



## **GENERAL TERMS & CONDITIONS**

Date: 5<sup>th</sup> May 2023

Version: Indian Law T's and C's

These General Terms and Conditions are from AVM Impact India Private Limited, a private limited liability company, (Company Number U72900KA2019FTC130844), with registered office at No 47, 7th Cross, Swimming Pool Extension, Malleswaram, Bangalore Karnataka 560003 India ('KINLY').

## 1. GENERAL TERMS

### ARTICLE 1 DEFINITIONS

1.1 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 Protection Addendum, 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 into an Agreement and who will be receiving the Services and/or Hardware herein;  |
| <i>Data Protection Legislation</i>      | Indian Information Technology Act, 2000 including without limitation the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011, and other applicable data protection laws which come into effect from time to time.  |
| <i>Equipment</i>                        | equipment rented under the Rental Services;   |
| <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>Hardware</i>                         | the hardware (including the software, documentation and other ancillary materials) sold by KINLY;   |
| <i>Final Completion (Projects)</i>      | Will be applicable when a project is fully complete, and all project closure information is handed over   |
| <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, included but not limited to MOS Services;   |
| <i>MOS Services</i>                     | managed on site services  |
| <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   |
| <i>Professional Services</i>            | The installation of Hardware or other professional services provided by KINLY;  |

|                                   |   |
|-----------------------------------|---|
| <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>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.  |

## **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.
- 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 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 is entitled at its sole discretion to make such alterations to the Services as it sees fit as long as the service is in essence still in compliance with the Services as agreed.
- 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 in this regard, with the Customer. 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.

## **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 the 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 under the Agreement, 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 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 them out or in any other way or create any third party interest in the Hardware under any title whatsoever.
- 4.4 Errors and omissions shall be excepted in relation to the specification provided for the Hardware and Services.
- 4.5 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 1 (one) week prior to installation.
  - (v) The disposal of any packaging or other waste is to be the responsibility of the Customer.

## ARTICLE 5 PRICE AND PAYMENT

- 5.1 Customer agrees to pay fees as consideration for the Services and/or Hardware provided by KINLY.
- 5.2 All prices and tariffs are stated in INR, unless otherwise agreed in writing, and are exclusive of goods and service tax (GST), value added tax (VAT) and/or other government levies, as applicable, which shall be payable by the Customer. 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-Indian 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 annually increase the prices and tariffs for any reason which *inter alia* includes any event wherein any cost price increasing circumstances occur which affects 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 INR 2,500,000 will be invoiced 50% on order, 30% on Hardware Delivered, 15% on Practical Completion and 5% on Final Completion;
  - (ii) Projects of INR 50,000 to INR 2,500,000 will be invoiced 50% on order and 50% on completion;
  - (iii) Projects under INR 50,000 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 in writing from time to time.
- 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 in full the invoice amount 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.
- 5.5 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 owed by the Customer to KINLY, or if in KINLY's opinion, the Customer will not be able to meet any future or existing commitment to KINLY.
- 5.6 Objections to invoiced amounts shall be communicated to KINLY in writing within 7 (seven) days from the date of delivery of the invoice, in the absence of which parties shall accept the accuracy of the invoiced amounts. KINLY shall determine the amounts owed by Customer, unless Customer can demonstrate that KINLY's records are incorrect.

- 5.7 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 to be given by KINLY. From such moment until the day full payment of the invoice is received by KINLY, interest shall accrue on the outstanding amount at the rate of 12% percent per annum on the unpaid invoiced amount.
- 5.8 If Customer continues to be in default in its obligation to pay the outstanding invoice amount with accrued interest, KINLY may resort to legal recourse as available to KINLY under the Indian laws. All costs incurred by KINLY in respect of such collection and legal recourse will be borne by Customer.
- 5.9 Notwithstanding article 5.4 and 5.7, 13.2 and 13.3, if the Customer continues to be in default in its obligation to pay the outstanding invoice amounts, 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 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 obligations under the Agreement.
- 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 KINLY shall refund the deposit, as the case may be. No interest shall be payable by KINLY over the deposit.
- 6.3 In the event, the Customer fails to act in accordance with the terms of the Agreement, or commits an act which results in harm, loss and/or damage to KINLY (including its properties, personnel, etc.), then KINLY shall be entitled to deduct/set-off such amounts as and by way of compensation from the security provided by the Customer.

