



**GENERAL TERMS & CONDITIONS**

Date: 9 April 2021  
Scope: United States

These Terms and Conditions are from Kinly Inc., a New Jersey corporation, having an office at 2 Ridgedale Ave., Suite 100, Cedar Knolls, NJ 07927, United States and AVMI Inc., a Delaware corporation, having an office at 86 Chambers Street, Suite 702, Tribeca, NY10007, United States (hereafter together referred to as: 'Kinly').

## 1. GENERAL TERMS

### ARTICLE 1 DEFINITIONS

1.1 The following capitalized terms will have the meaning as set forth hereinafter, either in the singular or in the plural.

<i>Agreement</i>	the agreement with respect to Services, software, or Hardware between KINLY and the Customer, including these Terms and Conditions, and any Purchase Order, data processing agreement, statement of works, schedule of services, project proposal, service level agreement, as required;
<i>Kinly Cloud Services</i>	the videoconferencing service hosted by Kinly;
<i>Cloud Services</i>	the Kinly Cloud Services and/or Third Party Cloud Services;
<i>Customer</i>	the party with whom Kinly has entered into an Agreement and who will be receiving the Services and/or Hardware herein, as listed in the relevant Purchase Order;
<i>GDPR</i>	Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), together with the codes of practice, codes of conduct, regulatory guidance and standard clauses and other related legislation resulting from the GDPR as updated from time to time;
<i>Equipment</i>	equipment rented to Customer;
<i>Hardware</i>	the hardware (including the software, documentation and other ancillary materials) provided by Kinly;
<i>Maintenance and Support Services</i>	the maintenance, support and managed service with respect to the Hardware or software, including but not limited to MOS Services;
<i>MOS Services</i>	<i>managed on site services</i> ;
<i>Purchase Order</i>	the document outlining the purchase of specific Services and/or Hardware, appended to these Terms, excluding Rental Services, which will be set forth more fully in the Rental Agreement.
<i>Professional Services</i>	the installation of Hardware or other professional services provided by Kinly;
<i>Rental Agreement</i>	the document which sets out more fully the provisions of Rental Services to Customer
<i>Services</i>	all services and activities offered by Kinly, including but not limited to the Kinly Cloud Services, Third Party Cloud Services, Smart Services, Maintenance and Support Services, Professional Services and MOS Services;
<i>Smart Services</i>	the smart services provided by Kinly
<i>Terms and Conditions</i>	these general terms and conditions, irrespective of the form in which these general
<i>Third Party Cloud Services</i>	terms and conditions are presented to the Customer.; the conference services hosted by a third party.

### ARTICLE 2 GENERAL CONDITIONS

- 2.1 These Terms and Conditions shall govern the provision of Services and/or Hardware to Customer for each Purchase Order. These Terms and Conditions will prevail over any of Customer's general terms and conditions of purchase, regardless whether or when Customer has submitted its own purchase order or such terms.
- 2.2 Deviations from the Terms and Conditions shall only apply if and to the extent that they have been explicitly agreed upon in writing between Kinly and Customer.
- 2.3 These Terms and Conditions are the only terms and conditions that apply between the parties and Kinly expressly rejects any general purchase or other conditions of Customer.

- 2.4 If and to the extent that any provision contained in these Terms and Conditions should prove not valid for whatever reason, the other provisions of these Terms and Conditions shall remain in full force and effect. Kinly and Customer shall negotiate a new provision that shall affect the original intent of the parties as closely as possible.
- 2.5 No offer, quotation or price is valid or binding on Kinly until a Purchase Order is accepted by Kinly in writing.
- 2.6 An Agreement shall be entered into on the date Kinly has accepted an order from Customer in writing, on the date of signature by both parties of an offer of Kinly or of another document, or if Customers enables Kinly to start executing the order.
- 2.7 Customer warrants the accuracy and completeness of the measurements, requirements, performance specifications, drawings and other data on which Kinly bases its offer and which have been stated by or on behalf of Customer to Kinly.

### **ARTICLE 3 SERVICES**

- 3.1 Kinly will provide the Services to Customer with due care and in accordance with the stipulations set forth in the Agreement (including these Terms and Conditions).
- 3.2 Kinly reserves the right to deliver Services in the manner it deems fit.
- 3.3 In the event that Kinly, at Customer's request, has delivered additional services that are not part of the Services agreed upon in the Agreement, Customer will pay for these services in accordance with Kinly's standard tariffs. Additional service may require the conclusion of a separate written agreement. Customer accepts that an alteration or expansion of the Services may affect the agreed or expected time of completion of obligations, mutual responsibilities of Customer and Kinly and agreed rates.

### **ARTICLE 4 DELIVERY OF HARDWARE AND/OR SERVICES AND RETENTION OF TITLE**

- 4.1 All terms of delivery of Services and Hardware only serve as guidelines and are not binding. Kinly will use its best effort to observe the projected delivery periods and/or other periods; however, failure to meet these (delivery) periods are never a grounds for termination of the Agreement. Parties shall consult with each other as soon as possible in the event of an impending late delivery. Kinly shall not be in default until after Customer has served Kinly with a written notice of non-fulfilment that afforded a reasonable time for rectification and after Kinly has failed to fulfil within such reasonable time.
- 4.2 Any risk of loss or damage of Hardware or of other consumables, software, documentation or other materials delivered in connection with the Services, will transfer to Customer at the time of delivery.
- 4.3 In the event Customer purchases Hardware from Kinly, all Hardware delivered to Customer shall remain Kinly's property until all amounts owed by Customer for the Hardware have been paid fully to Kinly. These amounts include the amounts with respect to all the work to be performed with respect of the Hardware (if agreed upon) and all other amounts which Customer owes Kinly due to a breach of its payment obligation. Until obtaining ownership Customer shall refrain from selling, mortgaging or pledging the Hardware and shall not rent or loan them out or in any other way make them available to third parties under any title whatsoever.

