



GENERAL TERMS & CONDITIONS

Date: 5th May 2023

Version: German Law T's and C's

These General Terms and Conditions are from Kinly Germany GmbH, with registered office at Ria-Thiele-Strasse 2a, 40549 Duesseldorf, Germany, (hereinafter 'KINLY').

1. GENERAL TERMS

ARTICLE 1 DEFINITIONS

The following capitalised 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 data processing agreement, statement of works, schedule of services, project proposal, service level agreement, as required;
<i>Kinly Cloud Services</i>	the conferencing 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 in an Agreement and who will be receiving the Services and/or Hardware herein;
<i>Equipment</i>	equipment rented under the Rental Services;
<i>Final Completion (Projects)</i>	will be applicable when a project is fully complete, and all project closure information is handed over
<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>Intellectual Property Rights</i>	intellectual property rights shall mean patents, utility models, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

<i>German Data Protection Legislation</i>	all applicable data protection and privacy legislation in force from time to time in Germany including the GDPR, the Federal Data Protection Law (“Bundesdatenschutzgesetz” – BDSG), and any other relevant, applicable legislation as amended;
<i>Hardware</i>	the hardware (including the software, documentation and other ancillary materials) sold by KINLY;
<i>Hardware Delivered</i>	a minimum of 95% (by value) of Hardware in any defined Phase, Stage, or Section of a statement of works has been delivered to site or to Kinly warehouse
<i>Maintenance and Support Services</i>	the maintenance and support service with respect to the Hardware or software, including the installation, repair, replacement, and upgrade of the Hardware or software;
<i>MOS Services</i>	managed on site services;
<i>Professional Services</i>	the installation of Hardware or other professional services provided by KINLY;
<i>Recurring Services</i>	services that are recurring are Cloud Services, Third Party Cloud Services, Smart Services, Maintenance and Support Services and MOS Services
<i>Rental Services</i>	the rental of hardware offered by Kinly;
<i>Services</i>	all services and activities offered by KINLY, including but not limited to the Cloud Services, Third Party Cloud Services, Smart Services, Maintenance and Support Services, Professional Services, Rental Services and MOS Services;
<i>Smart Services</i>	the smart services offered by KINLY;
<i>Start Date</i>	the agreed day on which KINLY will provide the Hardware and/or Services to Customer on the agreed location.
<i>Terms and Conditions</i>	these general terms and conditions, irrespective of the form in which these general terms and conditions are presented to the Customer;
<i>Third Party Cloud Services</i>	the conference services hosted by a third party.
<i>Practical Completion (Projects)</i>	Practical Completion status will apply when the project is materially complete, with only minor works outstanding. A minimum of 95% of hardware and services value will have been delivered.

ARTICLE 2 GENERAL CONDITIONS

- 2.1 The Terms and Conditions apply to and form part of all offers, proposals, agreements and other legal acts, either made orally, in writing, electronic or in any other form, concerning delivery of Services and/or Hardware by KINLY. The Terms and Conditions shall also apply to all future transactions between the parties to the contract without requiring any reference there to again. The Terms and Conditions shall not apply towards consumers.
- 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 KINLY explicitly rejects any applicability of any general (purchase) conditions used by Customer.
- 2.4 Offers, quotations and prices shall not be binding on KINLY, shall be without any obligation and shall be valid only as an invitation to Customer to place an order via their confirmation or acceptance in writing, unless explicitly otherwise stated in writing.
- 2.5 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.
- 2.6 Customer warrants the accuracy and completeness of the measurements, requirements, performance specifications and other data on which KINLY bases its offer and which have been stated by or on behalf of the 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 may change its services if and to the extent that this is necessary in order to adapt the Services to the state of the art and security, the development of legal and regulatory requirements, in particular in the areas of data protection, telecommunications and consumer protection, as well as market developments, in particular Customer expectations of comparable services, for example with regard to performance, storage capacities, user-friendliness and efficiency.
- 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. KINLY shall not be under obligation to meet a request for additional service and may require the conclusion of a separate written agreement.
- 3.4 Customer accepts that an alteration or expansion of the Services may affect the agreed or expected time of completion of the Services. Any alteration or expansion needs to be mutually agreed between Customer and KINLY at agreed rates.
- 3.5 The initial term of the Agreement for all Recurring Services shall be twelve (12) months, unless otherwise agreed between KINLY and Customer. The Recurring Services term of the Agreement shall be automatically renewed for twelve (12) months at the end of the initial term and each subsequent renewal term. In the event Customer or Kinly does not intend to renew the Agreement for Recurring Services, a sixty (60) days written notice must be provided to Kinly or Customer prior to the expiry of the initial term or any renewal term of the Agreement.

