

K-CLOUD

Terms & Conditions [Online, EU]

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PREAMBLE

- a. These Terms and Conditions as well as the Services provided by Kaleyra are intended for professional, companies and, in general, for legal persons only, **therefore excluding individuals qualifiable as consumers** *i.e.* any natural person acting outside the scope of an economic activity and for purposes different from trade, business, craft or profession.
- b. These Terms and Conditions are divided into several sections:
 1. Section A, containing the general rules relating to the execution of the Framework Agreement (FA), applicable to all online subscribed Kaleyra Services;
 2. Section B and following sections (*e.g.* C, D etc...), each containing special conditions relating to the execution of a specific Service Agreement (SA), applicable to a single online subscribed Kaleyra service such as SMS Service or WAB Service.
- c. By signing up to Kaleyra services and affirming to agree to these Terms and Conditions through the sign-up process and the related Client account creation, Client is entering into a Contract with Kaleyra S.p.A. with a single shareholder, a company duly incorporated under the laws of Italy, with registered office in Italy, Milan, via Marco D'Aviano n. 2, registration number and fiscal code IT 12716960153, duly represented by its *pro-tempore* authorized legal representative.
- d. The account creator represents to Kaleyra that he or she is a duly-authorized representative and signatory of the corporate entity named in the account and that the information provided is complete and accurate. The corporate entity named in the account accepts the Terms and Conditions hereby and its Annexes. The Contract shall be effective on the date at which time the account is created and verified.
- e. By using Kaleyra website or any of Kaleyra services, Client agrees to the Terms and Conditions hereby and its Annexes and that these Terms may change from time to time pursuant to clause 23.5. Client should therefore review them on a regular basis as the same will be published online with the date of the last change noted at the bottom.
- f. By creating an account and electronically accepting the Terms and Conditions or using the Services, Client agrees to and is legally bound by the Contract. If Client does not accept all of the terms contained in the Contract, it may not use the Services.

A. FRAMEWORK AGREEMENT

1 Scope

- 1.1 The Framework Agreement applies to all on-line subscribed Services – whether subject to Charges or not – that Kaleyra renders for the Client, such as, without limitation, messaging, voice and other telecommunication services.
- 1.2 The Service enables a Client to use Kaleyra Services as set out as part of Client online registration. Any such billable unit under the Services shall be referred in the Contract as a Chargeable Event.

2 Definitions

- 2.1 If nothing else is mentioned, the capitalized terms defined below shall always be used in this Contract with the meaning given herein below:

- | | |
|-------------------------|---|
| 2.1.1 Act of corruption | any act consisting of soliciting, authorising, offering, promising or granting a financial or other kind of advantage (including any payment, loan, gift or transfer of an item of value) with the aim of inciting a private individual or public agent to carry out his/her duties in a dishonest way or in a way that violates his/her professional, legal or contractual obligations and/or obtaining or conserving a contract for a counterparty in an improper or dishonest way. |
| 2.1.2 Charges | means all fees that Kaleyra invoices to the Client in consideration for the Services. Charges may be invoiced as one-time fees or recurring fees, respectively as flat fees or (usage-based) variable fees. |
| 2.1.3 Chargeable Event | any such billable unit or event under the Services. |
| 2.1.4 Client | means the legal person client of Kaleyra entering into the Contract, as identified on the on-line registration form upon signing up and creating an account, <u>excluding individuals qualifiable as consumers</u> <i>i.e.</i> any natural person acting outside the scope of an economic activity |

- and for purposes different from trade, business, craft or profession.
- 2.1.5 Contents means the contents sent by the Client through Kaleyra platforms and Services such as, without limitation, the contents of a SMS or of a WhatsApp message.
- 2.1.6 Contract means this Framework Agreement and its preamble together with the Service Agreement(s). The Contract may also comprise further contractual documents such as, without limitation, the SD and the DPA and may be referred to as Terms and Conditions as well.
- 2.1.7 Customers means the customers of the Client who subscribed a personal mobile Subscriber Identity Module cards, and/or registered their personal mobile Subscriber Identity Module cards to the WhatsApp messaging service and use the dedicated iOS or Android based application.
- 2.1.8 Data Processing Agreement (DPA) means an agreement between the Parties setting out specific rules and measures to ensure the protection of personal data processed during the provision of the Services.
- 2.1.9 Facebook means, together, WhatsApp Inc. and Facebook Ireland Ltd.
- 2.1.10 Framework Agreement (FA) means the contractual document containing the general terms and conditions applicable to all online subscribed Kaleyra Services.
- 2.1.11 Kaleyra means Kaleyra S.p.A. with a single shareholder, via Marco D'Aviano n. 2, Milan, Italy, registration number and fiscal code IT 12716960153.
- 2.1.12 K-Cloud means Kaleyra cloud platform together with the WAB Plug-in.
- 2.1.13 Location(s) means the place(s) where Kaleyra renders a Service or agrees to render a Service.

- 2.1.14 Party, Parties means in the singular the Client or Kaleyra and in the plural the Client and Kaleyra.
- 2.1.15 Plug-in means Kaleyra's proprietary software that integrates WAB with Kaleyra's proprietary K-Cloud platform directly or indirectly connected to the international mobile network - to send WhatsApp messages to Customers.
- 2.1.16 Pull mode means the WhatsApp messaging mode in which the Customer starts the messaging chat with the Client.
- 2.1.17 Push mode means the WhatsApp messaging mode in which the Client starts the messaging chat with the Customer or the Client answers the Customer 24 (twentyfour) hours after the reception of a WhatsApp message from the Customer.
- 2.1.18 Services means any service(s) and/or part thereof provided by Kaleyra to the Client under the Contract. The details of each Service are set forth in the applicable Service Agreement (SA).
- 2.1.19 Service Agreement (SA) means a contractual document specifying additional terms and conditions applicable to a certain type of Service.
- 2.1.20 Service Description (SD) means the specification of K-Cloud standardized Services.
- 2.1.21 SMS means a message of 160 (one hundred and sixty) characters sent through the Short Message System.
- 2.1.22 SMS MO means SMS Mobile Originated.
- 2.1.23 SMS MT means SMS Mobile Terminated.
- 2.1.24 SMS Service means the SMS bulk messaging service that Kaleyra renders for the Client through its proprietary K-Cloud platform.
- 2.1.25 WA Service means the WhatsApp Business messaging service that Kaleyra renders for the Client through its proprietary K-Cloud platform integrated with the WAB and provided by

Kaleyra to the Client using a WABA under this Service Agreement.