### **ARTICLE 5 PRICE AND PAYMENT**

- 5.1 Customer agrees to pay fees as set out in the Purchase Order as consideration for the Hardware and/or Services provided by Kinly.
- 5.2 All prices and tariffs are stated in US dollars and are exclusive of sales, use, excise or other tax or government levies. Travel time, costs of travel, costs of transport, insurance, rigging and hoisting, leasing temporary facilities and subsistence expenses, extra hours and other costs attached to the Services are not included in the prices and rates and will be billed separately by Kinly as part of the final project invoice. Unless otherwise stated, quotations for non-US locations are exclusive of all applicable import duties, delivery and local sales, value added taxes or withholding taxes which shall be the responsibility of the Customer.
- 5.3 Kinly may, from time to time, increase the prices and tariffs in case any cost price increasing circumstances occur that affect the cost price of the Services and/or the Hardware.
- 5.4 Unless otherwise agreed in writing, delivery of Hardware and Services will be invoiced at the following stages:
  - (i) Projects over USD100,000 will be invoiced 40% on order, 40% on delivery and 20% on completion;
  - (ii) Projects of USD50,000 to USD99,999 will be invoiced 50% on order and 50% on completion;
  - (iii) Projects under USD50,000 will be invoiced on completion;
  - (iv) Hardware only supply will be invoiced 100% on order;
  - (v) New KINLY customers will be invoiced on immediate payment terms until/unless a credit account is agreed.

- (vi) Maintenance and Support Services agreements will be invoiced on a yearly basis, in advance. Where extra Maintenance and Support Services are requested by Customer, which are not included in the relevant Maintenance and Support Service agreement, these shall be chargeable at rates agreed from time to time.
- . All invoices thereafter will be paid by Customer in accordance with the conditions of payment stated on the invoice. In absence of specific conditions, Customer will pay within 30 (thirty) days from the invoice date.
- 5.5 Objections to invoiced amounts shall be communicated to Kinly in writing before the due date, in the absence of which parties shall accept the accuracy of the invoiced amounts after expiry of the due date. Kinly shall determine the amounts owed by Customer, unless Customer demonstrates to Kinly's reasonable satisfaction that Kinly's records are incorrect.
- 5.6 Customer will pay for recurring Services in advance, unless otherwise agreed upon in writing, and without any set-off or suspension on any account whatsoever, except where it has been decided by arbitration award or judgment of a Court, that Customer has a counter-claim capable of being set off or a ground for suspension.
- 5.7 If Customer fails to pay an invoice within the term of payment, Customer will be in default, without a warning or notice of default being required. From such moment until the day of full payment, interest shall accrue on the outstanding amount against the lesser rate of 1% or the maximum rate permissible under applicable usury law, calculated daily and compounded monthly.
- 5.8 If Customer continues to be in default in its obligation to pay the outstanding invoice with accrued interest, Kinly can place the matter in the hands of a lawyer or debt-collector agency.
- 5.9 Notwithstanding article 5.6 and 5.7, 13.2 and 13.3, if Customer continues to be in default in its obligation to pay the outstanding invoice, with accrued interest, for a period of more than 60 (sixty) days, all (recurring and nonrecurring) amounts due for the Services and Hardware agreed upon for the remaining term of the Agreement, will immediately become due and payable.
- 5.10 All amounts paid by Customer will first offset any extrajudicial cost, secondly any accrued interest and thirdly the original amount of the invoice, regardless of any payment description or any notice by that Customer.

#### **ARTICLE 6 SECURITY, DEPOSIT, BANK GUARANTEE**

- 6.1 Kinly may require a bank guarantee or security if in Kinly's opinion doubt exists about Customer's ability to fulfil its payment obligation.
- 6.2 At such time as the need for security no longer exists, Kinly shall notify Customer that the security or bank guarantee or other form of security may be discontinued or, as the case may be, shall refund the deposit. No interest shall be payable over the deposit.

#### **ARTICLE 7 COOPERATION OF CUSTOMER**

- 7.1 Customer will supply Kinly in a timely manner with all data, information, hardware, facilities, materials, drawings, access and cooperation that are useful and necessary to execute the Agreement properly and provide full cooperation. If Customer utilizes its own employees in cooperating in the execution of the Agreement, these employees shall possess the necessary know-how, experience, training and abilities. Customer guarantees that the provided information will be correct and complete.
- 7.2 Customer represents and warrants to Kinly that the hardware, including servers, software, telecommunication facilities (including internet), connections or other facilities used in connection with the Services and/or Hardware provided by Kinly meet all required technical specifications to enable the correct functioning of the Hardware and/or Services. Customer is responsible for selecting, using and applying in its organization the hardware, software, (internet) connections and other facilities necessary for the proper use of the Hardware and Services and shall also be responsible for the monitoring and security procedures and proper system management, unless otherwise agreed upon in writing. Kinly is not liable for any damage or expenses due to transmission errors, malfunctions or the non-availability of these facilities, unless Customer proves that such damage or expenses resulted from intentional acts or omissions or gross negligence on the part of Kinly.
- 7.3 If Customer does not provide Kinly with the data, equipment, software or other cooperation necessary to execute the Agreement, or does not provide this in a timely manner or in accordance with the agreements made, or if Customer otherwise does not fulfill its obligations, Kinly shall be entitled to suspend execution of the Agreement in whole or in part, and it shall be entitled to charge the ensuing expenses in accordance with its usual rates, all of this without prejudice to Kinly's right to exercise any other legal right.