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. KINLY will use its reasonable efforts to observe the agreed delivery periods and/or other periods, however failure to meet these (delivery) periods shall not be considered a breach of this agreement, unless explicitly stated otherwise. 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 consumables, software, documentation or other materials delivered in connection with the Services, will transfer to the Customer at the time of delivery.
- 4.3 In the event Customer purchases Hardware from KINLY, then all Hardware delivered to the Customer shall remain KINLY's property until all amounts owed by the 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 the Customer owes KINLY due to a breach of its payment obligation. Until obtaining ownership, Customer shall refrain from selling, leasing or pledging the Hardware and shall not rent or loan it out or in any other way make it available to third parties under any title whatsoever.

ARTICLE 5 PRICE AND PAYMENT

- 5.1 Customer agrees to pay the fees according to the prices and tariffs agreed for the Services and/or Hardware provided by KINLY.
- 5.2 All prices and tariffs are stated in euro, unless otherwise agreed in writing, and are exclusive of value added tax (VAT) and other 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 may be billed separately by KINLY. Unless otherwise stated, quotations for non-German 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 is entitled to adjust the prices to be paid no more than once a year at its reasonable discretion in accordance with Section 315 of the German Civil Code (BGB) to reflect the development of costs that are decisive for pricing. In particular, the costs of technology (e.g., operation of data centers, hardware, technical service), costs of operating the Services (licenses, in particular software licenses, costs of domain registration and administration, costs of our suppliers who perform the Service on KINLY's behalf directly at Customer's premises), costs of customer support (e.g., for the service hotline, technical support, etc.), the costs of the Service (e.g., for the service support, etc.) and costs (e.g., for service hotline, billing and IT systems), personnel and service costs, energy, overheads (e.g., for administration, marketing, rent, interest, financing costs, invoicing and payment), and statutory imposed fees, taxes, levies and contributions shall be decisive for the formation of prices.
- The price development of these cost factors can lead to both an increase and a decrease in the prices to be paid by the Customer.
 - Price adjustment is limited to the extent of changes in the cost factors.
 - Both price increase and price decrease shall take into account whether the price change can be compensated by decreased/increased costs in another area.
 - In exercising its reasonable discretion, KINLY will choose the respective times of a price adjustment in such a way that cost reductions are not taken into account according to standards that are less favorable for the Customer than cost increases, i.e. cost reductions will have at least the same effect on prices as cost increases.
 - KINLY will notify the Customer of the change in text form no later than 6 weeks before the change is scheduled to take effect. In the event of a price change.
- 5.4 Unless otherwise agreed in writing, delivery of Hardware and Services will be invoiced at the following stages:
- (i) Projects over € 25,000 will be invoiced 50% on order, 30% on Hardware Delivered, 15% on Practical Completion and 5% on Final Completion;
 - (ii) Projects of € 5,000 to € 25,000 will be invoiced 50% on order and 50% on completion;
 - (iii) Projects under € 5,000 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.
- 5.5 All invoices 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, 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.
- 5.6 Without prejudice to any other right or remedy KINLY reserves the right to suspend delivery or to terminate the Agreement if there is any outstanding liability owing to it by the Customer, or if in its opinion the Customer will not be able to meet any future or existing commitment to it.
- 5.7 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 can demonstrate that KINLY's records are incorrect.
- 5.8 If Customer fails to pay an invoice within the term of payment, Customer will automatically 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 statutory interest, which is currently nine percentage points

above the base rate.

- 5.9 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. All costs incurred by KINLY in respect of such collection will be borne by Customer.
- 5.10 Notwithstanding article 5.8 and 5.9, 13.2 and 13.3, if the 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.
- 5.11 All amounts paid by the 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 is entitled to require security from Customer in the form of a bank guarantee, deposit or some other kind of 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 THE CUSTOMER

- 7.1 The Customer shall always furnish KINLY in a timely manner with all data, information, hardware, facilities, materials and cooperation that are useful and necessary to execute the Agreement properly and provide full cooperation. Cancellation fees may apply if these conditions are not met at the agreed date and time. If the Customer utilises 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 shall bear the risk of selecting, using and applying in its organisation 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. Damages or expenses that result from errors, malfunctions or the non-availability of these facilities will be the responsibility of Customer is.
- 7.3 If the 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 the 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 Customer shall 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.
- 7.5 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. The Customer shall indemnify KINLY against claims by third parties which are the result of acts or omissions by the Customer or of unsafe situations in its organisation.
- 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 Start Date. 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 7 are not met by the 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.
- 7.8 If the Services and/or Hardware cannot be delivered on the Start Date on the agreed location, due to circumstances caused by Customer, KINLY can charge Customer the full remaining invoice amount on the Start Date. In addition to that, KINLY can charge Customer the costs as included in article 17.3.