- 2.1.26 WAB means the WhatsApp Business Solution provided by Facebook and integrated with Kaleyra's proprietary K-Cloud platform the Client uses to send WhatsApp messages to Customers.
- 2.1.27 WABA means the Facebook WhatsApp Business Account of the Client needed to use WAB and to send WhatsApp messages to Customers.
- 2.1.28 WhatsApp Message template means a WhatsApp message model previously designed and approved by Facebook within 4 (four) business days and to be mandatorily used for Push mode messaging.

3 Contract structure

- 3.1 The Contract consists of
 - 3.1.1 the Framework Agreement containing the basic rules defining the mutual rights and obligations of the Parties;
 - 3.1.2 Service Agreement(s) (SA) containing each a set of additional rules that specifically govern a certain type of Service, *e.g.* telecommunication services, which shall be executed from time to time by the Parties in view of Client's intention to order a certain type of Service;
 - 3.1.3 other possible documents referred to in the Contract, such as Service Descriptions (SD), Data Processing Agreement (DPA), User Guidelines for Kaleyra Internet Services, Conditions for the Use of a Business Account (BA), etc.
- 3.2 In case of contradictions, the contractual documents shall apply in the following order of precedence:
 - 3.2.1 Framework Agreement;
 - 3.2.2 applicable Service Agreement (SA);
 - 3.2.3 Data Protection Agreement (DPA);
 - 3.2.4 other documents included in the Contract.
- 3.3 General terms and conditions of the Client shall never apply.

4 Services rendered by Kaleyra

- 4.1 Kaleyra shall render the Services with due care and diligence.
- 4.2 Kaleyra shall carry its obligations with own personnel. Nevertheless, Kaleyra is allowed to subcontract the performance of its obligations with the prior written consent of the Client, which should not be unreasonably withheld. It is agreed that, even in the case of appointment of a subcontractor approved by the Client, the responsibility for the duly performance of all obligations hereunder shall remain exclusively with Kaleyra. Kaleyra shall impose upon any direct or indirect subcontractor obligations that correspond to those contained in the Contract (including obligations of confidentiality). Kaleyra shall be responsible to the Client for the activities performed by any subcontractor as if said activities had been performed by Kaleyra. Kaleyra shall remain the Client's sole and exclusive counterpart for all aspects under the Contract.
- 4.3 Kaleyra warrants, for itself and for potential subcontractors entrusted with the execution of obligations under the Contract in accordance with Section 4.2, to comply with all laws, ordinances, rules and regulations applicable to it in connection with the Contract, including, without limitation: those covering the delivery of the Service specified in the Contract. Kaleyra has and shall maintain in effect all the licenses, permissions, authorizations, consents, and permits required to perform its obligations under the Contract.
- 4.4 Kaleyra warrants to maintain at all times during the term of the Contract adequate technical infrastructure to perform its obligations under the Contract.

5 Charges, payment terms and test account

- 5.1 Charges and payment terms
 - 5.1.1 The Charges are quoted in Euro (EUR), including, where applicable, value added tax.
 - 5.1.2 The Client agrees to pay all Charges due to Kaleyra in respect of making the Service available to the Client and giving access to and use of the Service by the pre-payment method and in accordance with the terms as set hereof.
 - 5.1.3 Client agrees to pre-purchase credits for each month of the Contract or such other period as is agreed between the Parties, in which case Kaleyra will allocate the Client a corresponding credit. Each Chargeable Event that Client conducts using the Service will therefore reduce the value of the credits available to the Client by the amount corresponding to the tariffs applicable at the moment in which the Chargeable Event is generated and referred to on K-Cloud. Furthermore Client acknowledges and accepts, pursuant to clause 23.5, that prices may be updated by Kaleyra from time to time according to the provisions set forth in the Service Agreements. For

the avoidance of doubt, a Charge will be incurred for every Chargeable Event conducted by the Client regardless of whether it is successfully delivered.

- 5.1.4 Client is solely responsible, by seeking adequate Chargeable Event credit allocation(s) and checking Client's remaining available Chargeable Event credit level on Kaleyra's website, for ensuring that Client has enough Chargeable Event credits to meet Client's requirements from time to time and Kaleyra shall not be in any way responsible or liable in the event that Client has insufficient Chargeable Event credits to meet Client's requirements, and/or has exceeded Client's Chargeable Event credit allocation(s), for any period.
- 5.1.5 All charges and bank fees incurred through payment shall be borne by the Client who furthermore guarantees to Kaleyra to legitimately use the payments means necessary to pay and top-up its credit. Client is responsible for the payment of all bank and finance charges and must ensure that the amount received on Kaleyra bank account, after deductions, corresponds to the full amount owed to Kaleyra.
- 5.1.6 Notwithstanding anything to the contrary and for the avoidance of doubt, Kaleyra may in a separate invoice make backdated claims for amounts outstanding which were not previously invoiced for technical or other reasons. Such charges shall be detailed in an accounting summary report.
- 5.1.7 Kaleyra shall be entitled to suspend or deactivate those invoiced Services – including the related invoiced default interests possibly incurred by the Client - remained unpaid by written notice. Charges which are not based on actual usage are payable even in the event of suspended or deactivated Services.
- 5.1.8 Without prejudice to the provisions of clause 23.5, Client will not be able to receive any refund for the payment made.