- 7.4 If and insofar employees of Kinly perform work on the premises of Customer, Customer shall provide appropriate working conditions, access to all necessary facilities including but not limited to computer and telecommunication facilities and qualified personnel as may be reasonably requested by Kinly. All facilities shall comply with all applicable statutory and other requirements and provisions concerning working conditions. Customer shall indemnify Kinly against claims by third parties, including Kinly's employees, who, in executing the Agreement, suffer injury which is the result of acts or omissions by Customer or of unsafe situations in its organization.
- 7.5 Ensure that all software and data files are adequately replicated, and a copy is supplied to KINLY on first request. The software and data files will be stored by Customer in compliance to ISO 27001 or equivalent certification and will remain the property of the Customer. In the event the Customer is unable to provide a copy of software and data files, and KINLY is required to create the files to carry out the tasks defined within the Agreement, this may incur an additional charge.
- 7.6 All work in relation to the delivery of the Services and Hardware needs to be carried out in a continuous period, in a safe and secure environment that is clean, dust-free and ready for installation on the first day of the communicated program schedule. KINLY may require assistance with a number of tasks required as part of the installation process. These will require to be completed in advance of the first day of program schedule and include, amongst other things;
- (i) Power, power cable sockets, power and data cabling, ELV cabling containment;
  - (ii) Network connections, sockets and switches;
  - (iii) Floor boxes and/or grommet holes as required;
  - (iv) Details of the client supplied IP connectivity and related addresses are to be supplied to KINLY at least one week prior to installation.
  - (v) The disposal of any packaging or other waste is to be the responsibility of the Customer.
- 7.7 If any of the provisions of this article 8 are not met by Customer and therefore the delivery of Services and/or Hardware is delayed and extra time and/or extra work needs to be invested by Kinly, Kinly has the right to charge and Customer acknowledges it is obliged to pay all fees due to this extra time and/or extra work.

## **ARTICLE 8 INTELLECTUAL PROPERTY RIGHTS AND LICENSE**

- 8.1 All Intellectual Property Rights regarding the Services and Hardware (including but not limited to the software, documentation, facilities or other materials that is used therefore) are owned and retained by KINLY or its suppliers ("Supplier Background IPR"). KINLY shall retain ownership of any suggestions, ideas, recommendations, feedback or other information provided by Customer or any other party related to the Services and Hardware. Neither delivery of the Services or Hardware nor the Agreement will imply any transfer or assignment of Intellectual Property Rights.
- 8.2 Customer shall receive a limited, revocable, non-exclusive and non-transferable license for the use of the Supplier Background IPR regarding the Services for the term of this Agreement. Customer commits itself to adhere strictly to any conditions laid down in the Agreement or imposed in any other way.
- 8.3 In the event that the Services or Hardware contains any software that needs to be used by Customer for the proper performance of the Services or Hardware under this Agreement, KINLY and its licensors (as applicable) shall retain ownership of Supplier Background IPR related to the software and, KINLY grants to Customer a non-exclusive, non-transferable, revocable license to use such software. Such license is solely granted for the use in connection with the Services or the Hardware and under the condition that the Customer fully complies with the Terms and Conditions and the stipulations in the Agreement. In addition, Customer is not entitled to:
- (i) assign, sublicense, lease or otherwise make the software available to third parties;
  - (ii) decompile, decompile, modify, adapt, create derivative works based on the software or apply techniques of reverse engineering or any other techniques aimed to access the source code of the software, except where the rights to do so are mandatory by law and KINLY has refused to satisfy any conditions to such rights;
  - (iii) incorporate or let others incorporate the software, in part or in whole, into another program, or otherwise exploit the software other than for its internal business purposes;
  - (iv) make a copy of the software, without the prior written consent of KINLY, which consent will not be withheld in case of a back-up copy, unless KINLY decides to provide such back-up copy itself;
  - (v) delete or alter any trademark, trade name, logo, copyright notice, notice of reservation of rights, or limitation or exclusion of liability included in any part of the software and/or in the documentation associated with it.
- 8.4 KINLY shall be allowed to take technical measures to protect the software or with a view to agreed restrictions in the duration of the right to use the software. Customer shall not be allowed to remove or evade such a technical measure.

- 8.5 Customer is not entitled to receive upgrades and updates of the software, unless explicitly otherwise agreed upon in the Agreement.
- 8.6 Any Intellectual Property Rights specifically developed or created for the Customer, not being Supplier Background IPR, shall vest and will be transferred to the Customer by KINLY.

#### **ARTICLE 9 CONFIDENTIAL INFORMATION AND PERSONAL DATA**

- 9.1 During the Agreement and after its expiration or termination for whatever reason, Customer shall keep confidential all information it receives from Kinly, including without limitation, information in relation to Kinly's affairs or business or method of carrying on business and all customer information and shall use such information only to the extent necessary to perform its obligations under this Agreement or as may be required by law.
- 9.2 The requirements of Article 9.1 shall not apply to the extent that such information is or becomes public knowledge through no fault of Customer or was already known by Customer prior to its disclosure by Customer or is otherwise authorized by Kinly for disclosure or required to be disclosed by law.
- 9.3 If and insofar Kinly receives personal data that falls within the scope of the GDPR, Customer guarantees that with regard to such personal data all obligations inserted in the GDPR have been observed and that Kinly is entitled to process such personal data.

#### **ARTICLE 10 AUDIT**

- 10.1 During the term of the Agreement and for a period of one year after its termination, Kinly may, at any time upon reasonable advance notice, conduct an audit at Customer's premises to ascertain whether Customer's use of the Service is in compliance with the provisions of the Agreement. Kinly shall ensure that the audit will be conducted during normal business hours without causing unreasonable disruption of Customer's business operation. Customer shall assist Kinly in the conduct of such audit and shall grant Kinly access to its premises and computer equipment. In the event that such audit reveals any use of the Service by Customer other than in full compliance with the Agreement, Customer shall reimburse Kinly for all reasonable costs and expenses related to such audit in addition to any other liabilities Customer may incur as a result of such non-compliance.

