INTESA has the right to terminate this SRA, the MPO and/or the WA under art. 1456 of the Italian Civil Code if Supplier fails to comply with this Section.

#### **1.11. Amendment**

The parties agree that any possible future amendment or supplement to the SRA should be intended as integral part of the SRA and that any reference to the SRA mentioned in the MPO, a WA or in this document, where applicable, are inclusive of such changes and/or integration.