5.2 Test account

Kaleyra may make an account available to the Client for the purposes of testing of certain Services. The terms of the Contract, including the DPA, shall govern Client's use and access to such test account and test Services. Client shall ensure that the test account and test Services are used only for the purpose of testing, and not for any productive, commercial or other purpose (such restriction prevailing over any other provision to the contrary in the Contract). Client shall comply with any relevant instructions or protocols notified by Kaleyra in relation to the test account and test Services. The Charges for such test account and test Services shall be as determined by Kaleyra from time to time. Client agrees that Kaleyra can withdraw such test account and test Services at any time (with or without notice to Client).

6 Client's cooperation obligations

- 6.1 The Client shall free of charge:
 - 6.1.1 provide to Kaleyra in a timely manner all information, documents, data, etc. necessary for the provision of the Services;
 - 6.1.2 obtain all necessary approvals, authorizations and third party consents needed for Kaleyra to deliver the Services;
 - 6.1.3 implement safeguards in accordance with best industry practices to ensure that no viruses or other malicious code are transmitted from the Client's infrastructure to Kaleyra's environment.
- 6.2 Additional cooperation obligations of the Client may be set forth in specific Service Agreements.
- 6.3 The Client shall be solely liable for the safekeeping and backing up of its data (including installed software), unless otherwise set forth in the Contract.
- 6.4 In the event that the Client does not fully or timely fulfill its cooperation obligations, after having failed to remedy to such failure in spite of Kaleyra having given a 10 (ten) business days written notice, specifying the details of such non-cooperation Kaleyra may adjust the deadlines (without defaulting or breaching the Contract) and charge the Client for any additional costs incurred.

7 Deadlines

- 7.1 The deadlines mentioned in the Contract are based on thorough planning and are binding unless explicitly identified as non-binding deadlines.
- 7.2 If a binding deadline is missed due to Client's failure to comply with its cooperation obligations or due to other reasons which are not within the control of Kaleyra, the deadline will be extended accordingly.
- 7.3 If a binding deadline is not respected for reasons attributable to Kaleyra, the Client shall set an appropriate grace period for Kaleyra in writing. If Kaleyra does not fulfill its contractual obligations within the grace period, then Kaleyra shall be in default. After expiry of an additional reasonable grace period notified in writing, the Client is entitled to reject the delayed Service (but not the other Services under the Contract) in writing. To the extent permitted by law, all other claims of Client in the event of default are excluded.

8 Warranty of title

- 8.1 If a Service or a part thereof is or, in the reasonable opinion of Kaleyra, may become the subject of a complaint by a third party based on an alleged infringement of intellectual property rights,

Kaleyra may, at its option, (i) provide the Client the right to use the Service free of all liability for breach of intellectual property rights, or (ii) replace the Service with one that complies with the essential contractual properties of the existing Service, or (iii) modify the Service so that it no longer breaches any intellectual property rights; or, if none of the above possibilities can be achieved at reasonable costs (iv) terminate the Service subject, when possible, to a 30 (thirty) days prior written notice. Kaleyra will anyway provide its best effort to minimize Service interruption.

8.2 In the event that a third party disputes the Client's rights of use of the contractual Services, Kaleyra will conduct the defence at its own costs and cover all costs and damages incurred by the Client as a result of any legal rulings, on the cumulative conditions that

8.2.1 the Client informs Kaleyra in writing as soon as any claims are raised, and

8.2.2 authorises Kaleyra to conduct the defence, including an amicable settlement, and

8.2.3 supports Kaleyra to an appropriate and reasonable extent free of charge, and

8.2.4 the claim of the third party is based on the fact that the intended use of the unaltered Service infringes rights at a Location specified in a Service Agreement and

8.2.5 such claim is not arising from (i) unauthorized modification of the Service by Client or any third party acting on its behalf, or (ii) a combination of the Service with a service not supplied by Kaleyra provided that the infringement will not occur but for the combination, or (iii) use of the Service in breach of the terms and conditions of the Contract, or (iv) compliance of the Service with mandatory requirements of the Client that cannot be heeded but by way of infringing third party rights.

9 Intellectual property rights

9.1 General

9.1.1 Unless otherwise agreed, the intellectual property rights to all Services arising from or deployed during the fulfilment of the Contract (such as copyright, patents, design or trademark rights), particularly the rights to individual software created or used by Kaleyra, including source codes, program descriptions and parameterisations, and all related documentation, papers or data media, shall be and remain the exclusive property of Kaleyra or its licensors, and the Client shall be granted a non-exclusive right to use such Services for the term of the Contract to the extent necessary for the intended use of the Services. The Client must not transfer the rights of use to third parties.

9.1.2 Pre-existing intellectual property rights or intellectual property rights independently developed from the Contract remain the property of Kaleyra or its licensors. If Kaleyra uses such pre-existing or independently developed intellectual property rights for the provision of the Services, it hereby grants the Client the rights of use necessary for the intended use of the Services. In the case of intellectual property rights belonging to third parties, in particular regarding software licenses from third-party suppliers or manufacturers, the Client herewith accepts licence terms and use restrictions imposed by such third parties; Kaleyra shall provide the Client with these licence terms and use restrictions.

9.2 Software

9.2.1 In case of licensed software, the Client shall obtain the licensed programmes in machine-readable object code only. The Client shall not be allowed to decompile, reconstruct the source code, modify or further develop the software, unless explicitly authorised by applicable mandatory law to do so.