#### **ARTICLE 11 LIMITATION OF LIABILITY AND WARRANTIES**

- 11.1 IN NO EVENT SHALL KINLY OR ITS REPRESENTATIVES BE LIABLE FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR ENHANCED DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF TURNOVER, LOSS OF GOODWILL OR REPUTATION, OR LOST PROFITS, ARISING OUT OF OR RELATING TO ANY BREACH OF THIS AGREEMENT, WHETHER OR NOT SUCH DAMAGES WERE FORESEEABLE.
- 11.2 IN NO EVENT SHALL KINLY'S AGGREGATE LIABILITY ARISING OUT OF RELATED TO THE AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT; OR OTHERWISE, EXCEED \$10,000.00 PER EVENT, WHERE A SERIES OF CONNECTED INCIDENTS OR EVENTS WILL COUNT AS ONE INCIDENT OR EVENT.
- 11.3 KINLY WILL BE RESPONSIBLE ONLY FOR DIRECT DAMAGE, WHICH SHALL MEAN STRICTLY:
- 11.3.1 ALL REASONABLE COSTS INCURRED BY CUSTOMER IN ORDER TO HAVE KINLY'S PERFORMANCES MEET ITS OBLIGATIONS UNDER THE AGREEMENT;
  - 11.3.2 ALL REASONABLE COSTS INCURRED BY CUSTOMER IN ORDER TO MITIGATE ANY DIRECT DAMAGES;
  - 11.3.3 ALL REASONABLE COSTS INCURRED BY CUSTOMER IN ORDER TO ESTABLISH THE NATURE AND SCOPE OF DIRECT DAMAGES;
  - 11.3.4 ALL COSTS TO REPAIR OR REPLACE DAMAGE TO PROPERTY, WHEREBY A SERIES OF CONNECTED INCIDENTS OR EVENTS WILL COUNT AS ONE INCIDENT OR EVENT.
- 11.4 Nothing in this agreement will attempt to limit the liability of Kinly for anything which cannot be limited by applicable law.
- 11.5 KINLY MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE HARDWARE, SOFTWARE OR SERVICES, INCLUDING ANY WARRANTY OF MERCHANTABILITY, WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY, WHETHER EXPRESS, OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE.
- 11.6 KINLY MAKES NO EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY, EITHER ORAL OR WRITTEN, WHETHER ARISING BY LAW OR OTHERWISE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED TO THE EXTENT POSSIBLE, AND EACH PARTY ACKNOWLEDGES THAT IT HAS NOT RELIED UPON ANY REPRESENTATION OR WARRANTY MADE BY THE OTHER PARTY OR ANY OTHER PERSON ON SUCH PARTY'S BEHALF, EXCEPT AS PROVIDED ELSEWHERE IN THIS AGREEMENT.

**ARTICLE 12 FORCE MAJEURE**

- 12.1 There is no attributable failure by Kinly if there is an event of force majeure. Force majeure includes but is not limited to embargoes, governmental restrictions, strikes, lockout, work stoppages or other labor difficulties, acts of God, riots, insurrections, wars or other military actions, government action, acts of terrorism, civil disorders, fires, floods, vandalism, sabotage or pandemics.
- 12.2 If the event of force majeure continues for a period of 60 (sixty) consecutive days, then parties are authorized to dissolve the Agreement in writing without judicial intervention being required. Such dissolution does not oblige Kinly to pay compensation for damage and/or loss. Kinly is entitled to receive payment from Customer for the delivery of Hardware and/or Services already made prior to the force majeure situation.

**ARTICLE 13 TERMINATION AND SUSPENSION**

- 13.1 If Customer has failed to perform an obligation under the Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within 7 (seven) days (or another reasonable term stated by Kinly) after being notified in writing (including e-mail) of such breach, Kinly is entitled to suspend, terminate or rescind the Agreement, by notifying Customer (and without any judicial intervention being required and without becoming liable for damages) . The suspension, termination or rescission does not release Customer from any payment obligation as inserted in article 6, unless Kinly is in default with regard to such Hardware or Services.
- 13.2 If undisputed invoices, with the addition of late payment interest, have not been paid before the expiry of (30) calendar days from (and including) expiry of the due date, Kinly may send Customer a written notice stating that the Agreement will be terminated for breach or suspended.
- 13.3 Both parties are entitled to suspend, terminate or rescind the Agreement with immediate effect by notifying the other party (and without any judicial intervention being required and without becoming liable for damages), if either party: a) becomes insolvent; b) is generally unable to pay, or fails to pay, its debts as they become due, c) files, or has filed against it, a petition for voluntary or involuntary bankruptcy or pursuant to any other insolvency law, d) makes or seeks to make a general assignment for the benefit of its creditors, or e) applies for, or consents to, the appointment of a trustee, receiver or custodian for a substantial part of its property or business.
- 13.4 Kinly is entitled to suspend, terminate or rescind the Agreement with immediate effect by notifying the Customer (and without any judicial intervention being required and without becoming liable for damages) if the Customer undergoes a substantial change of management or control reasonably deemed by Kinly to be incompatible with its legitimate interests.