## **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. Labour 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 information provided by it to KINLY 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. KINLY is not liable for any damage or expenses due to transmission errors, malfunctions or the non-availability of these facilities, unless the Customer proves that such damage or expenses resulted from intentional acts or omissions or gross negligence on the part of KINLY.
- 7.4 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 performance of the Agreement in whole or in part, and it shall be entitled to charge the ensuing expenses in accordance with its usual rates. This shall be without prejudice to KINLY's right to exercise any other legal right.
- 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 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, including KINLY's employees, who, in executing the Agreement, suffer injury which is the result of acts or omissions by the Customer or of unsafe situations in its organisation.
- 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 extra fees and Customer acknowledges that it is obliged to pay such extra fees due to the extra time and/or extra work undertaken by KINLY.

## **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) decodify, 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 the Confidential 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 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 receives personal data that falls within the scope of the Data Protection Legislation, the parties shall abide by the obligations set forth in the Data Protection Addendum, attached hereto.

## **ARTICLE 10 AUDIT**

- 10.1 During the term of the Agreement and for a period of 1 (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 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 non-compliance.

## **ARTICLE 11 LIMITATION OF LIABILITY**

- 11.1 These Terms and Conditions set 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 the Agreement. Any condition, warranty or other term concerning the Services and/or Hardware which might otherwise be implied into or incorporated within these Terms and Conditions, whether by statute, law or otherwise, is expressly excluded.
- 11.2 The total liability of KINLY to Customer at any given time, for any reason whatsoever, is limited to the compensation of the following damages and to the maximum amounts stated from case to case:
- (i) direct damages resulting from a material breach of its obligations under the Agreement will be limited to the fee that is or must be paid by Customer in the year that the damage occurs, up to a maximum of INR 1,000,000, per event, whereby a series of connected incidents or events will count as 1 (one) incident or event. Direct damages in this respect exclusively mean:
    - (a) all reasonable costs incurred by Customer in order to have KINLY's performances meet its obligations under the Agreement;
    - (b) all reasonable costs incurred by Customer in order to prevent or limit any direct damages as meant in this article.
    - (c) all reasonable costs incurred by Customer in order to establish the nature and scope of the direct damages as meant in this article.
  - (ii) damage to property, reasonable costs of repair or replacement, up to a maximum amount of INR 1,000,000, per event, whereby a series of connected incidents or events will count as 1 (one) incident or event.
- 11.2 Nothing in these Terms and Conditions limits any liability which cannot legally be limited, including but not limited to liability for death or personal injury caused by negligence; fraud or fraudulent misrepresentation.
- 11.3 Any and all liability for indirect damages, including but not limited to consequential damages, loss of profit, loss of turnover, damage through stagnation of operations, loss of anticipated savings, loss of use or corruption of software, data or information, de-staffing, penalties and charges owed to third parties and impaired goodwill or damage of reputation, is excluded.
- 11.4 Establishment of any right to compensation shall in each instance be conditional upon Customer reporting such damage to KINLY in writing within 3 (three) months of its occurrence.

## **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 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. Notwithstanding anything contained in this Article, the Customer shall be liable to pay for the delivery of Hardware and/or Services already made by KINLY prior to the occurrence of force majeure event.

**ARTICLE 13      TERMINATION AND SUSPENSION**

- 13.1 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) 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, termination or rescission 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, 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:
- (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 Customer (and without any judicial intervention being required and without becoming liable for damages), if Customer undergoes a substantial change of management or control. **"Control"** shall mean the possession by a person or a group of persons acting in concert, directly or indirectly, of the power to direct or cause the direction of the management and policies of another person, whether through the board of directors or ownership of voting rights by such other person, by contract or otherwise. A person or a group of persons acting in concert shall be deemed to be in control of a body corporate if such person or group of persons is in a position to appoint or appoints the majority of the directors of such body corporate.

**ARTICLE 14      FINAL PROVISIONS**

- 14.1 The Agreement constitutes the full agreement between the parties with respect to the utilisation 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 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.
- 14.5 The Agreement is governed by the laws of India.
- 14.6 In the event any dispute or difference arises out of or in connection with the interpretation or implementation of the Agreement, or out of or in connection with the breach, or alleged breach of the Agreement between KINLY and the Customer, they shall attempt in the first instance to resolve such dispute through friendly consultations. If the dispute is not resolved through friendly consultations within 30 (thirty) days after a party of one part first informs the party of the other part in writing of the existence of the dispute, then either of these parties may refer the dispute for resolution by arbitration. Such arbitration shall be governed by the provisions of the Arbitration and Conciliation Act, 1996 or any statutory re-enactment or modification for the time being in force. The arbitration proceedings shall be conducted in accordance with the Arbitration Rules of Mumbai Centre for International Arbitration ("**MCIA**") for the time being in force ("**MCIA Rules**") and such MCIA Rules shall be deemed to be incorporated by reference in this article. The parties shall be entitled to apply to the appropriate court of competent jurisdiction at Mumbai exclusively for interlocutory or interim relief in respect of the arbitration. The juridical seat and venue of arbitration shall be at Mumbai, India. The arbitration shall be held in the following manner:
- (a) All proceedings in any such arbitration shall be conducted in English.
  - (b) The arbitrator(s) shall be appointed in accordance with the MCIA Rules.