9.2.2 The right of use shall be limited to the processing of the Client's own business data and restricted to the number of users agreed as well to all other price-determining parameters. Kaleyra shall have the right to perform audits at the Client's premises in order to verify the compliance of the latter with license provisions of the Contract. For this purpose Kaleyra shall notify the request for an audit to the Client with at least 5 (five) working days written notice. If an audit reveals any material inaccuracy, any material breach of provisions of the Contract, then the Client shall reimburse Kaleyra for the reasonable costs incurred by Kaleyra for the relevant audit, without prejudice to potential additional claims provided for in applicable law.

9.2.3 The Client shall be allowed to make a backup copy of the licensed software and the documentation obtained. The Client shall undertake not to produce any further copies, and to duly protect the software and documentation against unauthorised inspection or copying by third parties as well as against loss. The Client shall immediately notify Kaleyra in writing in the event of unauthorised use by third parties or loss.

10 Liability

10.1 The overall liability of Kaleyra per contract year shall always be limited to an amount corresponding to the larger of the following amounts, i.e. (i) 20% (twenty percent) of the paid Charges (excluding software deliveries) for the relevant Service during the respective contract year in which the damage-causing event took place, respectively started, and (ii) the amount of EUR 20.000 (twenty thousand) per contract year.

- 10.2 To the fullest extent permitted by law, the liability of Kaleyra for indirect damage and financial loss, consequential damages, loss of data, lost profits, loss of earnings, savings not realized, additional expenses, third party claims, etc. shall be excluded.
- 10.3 The above limitation of liability shall not apply in cases where mandatory law provides for unlimited liability without possibility of a waiver, such as for damages caused by unlawful intent or gross negligence, or for death or personal injury.
- 10.4 Neither Party shall be liable for
 - 10.4.1 damage caused by force majeure, such as defined further; or
 - 10.4.2 failures of the internet, telecommunications networks or other data transmission infrastructure operated by third parties (by way of example but not limited to telecommunication operators, instant messaging platforms) and outside of Kaleyra's control; or
 - 10.4.3 errors in data transmission outside Kaleyra's sphere of influence; or
 - 10.4.4 the contents of third party generated data transmitted through the Service.

11 Force majeure

- 11.1 Non-performance of either Party's obligations pursuant to the Contract or delay in performing the same shall not constitute a breach of the Contract if, and for as long as, it is due to a force majeure event, including, but not being limited to, power failure or malware (e.g. viruses, denial-of-service attacks and similar), governmental action, or requirement of regulatory authority, lockouts, strikes, shortage of transportation, war, rebellion or other military action, fire, flood, natural catastrophes, earthquakes or any other unforeseeable obstacles that a Party is not able to overcome with reasonable efforts, or non-performance of obligations by a sub-contractor to a Party pursuant to any of the aforementioned reasons. The Party prevented from fulfilling its obligations shall, on becoming aware of such event, inform the other Party in writing of such force majeure event as soon as possible.
- 11.2 If the affected Party fails to inform the other Party of the occurrence of a force majeure event as set forth above, then such Party thereafter shall not be entitled to refer such events to force majeure as a reason for non-fulfilment. This obligation does not apply if the force majeure event is known by both Parties or the affected Party is unable to inform the other Party due to the force majeure event.
- 11.3 The Party affected by force majeure shall promptly notify the other of the estimated extent and duration of its inability to perform its obligations and shall use reasonable endeavours to both mitigate such inability to perform its obligations and to resume performance of its obligations as

soon as reasonably possible without hereby being obliged to incur any unreasonable cost or expenditure.

- 11.4 If the extent of the duration of the force majeure event lasts for a period higher than one month, the Party not affected by the force majeure event may withdraw from the Contract, by giving written notice to the other Party.
- 11.5 Upon the cessation of the delay or failure resulting from force majeure, the Party affected by force majeure shall promptly notify the other of such cessation.

12 Indemnification

- 12.1 The Client shall defend, hold harmless, and indemnify Kaleyra and its affiliates and its or their directors, officers, shareholders, employees and customers (collectively, Indemnitees) from and against any and all loss, injury, death, damage, liability, claim, deficiency, action, judgment, interest, award, penalty, fine, cost, or expense (including reasonable attorney fees, court costs and other litigation expenses) (collectively Losses) relating to (a) any loss or damages sustained by an Indemnatee or (b) any claim, demand, action, suit or proceeding against an Indemnatee by a third party (including employees of either Party or government agencies), arising out of or occurring in connection with the Services, with respect to
 - 12.1.1 any act or omission of the Client in connection with its obligations under the Contract or where it otherwise fails to comply with any legal, regulatory or governmental or network operator requirements relating to its use of any Services;
 - 12.1.2 any breach of warranties (express or implied) or other breach of Contract by Client or a third party for which the Client assumes responsibility according to the terms of the Contract.
- 12.2 The Client shall not enter into any settlement without Kaleyra's prior written consent.
- 12.3 Kaleyra shall defend, hold harmless, and indemnify the Client and its affiliates and its or their directors, officers, shareholders, employees and customers (collectively, Indemnitees) from and against any and all loss, injury, death, damage, liability, claim, deficiency, action, judgment, interest, award, penalty, fine, cost, or expense (including reasonable attorney fees, court costs and other litigation expenses) (collectively Losses) relating to (a) any loss or damages sustained by an Indemnatee or (b) any claim, demand, action, suit or proceeding against an Indemnatee by a third party (including employees of either Party or government agencies), arising out of or occurring in connection with the Services, with respect to

12.3.1 any act or omission of Kaleyra in connection with its obligations under the Contract or where it otherwise fails to comply with any legal, regulatory or governmental or network operator requirements relating to its use of any Services;

12.3.2 any breach of warranties (express or implied) or other breach of Contract by Kaleyra or a third party for which Kaleyra assumes responsibility according to the terms of the Contract.

12.4. Kaleyra shall not enter into any settlement without Client's prior written consent.

13 Confidentiality

13.1 For the duration of the Agreement and for a period of 2 (two) years thereafter, the Parties shall treat as confidential, in accordance with the customary precautionary measures, all information received from the other Party and all information marked as confidential and, in particular, shall not use such confidential information for purposes other than foreseen in the Contract or make such information accessible to unauthorized third parties.