**ARTICLE 14 FINAL PROVISIONS**

- 14.1 The Agreement constitutes the full agreement between the parties with respect to the utilization of the Services and the Hardware and it replaces any prior agreements concerning the subject hereof.
- 14.2 The Agreement is personal and as such Customer is not entitled to assign its rights and obligations under it, except with the prior written permission of Kinly which consent will not be unreasonably withhold. Kinly shall be entitled to assign or otherwise transfer its rights and obligations under the Agreement without requiring the consent of Customer.
- 14.3 During the term of the Agreement and one year thereafter, Customer shall not engage or otherwise employ, directly or indirectly, members of the staff of Kinly, who were involved in executing the Agreement, except pursuant to a general solicitation which is not directed specifically to any such employees, unless it has received prior written permission of Kinly.
- 14.4 EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL ACTION, PROCEEDING, CAUSE OF ACTION, OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING ANY EXHIBITS, SCHEDULES AND APPENDICES ATTACHED TO THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED HEREBY.
- 14.5 The agreement is governed by the laws of the State of New Jersey, USA, excluding any conflict of law provisions. The 1980 United Nations Convention on Contracts for the International Sale of Goods will not apply.
- 14.6 If and to the extent that any provision contained in this Agreement should prove invalid for whatever reason, the other provisions of this Agreement shall remain in full force and effect. Kinly and Customer shall negotiate a new provision that shall approximate the contents and the scope of the original provision as closely as possible.

- 14.7 Parties will first use their reasonable efforts to resolve any dispute that may arise out of the Agreement or any breach thereof. If a dispute cannot be settled amicably through ordinary negotiations within a timeframe acceptable to either party, either party may submit the dispute for resolution in accordance with article 14.8
- 14.8 All disputes that may arise under or in connection with the agreement shall be exclusively submitted to a New Jersey State court of competent jurisdiction located in Bergen County, New Jersey, except that either Party may seek temporary injunctive relief in any venue of its choosing. Both parties agree to accept service of any summons, complaint, or other process in connection with any dispute, lawsuit, proceeding or action relating to or arising out of this Agreement.

## **2. ADDITIONAL TERMS FOR CLOUD SERVICES AND SMART SERVICES**

The provisions set forth in these Additional Terms for Cloud Services and Smart Services shall apply if Kinly provides its Cloud Services and/or Smart Services to Customer. These provisions apply in addition to Section 1. General Terms.

### **ARTICLE 15 CLOUD SERVICES**

- 15.1 Kinly and/or its Third Party Cloud Services supplier will use its reasonable efforts to provide the Cloud Services and Smart Services in a professional and workmanlike manner and with minimum disruptions. However, Kinly cannot guarantee that the Cloud Services and Smart Services will always function without disruptions, delay or other imperfections. Since the Cloud Services and Smart Services will be transmitted through Internet and a public (telecommunication) network, power outages, Internet or other disruption may occur, and users may experience some disruptions in the Cloud Services and Smart Services.
- 15.2 Any license granted to Customer in connecting with the Third Party Cloud Services is limited to the license granted by the third party providing the Third Party Cloud Services.
- 15.3 Kinly may change the technical features of the Cloud Services and Smart Services in order to keep pace with the latest demands and technological developments, at its own discretion.
- 15.4 Kinly will use its best effort to ensure the security and confidentiality of all communications on the Cloud Services and Smart Services, in accordance with the specifications agreed upon and taking in account the exceptions laid down by law (if relevant).
- 15.5 Only if expressly agreed upon in writing, Kinly will install the Cloud Services, Smart Services and/or the Hardware or have it installed. Any requirement by Kinly to install the Cloud Services, Smart Services and/or the Hardware does not include the requirement to install software or to convert any data related to peripheral services or products. If Kinly has undertaken to perform installation, Customer shall provide a suitable installation site with all necessary facilities, such as cable work and telecommunications facilities, before delivery and installation of the Cloud Service, Smart Services and Hardware and follow all instructions of Kinly necessary for the installation. To enable Kinly to perform the necessary work, Customer shall give Kinly access to the installation site during Kinly's normal working days and hours.

### **ARTICLE 16 RESTRICTIONS OF CUSTOMER**

- 16.1 Customer is entitled to use the Cloud Services and Smart Services for internal purposes only and therefore, it may not resell, transfer or rent the Cloud Services and Smart Services, nor incorporate or let others incorporate the Cloud Services and Smart Services into another service or otherwise exploit these other than for its internal business purposes.
- 16.2 Customer may use the Cloud Services and Smart Services solely for lawful purposes and in accordance with Kinly policy, as given in this clause sub (i) to (iv). In this respect Customer may not:
- (i) use or distribute components designed to compromise system security and more specific may not use any type of spider, virus, worm, trojan-horse, time bomb or any other codes or instructions that is designed to distort, damage or disassemble the Cloud Services and Smart Services, or to deliberate or reckless disrupt Cloud Services and Smart Services;
  - (ii) intercept or monitor, damage or modify any communication which is not intended for Customer;
  - (iii) impair, interfere with, damage or cause harm or distress to any other customer using the Cloud Services and Smart Services;
  - (iv) gain unauthorized access or fraudulently use the Cloud Services and Smart Services;
- 16.3 Customer shall not have the right to make any changes to the Cloud Services and Smart Services (including changes to accompanying software or facilities provided in connection with the Cloud Services and Smart Services) or to relocate facilities provided in connection with the Cloud Services and Smart Services or damage them.



- 16.4 Kinly reserves the right, without prejudice to any other provisions of the Agreement and/or these Terms and Conditions, to issue reasonable instructions concerning the use of any Hardware sold to Customer which utilizes Cloud Services or Smart Services (including the software and facilities provided in connection with the Cloud Services and Smart Services) as may be necessary in the interests of the safety, quality or security or for any other valid reason that Kinly reasonably deems appropriate.

### 3. ADDITIONAL TERMS FOR HARDWARE

The provisions set forth in these Additional Terms for Hardware shall apply if Kinly delivers and sells Hardware to Customer. These provisions apply in addition to Section 1. General Terms.