- (c) The arbitration award made by the arbitrator(s) shall be final and binding on the parties and the parties agree to be bound thereby and to act accordingly. The award shall be enforceable in any court of competent jurisdiction.
  - (d) The arbitration award shall be in writing and shall be a reasoned award.
- 14.7 The parties to such arbitral proceedings shall maintain strict confidentiality with respect to all aspects of the arbitration and shall not disclose the fact, conduct or outcome of the arbitration to any non-parties or non-participants without the prior written consent of the parties to the arbitration, except to the extent: (a) required by applicable law; or (b) necessary to recognize, confirm or enforce the final award in the arbitration; or (c) to respond to or defend itself with respect to any investigation or proceeding brought against such party by any governmental agency or (d) application to the appropriate court of competent jurisdiction at Mumbai exclusively for interim or interlocutory relief in respect of such arbitration.

## **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 suppliers 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, 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; or
  - (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 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.
- 16.6 In the event, the Customer does not adhere to and comply with the aforesaid restrictions which in turn causes harm and/or damage to KINLY's Hardware, software, Cloud Services or Smart Services, (including but not limited to any claims, losses, damage, etc.), then the Customer shall be liable to indemnify KINLY for such losses, claims, damage, etc.

### 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 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 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 India, when banks in India 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 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 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.
- 17.7 Without prejudice to the provisions in the warranty conditions of the manufacturer, supplier or KINLY, the warranty shall lapse if:
- (i) without the prior written permission of KINLY/supplier/ 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 in respect of which KINLY has indicated that it 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.
- 17.8 The warranty period will not be considered to have been extended or renewed only 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 explicitly 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.
- 17.10 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 or are declared inapplicable, the following shall be applicable with regard to the warranty:
- (i) The warranty period for the Hardware is 1 (one) year after the date of delivery of the Hardware and in the case of software, 1 (one) year after delivery of the license code.
  - (ii) 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.
  - (iii) If KINLY replaces parts/Hardware to fulfil its warranty obligation, the replaced parts/Hardware will become KINLY's property, if KINLY so desires.
  - (iv) 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.
  - (v) The warranty expires in case of circumstances as mentioned in article 17.6.

#### **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 may consist of (i) maintenance service, including the remedy of errors, (ii) the provision of maintenance releases or new versions of software, and/or (ii) preventive maintenance services. Request for change in Hardware and/or software does 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.

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

- 19.1 KINLY will provide Maintenance and Support services either physically or 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, the standard business hours in India (8:00 a.m. to 5:00 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 to meet the functional specifications set out in the applicable Agreement. In case of a defect, Customer shall provide KINLY a detailed notice of the defect. After receiving the notice, KINLY shall to the reasonable 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 problem-avoiding restrictions in the software.
- 19.4 In the event that the support services apply to software as well, KINLY will support only the version of the software that was originally the subject of the Agreement. For clarity, KINLY will only be liable to support a version of the software that existed at the time when the parties entered the Agreement.
- 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 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 procuring Services from 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 Services provided by KINLY.
- 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 remotely, i.e., from a 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 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 sole 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. 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 Prior to undertaking any replacements, KINLY shall submit a quotation for replacement of such 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 'Beyond Economic Repair' (BER) and reasonable endeavors are applied to provide a temporary replacement, the temporary replacement will be provided for a maximum period of 30 (thirty) days.

## **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 with 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 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 which changes or extends the content or scope of the agreed Professional Service under the Agreement. If such instructions (which changes are extended the content or scope of the agreed Professional Services under the Agreement) are followed by KINLY, the 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 While undertaking the Professional Services, KINLY is at all times entitled to replace its employees with 1 (one) or more other employees or subcontractors with the same qualifications, at its sole discretion.
- 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 guarantee on delivered Professional Services is limited to one (1) year after completion of the Professional Services.