13.2 The duty of secrecy does not apply to information that is in the public domain or comes into the public domain without any breach of a duty of secrecy or that is known to the recipient of the information without there being any duty of secrecy, that the recipient of the information obtains independently, without access to the information, or from third parties, without infringing upon any duty of secrecy, or that is made accessible to another third party by the provider of the information without there being any duty of secrecy.

13.3 In the case of inquiries by third parties, courts of law or administrative authorities with regard to the disclosure of information, the recipient of the information shall, to the extent permitted by law, immediately notify the provider of the information and support the latter in its efforts to prevent the disclosure of the information.

13.4 Kaleyra reserves the right to disclose confidential information to third parties engaged in the provision of the Services as well as to its affiliated companies on a need-to-know basis, provided that they have also undertaken to observe a duty of secrecy according to this Framework Agreement.

14 Data protection

14.1 General

14.1.1 The Parties shall comply with the European General Data Protection Regulation (Reg. 679/2016/UE), with the Italian Privacy Law (D.Lgs. 196/2003 as integrated and amended by D.Lgs.

101/2018) – in particular with art. 123 of Italian Privacy Law referred to communication traffic data - and with any other data protection regulation applicable at the Locations.

- 14.1.2 Furthermore Client acknowledges that Kaleyra shall act as an independent Data Controller with respect to the processing of personal data which is necessary for the operation of the Services which shall include any information processed for the purpose of the conveyance of a communication on an electronic communications network or for the billing thereof.
- 14.1.3 The Client shall be solely responsible for the security and protection of its own and third-party data (including its staff's and customer identifying data) processed on its own systems.
- 14.1.4 Kaleyra shall be entitled to disclose personal data to third parties engaged in the provision of the Services on a need-to-know basis and in accordance with the provisions of this clause 14.
- 14.1.5 Either Party shall undertake appropriate administrative, technical, physical, and organizational measures and take all necessary precautions to protect against unauthorized, accidental, or unlawful processing, loss, theft, interception, destruction of, or damage to, or similar risks to personal data. Either Party shall implement and maintain an appropriate information security program, including adequate processes and procedures to (i) ensure the security and confidentiality of personal data, (ii) protect against any threats or hazards to the security or integrity of personal data, and (iii) prevent unauthorized access to or use of personal data.
- 14.1.6 The Client assures that it has provided all necessary notifications and obtained all necessary informed consents or approvals as required under any applicable law relating to data protection in order to enable disclosure and processing of personal data, including Customer's data where applicable, by or on behalf of Kaleyra in connection with the provision of Services under the Contract. Client shall provide a reasonable and readily accessible method for third parties to revoke this consent and, at Kaleyra's request, shall provide Kaleyra with verifiable evidence to establish informed consent from such third parties.
- 14.1.7 Kaleyra holds the right to use the statistical information, data and related analysis in aggregate form deriving from the usage of K-Cloud platform by the Client. These data in aggregate form do not include any more personal data and the Client expressly authorizes Kaleyra to use them in order to improve the functionality of the K-Cloud platform or for the purpose of statistical information.

14.2 Processing of Client and Kaleyra data

- 14.2.1 Kaleyra uses Client data, including Customer's data where applicable, for the conclusion and the execution of the Contract, for the delivery of the Services, the care of the Client relationship, the

stability and optimization of the business as well as for the development, formation and tailored submission of service offers to the Client.

14.2.2 The Client may use Kaleyra data for the conclusion and the execution of the Contract and for the receipt of the Services.

14.2.3 Specific rules and measures to ensure the protection of personal data processed by each Party on behalf of the other Party during the provision of the Services are detailed in the DPA annexed.

15 Term and termination of the Contract

15.1 Effective date of the Contract

15.1.1 The Contract takes effect as of Client's electronic acceptance of the Terms and Conditions and will continue until terminated in accordance with the terms of the Contract.

15.1.2 In any case, the contract will commence once the Client starts using the Service.

15.2 Ordinary termination

15.2.1 This Contract is concluded for a term of one year and is renewable unless terminated in accordance with the terms of the Contract, each Service shall automatically renew for a same period upon expiry of its initial term or then-current renewal Term.

15.2.2 The termination of the Framework Agreement also leads to the termination of all relating Service Agreements.

15.2.3 The termination of a Service Agreement does not affect the Framework Agreement nor any other Service Agreement.

15.2.4 Without prejudice to the provisions of law and to those set forth in clause 23.5, either Party may terminate a Service Agreement or the Framework Agreement (and consequently all the relating Service Agreements as provided in clause 15.2.2), for convenience (i) by giving 3 (three) months' notice to the end of a calendar month and (ii) by paying to the other Party the foreseen, if any, early termination fee(s).

15.3 Termination for cause

15.3.1 Either Party may terminate this Contract immediately by written notice to the other Party if

- a. the other Party commits a material, persistent or repeated breach of any of its obligations under this Contract and (in the case of a breach capable of being remedied) does not remedy

such breach within a reasonable term not exceeding 10 (ten) business days of receiving from the other Party written notice of the breach and a request to remedy the breach;

- b. (i) the other Party becomes or is deemed insolvent; (ii) any distress or execution is levied on any of the other's property or assets; (iii) the other makes or offers to make any arrangement or composition with creditors; (iv) any resolution or petition to wind up the other's business (other than for the purpose of amalgamation or reconstruction) is passed or presented or if a receiver or administrative receiver of the other's undertaking, property or assets is appointed or a petition presented for the appointment of an administrator; (v) the other is subject to any proceedings which are equivalent or substantially similar to any of the proceedings under sub-clause (i), (ii), (iii) or (iv) under any applicable jurisdiction.
- c. if the law and/or official orders prevent either of the Parties from performing the Contract.