#### ARTICLE 17 HARDWARE

- 17.1 The price of the Hardware shall not include the costs of transport, insurance, rigging and hoisting, leasing temporary facilities and the like.
- 17.2 If Customer request any change to Hardware supplied by Kinly according to specifications, such request will be subject to cancellation, restocking and administration charges. Any bespoke or customised Hardware for Customer must be paid for in full, if returned to Kinly.
- 17.3 The Hardware will be delivered to the location specified in the Agreement. If no location has been agreed, delivery will take place by offering the Hardware at Kinly's premises and / or warehouse, so that Customer can collect it themselves. Customer is obliged to collect the Hardware immediately upon its arrival, failing which Kinly shall be entitled to charge the costs of such delay, transport, return and / or storage related to this default to Customer.
- 17.4 Upgrades and updates with respect to the Hardware (including the software provided with the Hardware) will be made based upon separate agreement for maintenance, support or upgrades.
- 17.5 Upon delivery, Customer must immediately check the Hardware in question for any defects or damage. Any visible defects must be reported to Kinly in writing within three (3) Working Days (a day, other than a Saturday, Sunday, or public holiday in New Jersey, when banks in New Jersey are open for business), after the delivery of the Hardware, with reference to the invoice number or, in the absence thereof, the number of the dispatch note or order confirmation. If this period has expired without written notice (complaint) regarding a defect in the Hardware, the Hardware shall be deemed to have been accepted by Customer. In any case, the Hardware is deemed to be accepted if Customer has taken the Hardware into use, has delivered it to third parties, or has commissioned it, unless a complaint has been lodged within the stipulated period of three (3) Working Days.
- 17.6 THE WARRANTY WITH REGARD TO THE HARDWARE DELIVERED BY KINLY IS LIMITED TO THE WARRANTY GRANTED BY THE MANUFACTURER OF THE HARDWARE OR THE SUPPLIER OF THE SOFTWARE (DELIVERED IN CONNECTION WITH THE HARDWARE), BOTH IN TERMS OF ITS SUBSTANCE AND ITS DURATION. THEREFORE, ONLY THE WARRANTY CONDITIONS AND WARRANTY PERIOD OF SUCH MANUFACTURER/SUPPLIER APPLY TO THE DELIVERED HARDWARE, OR SOFTWARE DELIVERED IN CONJUNCTION WITH SAID HARDWARE, REPLACING ANY DEVIATING PROVISIONS IN THESE TERMS AND CONDITIONS. CUSTOMER ACCEPTS THE INTENDED WARRANTY CONDITIONS OF THE MANUFACTURER/SUPPLIER. THESE WARRANTY CONDITIONS ARE SUPPLIED ALONG WITH THE HARDWARE OR, IN THE CASE OF SOFTWARE, CONSTITUTE PART OF THE LICENSE TERMS. IT FOLLOWS FROM THE FOREGOING THAT KINLY ONLY HAS A WARRANTY OBLIGATION IF AND INsofar AS IT (OR CUSTOMER DIRECTLY) CAN CLAIM A WARRANTY OBLIGATION FROM THE MANUFACTURER OR SUPPLIER. The processing of the defective Hardware will be carried out according to the procedure of the manufacturer or supplier and the instructions given by Kinly.
- 17.7 Without prejudice to the provisions in the warranty conditions of the manufacturer, supplier or Kinly, the warranty will at least lapse if:
- without the prior written permission of Kinly, supplier or the manufacturer, repairs, modifications or extensions have been made to the Hardware or software by Customer or by others;
  - changes, repairs or extensions have been made to the Hardware or software, of which Kinly has indicated that this can lead to the lapse of the warranty;
  - in Kinly's opinion the Hardware has been used or maintained carelessly, incorrectly or not for its intended purpose;
  - changes have been made to the warranty certificate or any seal of the Hardware has been broken;
  - type numbers, serial numbers and/or warranty stickers are damaged, altered or removed;
  - any defects have arisen by not connecting or using the Hardware or software as prescribed and/or not connecting or installing (approved) other products to the Hardware or software;

- g. defects have arisen due to deviating environmental conditions, insofar as such conditions have been stipulated or by other external causes such as fire or water damage;
- 17.8 The warranty period is not extended or renewed by carrying out the work performed, or replacement products supplied within the context of the warranty.
- 17.9 Kinly is under no obligation to repair defects that have been reported after the expiry of the warranty period set by the manufacturer or supplier, unless parties have agreed in the Agreement upon the delivery of Maintenance and Support Services, which includes such a duty to repair. Work and costs of repair that are delivered or made outside the scope of the warranty will be charged by Kinly in accordance with its usual rates.

#### **4. ADDITIONAL TERMS FOR MAINTENANCE AND SUPPORT SERVICES**

The provisions set forth in these Additional Terms for Maintenance and Support shall apply if Kinly provides its Maintenance and Support Services. These provisions apply in addition to Section 1. General Terms.