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. Customer will apply and entertain during the term of the Agreement all necessary and feasible technical and organizational means to keep the information confidential. Customer will impose and enforce this obligation to all its employees and suppliers that it allows to come in contact with such confidential information.

- 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 the Customer or was already known by the Customer prior to its disclosure by the Customer or is otherwise authorised by KINLY for disclosure or required to be disclosed by law.
- 9.3 If and insofar KINLY processes personal data that falls within the scope of the German Data Protection Legislation, the parties shall enter into a data processing agreement.
- 9.4 Insofar as special categories of data are processed (e.g. data that is protected under professional secrecy laws), the Customer will inform KINLY and conclude any legally required additional agreements for processing of such data.

ARTICLE 10 AUDIT

- 10.1 During the term of the Agreement and for a period of one (1) 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 relation to the Hardware and/or Services delivered. In the event that such audit reveals any use of the Services 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 noncompliance.

ARTICLE 11 LIMITATION OF LIABILITY

- 11.1 This agreement sets forth the full extent of KINLY's obligations and liabilities in respect of the Services and/or Hardware. In particular, there are no conditions, warranties or other terms, express or implied, including as to quality, fitness for particular purpose or any kind whatsoever that are binding on KINLY except as specifically stated in this agreement. Any condition, warranty or other term concerning the Services and/or Hardware which might otherwise be implied into or incorporated within this agreement, whether by statute, common law or otherwise, is expressly excluded.
- 11.2 KINLY is liable in accordance with the statutory provisions if damage is caused by an intentional or gross negligent breach of duty by KINLY or one of its legal representatives or agents.
- 11.3 KINLY is also liable without restrictions for damages from injury to life, body or health, for features which are a contractually guaranteed condition and for fraudulently concealed defects. Further, the liability under the German Product Liability Act remains unaffected.
- 11.4 KINLY is liable for slight negligent breaches of essential contractual obligations. Essential obligations are (i) such the breach of which is putting at risk the achievement of the contractual purpose, (ii) only enable performance or fulfillment of the contract and are regularly relied upon by the other party. In this case, KINLY is only liable for the typically foreseeable damages. KINLY is not liable for slight negligent breaches of any other obligations than those mentioned in the previous sentences.
- 11.5 To the extent the liability is excluded or limited, such exclusion or limitation also applies to the employees, legal representatives or agents of Kinly.
- 11.6 KINLY endeavors to ensure that the availability of the Services will be uninterrupted and that transmissions will be free of errors. However, due to the nature of the internet, this cannot be expected as a feature and is not warranted or guaranteed.
- 11.7 In the event of loss or unreadability of data, KINLY shall be liable for damages caused by it to a maximum of the amount of the recovery costs from a regular and timely data backup expected by the Customer's regular and timely data backups.

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 (including government actions in connection to pandemics).
- 12.2 If the event of force majeure continues for a period of 60 (sixty) consecutive days, then Parties are authorised 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 the Customer for the delivery of Hardware and/or Services already made prior to the force majeure situation.

ARTICLE 13 TERMINATION AND SUSPENSION

- 13.1 KINLY is entitled to suspend or terminate the Agreement for cause, by notifying Customer. Cause is in particular deemed to exist 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. The suspension or termination does not release the Customer from any payment obligation as inserted in article 5, unless KINLY is in default with regard to such Hardware or Services.
- 13.2 Both parties are entitled to suspend or terminate the Agreement with immediate effect by notifying the other party, if either party:
- (i) suspends, or threatens to suspend payments of its debts or is unable to pay debts as they fall due or is deemed unable to pay its debts under the law;
 - (ii) suspends, ceases, or threatens to suspend or cease carrying on all or a substantial part of its business;
 - (iii) commences negotiations with all or any class of its creditors with a view to make a general assignment for the benefit of its creditors;
 - (iv) suffers or permits the appointment of a receiver or a manager for its business assets;
 - (v) files a petition or gives notice for or in connection with the winding up of their business.
- 13.3 KINLY is 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) in case Customer undergoes a substantial change of management or control (within the meaning of sec. 15 ff of the German Commercial Code ("Handelsgesetzbuch" – HGB) reasonably deemed by the other party 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. KINLY shall be entitled to assign or otherwise transfer its rights and obligations under the Agreement without requiring the consent of Customer.
- 14.3 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 approximate the contents and the scope of the original provision as closely as possible.
- 14.4 During the term of the Agreement and one year thereafter, Customer shall not actively engage or otherwise employ, directly or indirectly, members of the staff of KINLY or contractors used by KINLY in the performance of the Services or delivery of the Hardware, who are or were involved in executing the Agreement, unless the Customer has received prior written permission of KINLY. Customer is liable for any loss, damage or expenses (including but not limited to fines and fees Kinly has to pay its suppliers or subcontractors) Kinly may incur as a result of breaching this obligation.
- 14.5 The Agreement as well as all claims, rights and obligations arising from or in connection with it are governed by the law of Germany to the exclusion of the German conflict of laws rules and all international and supranational legal systems, in particular the UN Convention on Contracts for the International Sale of Goods
- 14.6 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 14.7
- 14.7 All disputes that may arise under or in connection with the agreement shall be exclusively submitted to any competent court within Germany.