15.3.2 Should Kaleyra be authorised to terminate the Contract for cause as defined in Section 15.3.1. here above, Kaleyra may suspend or deactivate all or part of the Services instead of terminating the Contract or parts thereof. If Services are deactivated or suspended, the Client shall be fully liable for all damage resulting thereof and remain liable for the Charges for the remaining contract term.

15.3.3 Should Kaleyra be authorised to terminate the Contract during its term or during its extended term for cause as defined in Section 15.3.1. the recurring Charges for the remaining (extended) fixed term, any other Charges that have been agreed up to the end of the (extended) term as well as any cost, fee and/or penalties due by Kaleyra to sub-contracted third party due to the consequential termination of its contract with the third party shall be due immediately by Client; they are not eligible for reimbursement.

15.3.4 If the Client terminates the Contract during its term or during its extended term for cause as defined in Section 15.3.1. here above, the recurring Charges for the remaining (extended) term, any other Charges that have been agreed up to the end of the (extended) term as well as any cost, fee and/or penalties due by Kaleyra to sub-contracted third party due to the consequential termination of its contract with the third party shall not be due by Client.

16 Notices.

16.1 When to the Client

Kaleyra may provide all written notices hereunder to any email address provided by the Client during the sign-up process and the related Client account creation where the Client elects domicile, effective upon transmission. If an e-mail address under Client's account is not valid, Kaleyra may also give notice to the Client at the postal address listed in Client's account, which

shall be deemed effective on the date of dispatch. If Kaleyra for any reason is not capable of delivering to the Client any notices required/permitted by the Contract, Kaleyra's dispatch of the e-mail or postal message containing such notice will constitute effective notice.

16.2 When to Kaleyra

Client may give notice to Kaleyra at the addresses set forth below where Kaleyra elects domicile; such postal notice will be deemed effective only when received by Kaleyra by certified electronic mail, letter delivered by nationally recognized overnight delivery service, charges prepaid, or recorded prepaid mail, charges prepaid, at the addresses below. Notices to Kaleyra will be deemed delivered on the date shown on the postal return receipt or on the overnight courier return receipt or on the certified electronic mail confirmation of delivery.

Any issue or notice related to the Contract shall, if addressed to Kaleyra, be sent to:

Kaleyra S.p.A. with a single shareholder

Via Marco D'Aviano, 2, 20131 Milan, Italy or

Certified Electronic Mail (PEC): kaleyra@legalmail.it with a copy to legal.europe@kaleyra.com

17 Assignment

Kaleyra may assign this Contract or any rights hereunder to any of its affiliates or subsidiary. Client, in collecting consent to the processing of personal data, undertakes to adequately communicate this eventuality to its Customers. Client may only assign this Contract or any rights hereunder to third parties if Kaleyra has given its prior written consent.

18 Reference

Client hereby grants Kaleyra a limited, non-exclusive, non-transferable, royalty-free, non-revocable, perpetual, non-sublicenseable license to display Client's trade names, trademarks, service marks, logos, domain names for marketing and promotion purposes, including (i) disclosing to third parties that the Client is Kaleyra's client; (ii) disclosing to third parties the scope of Services provided to the Client by Kaleyra; and/or (iii) listing the Client as a client of Kaleyra on Kaleyra's promotion material including Kaleyra homepage.

19 Severability

If individual provisions of this Contract are deemed void or invalid, such invalidity or unenforceability of any provision shall not affect the validity and enforceability of other provisions of the Contract. The Parties shall endeavor to amend the provision so affected so as to make it

valid and enforceable whilst reflecting as closely as possible the purpose and intent of said provision in a legally valid form.

20 Non-solicitation

The Client shall refrain from any kind of attracting persons employed by Kaleyra for carrying out the Contract. The Client shall not accept any services by such persons, except via Kaleyra. Such obligations shall apply during employment of such persons for the Client as well as 1 (one) year thereafter. In the event of any contravention, a penalty of 1 (one) annual salary of the person concerned shall be applicable. Payment of such penalty shall not release the Client from its non-solicitation obligation.

21 Code of conduct

Kaleyra has a Code of conduct, which can be consulted on its web site at the following address: http://www.kaleyra.com/PDF/Kaleyra_Inc_Code_of_Business_Conduct_and_Ethics_200429.pdf; the Client undertakes to abide by it and to ensure that any person it delegates to provide the services in this contract does not act in violation of this code throughout the term of the Contract.

22 Anti-corruption

Each Party states and guarantees to the other Party at any time during the term of the contract:

- That it is aware of all legislation pertaining to this Contract in terms of anti-corruption and that it has implemented rules and procedures to comply with the aforementioned legislation and to adjust to its future developments;
- That the persons it controls (these "**Controlled persons**" notably include its directors, employees and agents) have not committed or will not commit, directly or indirectly, any Act of corruption to the benefit of a private individual or a public agent;
- That it has set up appropriate rules, systems, procedures and controls to prevent any Acts of corruption being committed by the company, its agents or other intermediaries and by the Controlled persons and to ensure that any proof or any suspicion of an Act of corruption being committed will be the subject of an in-depth enquiry, shall be handled with due diligence and notified, to the extent permitted by law, to the other Party. The proof of the existence of these rules, systems, procedures and controls shall be provided to a Party by the other Party upon request;
- That the company, its agents, intermediaries or Controlled persons have not been banned (or treated as such) by a governmental or international organization from replying to bids, from contacting or working with this organization due to declared or suspected Acts of corruption;

- That the archives relating to its activities, including accounting documents, are stored in such a way as to guarantee their integrity in a form that can be exploited by the other Party.