##### **ARTICLE 18 GENERAL**

- 18.1 Kinly will provide the Maintenance and Support Services solely with respect to the Hardware and/or software specified in the Agreement. The Maintenance and Support Services will consist of the entitlements and service levels defined in the Agreement. Change requests do not fall under the scope of the Maintenance and Support Services.
- 18.2 Kinly will use its best efforts to provide the Maintenance and Support Services in a professional and workmanlike manner. Kinly shall provide the services on the basis of a best efforts obligation, unless and in so far it has explicitly undertaken in the Agreement to achieve a specific result and the result in question is sufficiently determined.
- 18.3 Kinly may sub-contract any part of its obligations with respect to the Maintenance and Support Services to a third party, for example a local partner or a supplier, without the prior written consent of Customer.
- 18.4 The Maintenance and Support Services shall only be provided to the contact persons of Customer named in the Agreement. Maintenance and Support Services are dependent on the ability of the contact person to communicate and be available. Therefore, Kinly may set forth certain requirements on the part of the contact person to ensure fulfillment of Kinly's obligations.
- 18.5 Customer will cooperate as required by Kinly for the purpose of the Maintenance and Support Services, including the temporary suspension of use of the Cloud Services or the Hardware by Customer if Kinly deems this to be necessary. If Customer fails to cooperate, Kinly may suspend or limit the Maintenance and Support Services. If the Maintenance and Support Services are provided on the basis of information to be provided by Customer, this information shall be prepared in accordance with the conditions to be imposed by Kinly and provided at the risk and expense of Customer. Customer shall at all times guarantee that all materials, information, software, procedures and instructions that it makes available to Kinly for the purpose of providing the Maintenance and Support Services is accurate and complete and that all data carriers issued to Kinly meet Kinly's specifications.
- 18.6 If the Maintenance and Support Services are provided on premises of the Customer, and KINLY cannot execute its Maintenance and Support Services due to i.e. but not limited to: unavailability of the room, unavailability of documents, personnel, KINLY shall may charge the Customer an amount at least equal to Maintenance and Support Services to Kinly's standard maintenance call out charge, notwithstanding KINLY's further rights to compensation for the full damage it has suffered.
- 18.7 Keep and operate the Hardware in accordance with the manufacturers' recommendations.
- 18.8 Inform KINLY in writing of its intentions to remove any of the Hardware from the location itemised within the Agreement. For the avoidance of doubt, changes to the charge in respect of such Hardware moves or the deletion of such Hardware from the Agreement will be as agreed between KINLY and Customer.

##### **ARTICLE 19 MAINTENANCE AND SUPPORT SERVICES**

- 19.1 Kinly will provide support services by phone or by e-mail, to the contact persons set out in article 18.4, during the business hours agreed upon in the service description. If no business hours are agreed upon, then the standard business hours in the United States will apply.
- 19.2 Kinly's obligations are conditional upon Customer being able to provide a full and detailed description of a defect and any other information or documentation which facilitates Kinly in reproducing the occurred defect and solving this defect. Customer will first use its best effort to analyze the cause of the error. Kinly's obligations are conditional upon the defect being reproducible.

- 19.3 In the Agreement a defect will mean a substantial failure of an item of Hardware or a system. In case of a defect, Customer shall provide Kinly a detailed notice of the defect. After receiving the notice Kinly shall to the best of its ability, do its utmost to fix the defect or in case of software, to make improvements in later, new versions of the software. Depending on the urgency, the results shall be provided to Customer in the manner and within the time period set out in the Agreement. In case of defects with respect to software, Kinly shall be entitled to install temporary solutions, program bypasses or problem-avoiding restrictions in the software.
- 19.4 In the event that the support services see to software as well, Kinly will support only the version of the software that was originally the subject of this agreement. For clarity, Kinly will only be liable to support a version of the software that existed at the moment the parties entered the contract, and later updates provided by Kinly pursuant to clause 21.1.
- 19.5 Kinly does not warrant that the Hardware, software, or Cloud Services shall operate without interruption, errors or other defects or that all defects can be corrected.
- 19.6 If the Maintenance and Support Services apply to software or hardware that were not provided by Kinly, Customer shall make all relevant (technical) documentation and the software source code available to Kinly and grant Kinly the right to use same, if Kinly deems this to be useful or necessary for carrying out the support service. Customer guarantees that it is entitled to make this data and/or documentation available for the purposes of support by Kinly. Customer shall grant Kinly the right to use and adapt the software, including the source code and technical (development) documentation, within the context of performing the agreed support service. Customer shall indemnify Kinly against any claims by third parties in relation to the provision of this data and/or documentation and Kinly's use thereof within the context of the support service.
- 19.7 Only if and insofar expressly agreed upon in writing, Kinly will be obliged to convert any data.

#### **ARTICLE 20 REMOTE ACCESS**

- 20.1 If the Maintenance and Support Services is carried out long-distance or online, Customer shall for its part ensure that Kinly has unrestricted access to all necessary software, services and systems and that the proper infrastructure and telecommunication facilities are in place, in a timely manner. Customer will comply with all instructions and requirements of Kinly in this respect. Kinly shall be entitled to suspend or limit the services if the remote access including Customer's infrastructure and telecommunication facilities do not meet the requirements or instructions imposed by Kinly.

#### **ARTICLE 21 NEW VERSIONS AND MAINTENANCE RELEASES**

- 21.1 Only if this has been agreed upon in the Agreement, Kinly will provide Customer with new versions and/or maintenance releases with respect to the software used in the Cloud Services, Smart Services or the in the Hardware. Such provision of new versions and/or maintenance releases shall take place at Kinly's discretion.
- 21.2 Kinly may require Customer to adapt its system (hardware, software etc.) if this is necessary in order to ensure the proper functioning of a new version and/or maintenance release.
- 21.3 KINLY shall at its sole discretion decide not to repair any part of the Hardware, if in the opinion of KINLY, such repair is not economically viable or is unrepairable as a direct result of obsolescence or unavailability of parts ('Beyond Economic Repair' or 'BER'). It is agreed that KINLY shall not be deemed as acting unreasonably in adhering to this and shall specify the reasons for the decision in writing upon request from the Customer.
- 21.4 KINLY shall submit a quotation for replacement Hardware to the Customer for approval. In the case where the Hardware is not a 'like for like', the quotation will not cover any subsequent programming, commissioning, labour and project management costs.
- 21.5 In the event the Hardware is deemed as being 'BER' and where loan equipment is included in the Maintenance and Support Services, reasonable endeavors will be applied to provide a temporary replacement,; the temporary replacement will be provided for a maximum period of 30 (thirty) days.