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 the Customer. These provisions apply in addition to the General Terms.

ARTICLE 15 CLOUD SERVICES

- 15.1 KINLY and/or its Third Party Cloud Services supplier will use 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 reasonable effort to ensure the security and confidentiality of all communications on the Cloud Services and Smart Services, is in accordance with the specifications agreed upon and taking into 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. If KINLY has undertaken to perform installation, the 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, the Customer shall give KINLY access to the installation site during KINLY's normal working days and hours from 8.00 a.m. to 6.00 p.m. in the relevant region.

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 the 'fair use policy' of KINLY 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 specifically may not use any type of spider, virus, worm, trojan-horse, time bomb or any other codes or instructions that are designed to distort, damage or disassemble the Cloud Services and Smart Services, or to deliberately or recklessly 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 unauthorised 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 utilises Cloud Services, or Smart Services, the Cloud Services or Smart Services themselves (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.
- 16.5 Customer may not include, play or stream music and/or videoclips or any other work that is protected by copyright during a livestream or hybrid-event hosted via Cloud Services, unless Customer has obtained all the necessary rights or licenses under local law and regulations.

3. ADDITIONAL TERMS FOR HARDWARE

The provisions set forth in these Additional Terms for Hardware shall apply if KINLY delivers and sells Hardware to the Customer. These provisions apply in addition to the 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 ordered or 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 on the Start Date 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 on or immediately after the Start Date, failing which KINLY shall be entitled to charge the costs of such delay, transport, return and / or storage related to this default to Customer as of the Start Date until the day Customer has collected the Hardware.
- 17.4 Customer is not entitled to receive upgrades, updates and/or Professional Services with respect to the Hardware (including the software provided with the Hardware), unless it's specifically agreed upon in writing.
- 17.5 Upon delivery, the Customer must immediately check the Hardware in question for any defects or damage. Any visible defects must be reported to KINLY in writing within 3 (three) Working Days (a day, other than a Saturday, Sunday or public holiday in Germany, when banks in Germany are open for business at the registered office of the Customer) 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 the Customer. In any case, the Hardware is deemed to be accepted if the 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 3 (three) Working Days.
- 17.6 The warranty with regard to the Hardware delivered by KINLY is limited to the warranty ("Garantie") 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. The 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 the 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. Article 11 shall remain unaffected by this article 17.6.
- (i) 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 the Customer or by others;
 - (ii) changes, repairs or extensions have been made to the Hardware or software that KINLY has indicated that this can lead to the lapse of the warranty;
 - (iii) in KINLY's opinion the Hardware has been used or maintained carelessly, incorrectly or inexpertly;
 - (iv) changes have been made to the warranty certificate or any seal of the Hardware has been broken;
 - (v) type numbers, serial numbers and/or warranty stickers are damaged, altered or removed;
 - (vi) 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;
 - (vii) 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.
- 17.7 The warranty period is not extended or renewed by carrying out the work performed, or replacement products supplied within the context of the warranty.
- 17.8 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.
- 17.9 Only in the event of the warranty conditions of the manufacturer or the supplier in the relationship between KINLY and the Customer for whatever reason being deemed to not be applicable, are declared inapplicable or do not fully cover the statutory warranty rights ("Gewährleistung") the Customer has towards KINLY, the following applies with regard to the warranty:
- (ii) The warranty period for the Hardware is one year after the date of delivery of the Hardware and in the case of software, one year after delivery of the license code.
 - (iii) The warranty includes the free repair or replacement of (parts of) the Hardware in the event of defects

in materials and/or workmanship of which the Customer proves that these have occurred within the stipulated warranty period.