23 Miscellaneous

- 23.1 This Contract contains all of the arrangements made between the Parties with regard to its object. It supersedes and replaces all former agreements in this matter between the Parties, including any declarations of intent.
- 23.2 This Contract being agreed upon between professional operators who have thoroughly evaluated it before its acceptance, articles 1341 and 1342 of the Italian Civil Code do not apply.
- 23.3 Any modifications, additions and amendments of this Contract (including any waiver of the requirement of the written form) are only valid if made in writing.
- 23.4 Any possible new legislative/administrative/regulatory provision concerning the subject of this Contract will be incorporated into the Contract, subject to an analysis of the relevant implementation methods.
- 23.5 Kaleyra reserves the right, at its sole discretion and with or without notice from time to time, to modify or update any Services (including but not limited to the features, scope, reach and functionality). Additionally, Kaleyra may amend the Agreement (or any part thereof), and such amendment will take effect on the date Kaleyra designates. Further and without limit, Kaleyra specifically reserves the right to make changes to the Terms and Conditions of the Services by publishing a revised version at [please insert URL] (or any successor URL Kaleyra may determine) as may be updated by Kaleyra from time to time. If an amendment to the Framework Agreement or to a Service Agreement is to Clients' material detriment - except for price variation to the extent set forth in the Service Agreements - Client may terminate either: (i) the affected Service Agreement; or (ii) the Framework Agreement (and consequently all the relating Service Agreements as provided in clause 15.2.2), upon written notice within 30 (thirty) days following the effectiveness of such amendment; in this sole case Client may ask for the refund of any credit not yet used before the effectiveness of the termination.
- 23.6 Failure by either Party at any time to enforce any of the provisions of the Contract shall not be construed as a waiver by such Party of any such provision or in any way affect the validity of the Contract.

24 Applicable law and place of jurisdiction

- 24.1 This Contract shall be exclusively governed by substantive Italian law, to the exclusion of the rules on Private International Law. The Vienna Convention (United Nations Convention of 11 April 1980 on Contract for the International Sale of Goods) shall not apply.
- 24.2 In the event any dispute, claim or question between the Parties arises with respect to the interpretation of the Contract or the Parties' performance, enforcement, breach, or termination of the Contract, the Parties shall consult and negotiate with each other in good faith and understanding of their mutual interests, in an attempt to reach a fair and equitable solution to such dispute that is satisfactory to all Parties. Any notice of dispute shall be made in writing and identify the nature of the dispute.
- 24.3 If the consultations provided for in clause 24.2 do not lead to an agreed solution within 20 (twenty) business days following the date of receipt of the notice, article 24.4 below shall apply.
- 24.4 Disputes arising under or in connection with this Agreement shall be exclusively resolved by the ordinary courts of Milan.

25 List of annexes

- 25.1 K-Cloud Service Description (SD) [[please insert URL](#)];
- 25.2 Data Protection Agreement (DPA) [[please insert URL](#)].

B. SMS SERVICE AGREEMENT

26 Scope

1. This SMS Service Agreement (“**SMS-SA**”) applies to the SMS bulk messaging service that Kaleyra renders – as an OLO (“*Other Licensed Operator*”) holding a license for the provision of public telephone services pursuant to Section 25 of the Italian Electronic Communications Code (Legislative Decree no. 259/2003 and following amendments) - for the Client through its K-Cloud proprietary platform, its network infrastructure and a direct or indirect connection to the international mobile network to reach – and be reached from - Clients’ customers in the countries outlined in Kaleyra’s reachable countries list web page at [\[please insert the relevant URL\]](#).

27 SMS Service Agreement structure

2. This SMS-SA is part of the Contract as defined in the Framework Agreement and consists of this SMS-SA containing a set of additional rules that specifically govern the Service, which shall be executed from time to time by the Parties in view of Client’s ordering the Service.

28 Services rendered by Kaleyra

- 28.1 Kaleyra assures through its K-Cloud proprietary platform, provided that Customers’ numbers are correct and reachable, the delivery and the reception of SMS to and from the Customers, the safeguard of their privacy as well as a system redundancy and backup to guarantee the continuity of the Service provided.
- 28.2 For avoidance of doubt, in case Customer’s mobile Subscriber Identity Module (SIM) cards belong to a mobile operator that is not interconnected to any GSMA Mobile affiliate, such SIM cards cannot be reached nor can SMS be delivered to or sent by Customers.
- 28.3 Kaleyra may temporarily suspend the Service if maintenance of its K-Cloud proprietary platform is needed or if any technical problem arises, giving a prompt advice, when possible according to the nature of the problem arisen, to the Client.
- 28.4 Kaleyra will anyway provide its best effort to shorten any maintenance’s intervention.
- 28.5 Kaleyra acknowledges that Customers’ numbers and Contents may constitute personal data of Customers. In this respect, Kaleyra undertakes, in addition to the terms of the Framework Agreement:

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- not to change the country where personal data is processed without Client's prior written consent;
- to inform the Client of the location of its data center and the security standards implemented;
- to restrict access to personal data to vetted and trained employees for the purpose of maintenance and on a strict need-to-know basis only.