## 6. ADDITIONAL TERMS FOR RENTAL SERVICES

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

### ARTICLE 24 RENTAL PERIOD

- 24.1 The parties enter into the Equipment rental for the period and at the price specified in the rental agreement. This period starts on the day that KINLY delivers the Equipment. By signing the delivery note, the Customer confirms they have received the rented Equipment in good condition. The rental ends on the end date agreed in the rental agreement if the Customer has returned all the Equipment to KINLY in good condition.
- 24.2 The Equipment shall at all times remain the property of KINLY. The Equipment shall at all times be kept at the address specified (or a number of locations if agreed) and shall not at any time be sold, loaned, hired or transferred to any third party.
- 24.3 If the Customer cancels the order to rent Equipment fewer than 14 (fourteen) days before the order is executed, KINLY may charge the costs already incurred for executing the order, subject to a minimum of 50% of the agreed price.
- 24.4 If the Agreement for Rental Services is cancelled by the Customer after KINLY has dispatched the Rental Equipment, KINLY will charge the Customer the full rental payment for the entire term of the rent as mentioned in the Agreement.
- 24.5 If KINLY has not received the Equipment back or has not received it all in good condition by the end date, the end date will be considered to be extended till the Customer returns all the Equipment to KINLY in good condition and the Customer will be required to pay rent in full for such extended period.
- 24.6 If the Customer returns the Equipment to KINLY prior to the expiry of the agreed rental period, the initially agreed rent will remain payable by the Customer to KINLY for the entire agreed period under the Agreement.
- 24.7 The Customer undertakes to pay the agreed rent and the fees and costs resulting from the Agreement executed with KINLY.
- 24.8 Upon KINLY's request, the Customer must pay a non-interest bearing refundable security deposit as determined by KINLY under the rental agreement. If damage to the rented Equipment occurs, KINLY may deduct the repair costs and any late return charges from the refundable security deposit.
- 24.9 The Customer undertakes to return the Equipment, in good condition and with all accessories, to KINLY right after the end of the rental period, i.e. by 10 a.m. on the day after the rental period ends, to an address specified by KINLY, failing which the Customer will be in default with no need for a further reason or notice of default.
- 24.10 If KINLY agrees to deliver and collect the Equipment to the address specified in the quote, and the Equipment cannot be delivered on the date agreed or is unavailable for collection at the date of collection, Customer will be liable for additional rental, delivery and collection charges.
- 24.11 If the Customer does not return all the rented Equipment to KINLY undamaged, for whatever reason, KINLY may charge all necessary repair costs to the Customer or the same shall be deducted from the refundable security deposit. If the repair costs exceed the aggregate amount of refundable security deposit, then the Customer shall be liable to pay such additional costs to KINLY within 2 (two) working



days of receiving an intimation regarding the same from KINLY. KINLY has no other burden of proof than to submit a specified invoice for the defects it has identified and the resultant repair costs.

- 24.12 Unless agreed otherwise, the Customer strictly shall not provide, sell or sublet the Equipment to third parties. If the Customer sublets the Equipment with KINLY's written consent, the Customer still remains fully responsible and liable for such Equipment.

#### **ARTICLE 25 RISK AND OBLIGATION TO INSURE**

- 25.1 The Customer must prudently use and maintain the rented Equipment provided by KINLY in sound condition in accordance with its nature and purpose.
- 25.2 Throughout the rental period, the Customer bears the full risk for the rented Equipment, no matter what event, act or omission causes any damage, thus including force majeure. The Customer must compensate KINLY towards all damages to the rented Equipment based on its replacement value.
- 25.3 The Customer must insure and keep the rented Equipment insured during the rental period through a reputable company at new-for-old value. At the request of KINLY, the Customer must provide copies of insurance policies undertaken by the Customer for the rented Equipment.

#### **ARTICLE 26 REPAIRS**

- 26.1 During the rental period, any necessary changes or repairs to the rented Equipment will be performed by or on behalf of KINLY. The Customer may have any changes or repairs performed by expert personnel only with KINLY's prior written consent and using only original parts.
- 26.2 All repair costs resulting from normal wear and tear of the rented Equipment are payable by KINLY. All repair and other costs resulting from overloading, incompetent use, and so on are payable in full by the Customer. The Customer must immediately report any defects in the rented Equipment to KINLY in writing.
- 26.3 During the rental period, KINLY will always be entitled to inspect and check the condition and manner of use of the rented Equipment. The Customer must grant access to the rented Equipment immediately on KINLY's request.
- 26.4 Unless KINLY gives its express written consent, the Customer shall not (i) take or allow a third party to take, the rented Equipment outside the Customer's premises so approved by KINLY, (ii) give it to a third party to use, or (iii) transfer all or part of any right under the Agreement to any third party.