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#### **ARTICLE 22 EXCLUDED SERVICES**

- 22.1 The Maintenance and Support Services shall not include the fixing of defects arising from or related to:
- a) usage errors or improper use of the Hardware or the Cloud Services or Smart Services;
  - b) changes, repairs or extensions to the Hardware or the Cloud Services or Smart Services, other than those carried out by or on behalf of Kinly;

- c) use of the Hardware or the Cloud Services or Smart Services contrary to the applicable conditions or contrary to the instructions inserted in the documentation provided by Kinly;
  - d) changes to or errors, defects or shortcomings in the Hardware, the Cloud Services or the Smart Services that are not included within the scope of the Maintenance and Support Services to be carried out by Kinly;
  - e) failure by Customer to have Maintenance and Support Services carried out on Hardware, the Cloud Services or the Smart Services in a timely manner
  - f) the use of an older version of software that is no longer maintained by Kinly;
  - g) any problem with the functioning or the use of peripheral systems or software or the hardware configuration, including without limitation the operating system of the software platform and/or hardware upgrades;
  - h) any problem related with the unsuitability or incompatibility of the hardware and systems used by Customer;
  - i) the operation or use of the Cloud Services or Smart Services in a way that is not compatible with the latest release of the documentation provided by Kinly to Customer;
  - j) Support related to third party's software or hardware not supplied by Kinly (unless otherwise explicitly agreed upon in the Agreement);
  - k) other causes that are not attributable to Kinly.
- 22.2 The Maintenance and Support Services shall not include the recovery of scrambled or lost data
- 22.3 If Kinly carries out Maintenance and Support Services in connection with the provisions of article 22.1, Kinly shall be entitled to invoice the costs of these services or other work in accordance with its standard rates. This shall not affect the other fees payable by Customer in respect of the Maintenance and Support Services.

## 5. ADDITIONAL TERMS FOR PROFESSIONAL SERVICES

The provisions set forth in these Additional Terms for Professional Services shall apply if Kinly provides its Professional Services. These provisions apply in addition to Section 1. General Terms.

### ARTICLE 23 PROFESSIONAL SERVICES

- 23.1 Kinly will use its best effort to provide the Professional Services with due care, in a professional and workmanlike manner and in accordance with the applicable service description. Kinly shall provide all services on the basis of a best efforts obligation, unless and in so far it has explicitly undertaken in the written agreement to achieve a specific result and the result in question is sufficiently determined.
- 23.2 Professional Services delayed or cancelled by the Customer prior to commencement will result in the Customer being liable for all charges, unless agreed otherwise in writing.
- 23.3 It has been agreed that the Professional service will be provided in stages, Kinly is entitled to delay the start of the Professional Services associated with a stage until such time as Customer has approved the results of the previous stage in writing.
- 23.4 Kinly shall be obliged to follow timely and reasonable instructions issued by Customer during the performance of the Professional services unless Customer issues instructions that change or extend the content or scope of the agreed Professional service. If such instructions are followed, however, Customer shall pay for that work or services in question in accordance with Kinly's standard rates. Customer accepts that such additional work or services may affect the agreed or expected time of completion of the Professional Services and the mutual responsibilities of Customer and Kinly.
- 23.5 Kinly is at all times entitled to replace its employees with one or more other employees or subcontractors with the necessary qualifications.
- 23.6 Customer will provide all materials, information and other cooperation required by Kinly for the purpose of providing the Professional Services. Customer shall prepare and provide all information and material in accordance with the conditions and instructions imposed by Kinly. These information and materials are provided at the risk and expense of Customer. Customer guarantees that all materials, information, and instructions that it makes available to Kinly for the purpose of providing the Professional Services is accurate and complete and that all data media issued to Kinly meet Kinly's specifications.
- 23.7 Kinly shall carry out the work during Kinly's standard business hours.
- 23.8 Except where agreed otherwise in writing, the use by Customer of advice issued by Kinly shall in all cases be at Customer's risk and expense.
- 23.9 The guarantee on Kinly's standard workmanship delivered by Professional Services and/or the Maintenance and Support Services is limited to one (1) year after completion of the Professional Services and/or the Maintenance and Support Services.

## **6. ADDITIONAL TERMS FOR ON-SITE SERVICES**

The provisions set forth in these Additional Terms for MOS Services shall apply if KINLY provides its MOS Services. These provisions apply in addition to the General Terms.

- 24.1 Customer and Kinly will cooperate to transfer the managed on site employees working at the Customer's location and/or employees dedicated to perform work for customer ("Dedicated Employees") at the commencement date to Kinly and at termination date of this Agreement to the Customer or to any other third party nominated by the Customer, in accordance with the provisions of this clause.
- 24.2 The Customer warrants that i) the information provided to Kinly with regards to the list of Dedicated Employees that were previously performing the services and continue to do so under this Agreement and ii) the information relating to each Dedicated Employee, is in all material aspects true and accurate, and the Customer shall indemnify Kinly against all costs, liabilities and expenses, including, but not limited to all legal fees, which Kinly may incur in relation to any breach of this clause.
- 24.3 The Customer will indemnify Kinly against any employment claim brought against Kinly by or on behalf of any Dedicated Employee transferring to Kinly which arises as a result of any act or omission by the Customer or previous supplier of the services relating to the employment of such transferring Dedicated Employee before the date of such Dedicated Employee's transfer to Kinly.
- 24.4 Kinly shall indemnify the Customer against any employment claim brought against the Customer by or on behalf of any transferring Dedicated Employee which arises as a result of any act or omission by Kinly in the employment of such Dedicated Employee during the provision Services.