29 Client's obligations

- 29.1 Client will use the Service to provide its Customers with SMS for, by way of example but not limited to, banking information or marketing purposes to promote its services to the Customers and Customer relation.
- 29.2 Client assumes full responsibility for the text, links, numbers and in general of the Content of the SMS MT and SMS MO sent through the Service.
- 29.3 Client warrants and undertakes that it will (i) use the Service for lawful purposes and comply with all laws and regulations of the Customers' countries relating to the sending and Contents of its SMS (including but not limited to, according to countries, the obligations on specific days and times for sending marketing SMS, clear indication in the SMS of the opt-out option for the Customer who wants to opt-out from the Client database to avoid receiving further messages, Customer's pre-contractual information, prohibition over Contents, sender's alias pre-registration on Authorities databases, respect of law and order); (ii) obtain and maintain all necessary permits, consents, authorizations or certifications for sending the SMS and the Contents (including, without limitation, those from Customers, owners of database, copyrights or performing rights organizations) and that the Contents does not infringe the intellectual property or other rights of any person; (iii) provide promptly any information relating to the Contents, reasonably requested by Kaleyra or requested by any network operator and/or legal, governmental, regulatory or statutory authority; and (iv) immediately comply with such directions as may be issued from time to time by a network operator and/or legal, regulatory, governmental and/or statutory authority in relation to the Contents and will fully cooperate with Kaleyra's request for assistance in conforming the Service to any new requirements or determinations. Client will immediately inform Kaleyra if any third party makes or threatens any claim or action against it, or Kaleyra.
- 29.4 Notwithstanding the provisions on remedy in the termination clauses set forth in clause 15, Kaleyra reserves the right to immediately suspend the Service in case an unlawful or non-compliant use of it is ascertained. In that case the compatible provisions on termination for cause set forth in clause 15.3 will apply.

30 Pricing

- 30.1 Without prejudice to the provisions of clause 5, for the setup of Service and the dispatch of each SMS sent, the prices outlined on K-Cloud apply.
- 30.2 The prices mentioned above may vary depending on international mobile operators and aggregators.

C. WHATSAPP BUSINESS SERVICE AGREEMENT

31 Scope

31.1 This WAB Service Agreement (“**WAB-SA**”) applies to the WhatsApp Business messaging service that Kaleyra renders – as an OLO (“*Other Licensed Operator*”) holding a license for the provision of public telephone services pursuant to Section 25 of the Italian Electronic Communications Code (Legislative Decree no. 259/2003 and following amendments) - for the Client through its K-Cloud proprietary platform integrated with WhatsApp Business Solution, its network infrastructure and a direct or indirect connection to the international mobile network to reach – and be reached from - Clients’ customers in the countries outlined in Kaleyra’s reachable countries list web page at [please insert the relevant URL].

32 Service Agreement structure

3. This WAB-SA is part of the Contract as defined in the Framework Agreement and consists of this WAB-SA containing a set of additional rules that specifically govern the Service, which shall be executed from time to time by the Parties in view of Client’s ordering the Service.

33 Services rendered by Kaleyra

- 33.1 Kaleyra assures through its K-Cloud proprietary platform, provided that Customers’ numbers are correct and reachable, that they’ve subscribed a personal WhatsApp account, that the Client runs a WABA and that the WAB correctly operates, the delivery and the reception of WhatsApp messages to and from the Customers, the safeguard of their privacy as well as a system redundancy and backup to guarantee the continuity of the Service provided.
- 33.2 Kaleyra may temporarily suspend the Service if maintenance of its K-Cloud proprietary platform is needed or if any technical problem arises, giving a prompt advice, when possible according to the nature of the problem arisen, to the Client.
- 33.3 Kaleyra will anyway provide its best effort to shorten any maintenance’s intervention.
- 33.4 Kaleyra acknowledges that Customers’ numbers and Contents may constitute personal data of Customers. In this respect, Kaleyra undertakes, in addition to the terms of the Framework Agreement:
 - not to change the country where personal data is processed without Client’s prior written consent;

- to inform the Client of the location of its data center and the security standards implemented;
- to restrict access to personal data to vetted and trained employees for the purpose of maintenance and on a strict need-to-know basis only.

34 Client's obligations

- 34.1 Client will use the Service to provide its Customers with WhatsApp messages for Customer care and relations purposes.
- 34.2 Client assumes full responsibility for the text, links, numbers and in general of the Content of the WhatsApp messages sent through the Service.
- 34.3 Client warrants and undertakes that it will (i) use the Service for lawful purposes and comply with all laws and regulations of the Customers' countries relating to the sending and Contents of its WhatsApp messages (including but not limited to, according to countries, the obligations on specific days and times for sending WhatsApp messages, Customer's pre-contractual information, prohibition over Contents, respect of law and order); (ii) obtain and maintain all necessary permits, consents, authorisations or certifications for sending the WhatsApp messages and the Contents (including, without limitation, those from Customers, owners of database, copyrights or performing rights organisations) and that the Contents does not infringe the intellectual property or other rights of any person; (iii) provide promptly any information relating to the Contents, reasonably requested by Kaleyra or requested by any network operator and/or legal, governmental, regulatory or statutory authority; and (iv) immediately comply with such directions as may be issued from time to time by a network operator and/or legal, regulatory, governmental and/or statutory authority in relation to the Contents and will fully cooperate with Kaleyra's request for assistance in conforming the Service to any new requirements or determinations. Client will immediately inform Kaleyra if any third party makes or threatens any claim or action against it, or Kaleyra.
- 34.4 Client acknowledges that the following Facebook terms and conditions apply, that they're periodically updated by Facebook and that they can be consulted on-line at the URL below. Client acknowledges in particular that, among other Facebook provisions, the use of the Service for marketing and gaming activities is forbidden. Client furthermore agrees to these additional terms are deemed incorporated into the Contract by reference <https://www.whatsapp.com/legal/business-solution-terms>.
- 34.5 With regard to the provisions on Indemnification in the FA, Client specifically acknowledges that Facebook terms and conditions establish US law as applicable law and the jurisdiction of US

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Courts for possible violation of the above-mentioned terms and conditions and that this may therefore result in costly attorney fees.

- 34.6 Notwithstanding the provisions on remedy in the termination clauses set forth in clause 15, Kaleyra reserves the right to immediately suspend the Service in case an unlawful or non-compliant use of it is ascertained or, in any case, notified by Facebook. In that case the compatible provisions on termination for cause set forth in clause 15.3 will apply.

35 Pricing

- 35.1 Without prejudice to the provisions of clause 5, for the setup of Service and the dispatch of each WhatsApp messages, the prices outlined on K-Cloud apply.
- 35.2 The prices mentioned above may vary depending on Facebook Ireland Ltd.