#### **ARTICLE 27 OTHER OBLIGATIONS OF THE CUSTOMER**

- 27.1 The protective or packaging material supplied along with the rented Equipment under any rental agreement remains KINLY's property. If any protective or packaging material is missing when the Customer returns the rented Equipment, KINLY will charge the Customer for each item's missing packaging.
- 27.2 If the Customer fails to fulfil its obligations under a rental agreement, then KINLY is entitled to terminate the rental agreement with immediate effect and without any judicial intervention. Without prejudice to KINLY's right to claim a full compensation under the rental agreement, if the Customer fails to fulfil its obligations under the rental agreement, then the Customer shall forthwith pay KINLY the compensation equal to the sum of the rent instalments stipulated in the relevant agreement, less the amount already paid, plus fees and costs. KINLY may then repossess the Equipment immediately.
- 27.3 The Customer must allow anyone who is entitled to exercise any right to or regarding the Equipment under the Indian laws for the time being in force, including but not limited to the bailiff levying attachment for outstanding taxes or such other persons who are authorized under the Indian law to examine the rental agreement and the ownership rights of KINLY under such rental agreement. On occurrence of such event, the Customer shall forthwith notify KINLY of this, as and by way of a registered letter together with all relevant documents. If the Customer fails allow such persons to examine the rental agreement or fails to notify KINLY in this regard, then KINLY shall be entitled to forfeit a penalty equal to the purchase price of the rented Equipment.
- 27.4 If there is a delay in the return of the Equipment by the Customer, KINLY may charge the Customer an amount equivalent to the agreed rental price per day, plus a 25% surcharge, for each day or part of a day that the Equipment is delivered late, notwithstanding KINLY's further rights to compensation for the full damage it has suffered.
- 27.5 The Customer is liable to indemnify KINLY for all damages suffered by KINLY which arises out of loss or damage to the Equipment while the Customer has or should have had the Equipment in its possession. Further, in the event of theft at the Customer's location, the Customer shall be liable to indemnify KINLY

- for the loss caused to KINLY's Equipment due to such theft and KINLY shall not be liable towards any expenses arising thereto.
- 27.8 KINLY shall not be liable for any damage or loss resulting from fire, shocks, injuries or any other cause attributable to the improper functioning or deterioration of the Equipment, any part of it, or any wiring to or from the Equipment.
- 27.9 KINLY shall not be liable for damage to tapes, diskettes and other data carriers, regardless of the cause of the damage, or for any damage resulting from the total or partial deletion, deterioration or garbling of images and files recorded or to be recorded, even if that deletion, deterioration or garbling is due to malfunctioning of the Equipment with fittings or an error by KINLY's personnel.
- 27.10 In order to prevent damage which may be caused by losing recordings and files, KINLY recommends to its Customers that they should always make a working copy and should not use the original (the master tape) for purposes such as screening displays, etc.

## **7 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.
- 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 Services.
- 28.5 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.

## Data Protection Addendum

### Access Controls and Data Protection

To the extent of holding of the Personally Identifiable Information (PII) or Sensitive Personal Data or Information (SPI) by the parties and as applicable to them:

- (i) The parties undertake to adhere to the set of controls in terms of access control, performance review, monitoring, reporting, etc., from time to time, which each of the party shall require the other party to adhere to in the course of performance of its obligations under the Agreement.
- (ii) Both parties warrant that it is and will continue to be in compliance with the Information Technology Act, 2000 including without limitation the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011, and other applicable data protection laws which come into effect from time to time (the “**Data Protection Legislation**”).
- (iii) Where any party or its representatives process personal data (as defined in the Data Protection Legislation), or customer data (collectively, “**Personal Data**”) then such party shall, and shall procure that its representatives shall:
  - (a) process Personal Data in a manner consistent with its duties under such Data Protection Legislation;
  - (b) adopt and maintain appropriate security measures for processing Personal Data, both in terms of how the technology is used and how it is managed;
  - (c) comply with any applicable laws, rules, guidance and codes of practice issued by any local regulatory authority responsible for administering Data Protection Legislation; and
  - (d) promptly but in any event within 10 (ten) days of receipt of the request, assist the other party with any subject access requests which may be received from individuals to whom the Personal Data relates.
- (iv) In the event of a breach or a suspected or potential breach of the terms of this Addendum, the party who commits the breach shall, at its own cost, forthwith notify the other party regarding such breach and shall co-operate with the other party and make reasonable efforts to cure or prevent the breach, as the case may be.