- (iv) If KINLY replaces parts/Hardware to fulfil its warranty obligation, the replaced parts/Hardware will become KINLY's property, if KINLY so desires.
- (v) Unless the Customer has a Maintenance and Support Service agreement with KINLY, any costs that exceed the sole obligation of replacement as described, such as transport costs, travel and accommodation costs as well as costs of disassembly/assembly are payable by the Customer.

Article 11 shall remain unaffected by this Article 17.9.

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 the 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 reasonable efforts to provide the Maintenance and Support Services in a professional and workmanlike manner. KINLY shall provide the services on the basis of a reasonable 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 fulfilment of KINLY's obligations.
- 18.5 Customer will provide all cooperation 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 provide the requested cooperation, 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 may charge the Customer an amount at least equal to KINLY's standard maintenance call out charge, notwithstanding KINLY's further rights to compensation for the full damage it has suffered.
- 18.7 Customer will keep and operate the Hardware in accordance with the manufacturers' recommendations.
- 18.8 Customer will 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 Maintenance and Support services by phone or by e-mail, to the contact persons set out in article 18.4, during the hours agreed upon in the service description. If no hours are agreed upon, then the standard business hours in Germany (8:00 a.m. to 6:00 p.m. each Working Day) 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 reasonable effort to analyse 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 the 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 problemavoiding restrictions in the software.

- 19.4 In the event that the support services apply to software as well, unless an upgrade has been implemented by KINLY, 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.
- 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.
- 19.8 The services will be provided to Customer on the basis of 'fair use' by the Customer, meaning service requests from Customer have to be reasonable and proportionate,

ARTICLE 20 REMOTE ACCESS

- 20.1 If the Maintenance and Support Services is carried out long-distance or online, the 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 requested by KINLY.

ARTICLE 21 NEW VERSIONS, MAINTENANCE RELEASES AND REPAIR

- 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 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 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 In the event the Hardware is deemed as being BER, 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 endeavours will be applied to provide a temporary replacement; the temporary replacement will be provided for a maximum period of 30 (thirty) days.
- 21.6 On first request of Kinly, Customer has to return the temporary replacement equipment to Kinly within five working days. If the equipment is not returned within five working days, Kinly may charge rental fees for each day the equipment is not returned following the request up and until the day the equipment is returned to Kinly. If the Customer has not returned the equipment within six (6) months after the request of Kinly, Kinly may charge Customer for the economic value of the Equipment by providing sixty (30) days written notice to Customer.

ARTICLE 22 EXCLUDED SERVICES

- 22.1 The Maintenance and Support Services shall not include the fixing of defects arising from or related to:
- (i) usage errors or improper use of the Hardware or the Cloud Services or Smart Services;
 - (ii) 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;
 - (iii) 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;
 - (iv) 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;
 - (v) failure by the Customer to have Maintenance and Support Services carried out on Hardware, the Cloud Services or the Smart Services in a timely manner
 - (vi) the use of an older version of software that is no longer maintained by KINLY;
 - (vii) any problem with the functioning or the use of external systems or software, or the hardware configuration, including without limitation the operating system of the software platform and/or hardware upgrades;
 - (viii) any problem related to the unsuitability or incompatibility of the hardware and systems used by Customer;
 - (ix) 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;
 - (x) Support related to third party's software or hardware not supplied by KINLY (unless otherwise explicitly agreed upon in the Agreement);
 - (xi) other causes that are not attributable to KINLY.
- 22.2 Furthermore, 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 the General Terms.

ARTICLE 23 PROFESSIONAL SERVICES

- 23.1 KINLY will use its reasonable efforts 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 reasonable 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 If 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 service unless the 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. The 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 the 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 same 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 information provided 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 warranty on delivered Professional Services is limited to one (1) year after completion of the Professional Services.

6. ADDITIONAL TERMS FOR MOS 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.

- 28.1 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 the German Civil Code ("BGB") and any other applicable German laws.
- 28.2 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.
- 28.3 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.
- 28.4 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 of Services.
- 28.5 Dedicated Employees that work in jurisdictions where the German Civil Code is not in force will be offered employment or engagement by the Customer in line with the terms and conditions of this clause subject to local laws and regulations.
- 28.6 Unless otherwise agreed in the schedule of services, all agreements for MOS Services shall commence on the agreed commencement date and shall continue, unless terminated earlier in accordance with the termination provisions of the Terms and Conditions for a period of 12 months ("Initial Term") and will thereafter be automatically renewed for periods of three (3) months ("Renewal Term"). An agreement for MOS Services can be terminated by either party by providing sixty (60) days written notice before the end of the Initial Term or each Renewal Term.