

The Kelvin logo features the word "Kelvin" in a white, sans-serif font. A small yellow circle is positioned above the letter 'i'. The background of the entire page is a photograph of a multi-story brick building with green window frames and fire escapes, viewed from a low angle looking up. A light blue diagonal line runs across the top of the image, and a white diagonal line runs across the bottom right corner.

**Kelvin**

# Master Services Agreement

This **Master Sale and Services Agreement** (the "**Agreement**") is dated as of the effective date set forth in the Cover Page (the "**Effective Date**") between Kelvin, Inc., a Delaware corporation ("**Kelvin**"), and the customer identified in the Cover Page (the "**Customer**") (each a "**party**," and collectively the "**parties**").

## 1. DEFINITIONS

**1.1 "Agreement"** means these General Terms and Conditions together with all Order Forms entered into between the parties.

**1.2 "Authorized User"** means each of Customer's employees, agents, and independent contractors who are provided usernames and passwords for the purpose of accessing the Service Dashboard.

**1.3 "Confidential Information"** means all written or oral information, disclosed by either party to the other that has been identified as confidential or that by its nature ought reasonably to be considered confidential. Information relating to the Service and Kelvin' documentation, including information collected from the residents/tenants, Cozys and Cozy Mobile Applications, is the Confidential Information of Kelvin.

**1.4 "Cozy"** means Kelvin' proprietary radiator cover and all related components supplied by Kelvin, including, without limitation, all internal components, "stack kit" components, sensors, and temperature controlled fan.

**1.5 "Cozy Mobile Application"** means the downloadable mobile application available through the Apple App store, Google Play or other third party platforms that allows Customer and End Users (assuming Customer agrees to End User control) to control room temperatures and other features of the Service remotely through the application.

**1.6 "End User"** (and "**End Users**") means end users for whom Kelvin has agreed in writing that: (a) the Customer may use the Services for such end user's benefit and/or (b) the end user may access, use, and receive the Services directly or through Customer. End users include, but are not limited to, residents, tenants, leaseholders, and/or shareholders of the Premises.

**1.7 "Equipment"** means all equipment on the Premises that may be used in connection with Kelvin providing the Services, including, but not limited to, the boiler(s) on the Premises and the radiators resident in units and offices.

**1.8 “Feasibility Study”** means a full survey of the Premises to inspect site conditions to determine the feasibility of a successful installation of the Cozy Solution.

**1.9 “Fees”** means the fees set forth in the applicable Purchase Order Form of Subscription Services Form for the Services.

**1.10 “Gateway”** means the gateway that enables internet connectivity of the Kelvin Solution.

**1.11 “Order Form”** means a document signed by an authorized representative of each party and attached hereto, identifying the specific Service(s) to be made available, the Fees to be paid for such Services, and other relevant customized terms and conditions, if any.

**1.12 “Premises”** mean the building identified in any Order Form as the Premises, including all units and common spaces therein.

**1.13 “Kelvin Solution”** means the technology underlying Kelvin’ proprietary radiator cover solution currently branded as the “Cozy” including the Cozy, the Cozy Mobile Application, the Service Dashboard, and the Gateway.

**1.14 “Kelvin Technology”** means all intellectual property, proprietary components, and technology contained in or used in connection with the Kelvin Solution, including any software therein.

**1.15 “Service” or “Services”** mean any services provided by Kelvin to Customer as identified in any Order Form, which may include the conduct of the Feasibility Study and/or delivery of and access to the Kelvin Solution.

**1.16 “Service Dashboard”** means the web based dashboard that allows Authorized Users to view certain information collected by the Kelvin Solution regarding energy usage and efficiencies in respect of each Cozy.

## **2. SALE AND SERVICES**

**2.1 Performance.** Kelvin will deliver the Services to Customer as provided in any Order Form and in substantial conformance with Kelvin’ documentation.

**2.2 Purchase of Cozys; Risk of Loss.** Following the installation of and full payment by Customer of all Fees, title to and ownership of all Kelvin's equipment installed on the Premises

(i.e., the Cozy(s), the Gateway(s), routers and boiler controls), but excluding any Kelvin Technology contained therein ("**Installed Equipment**") will be transferred to Customer. The risk of loss of or damage to any Cozy transfers to the Customer at the time of the delivery of each such Cozy to the Customer at the Premises, whether or not any such Cozy is installed at the Premises.

**2.3 Authorized Users; Protection of Passwords.** Kelvin shall provide Authorized Users with access to the Service Dashboard. Only Authorized Users may use and access the Service Dashboard. Customer will safeguard, and ensure that all Authorized Users safeguard, the applicable user names and passwords. Customer will be responsible for all acts and omissions of Authorized Users. Customer will notify Kelvin immediately if it learns of any unauthorized use of any user name or password or any other known or suspected breach of security, but shall have no liability for failure to give immediate notice.

**2.4 Reservation of Rights.** Kelvin exclusively reserves all right, title and interest (including all intellectual property rights) in and to the Kelvin Solution (excluding Installed Equipment transferred to Customer in accordance with Section 2.2), the Kelvin Technology, and the Services. Except as expressly set out in this Agreement, this Agreement does not confer on the Customer (or its End User(s)) any right, title or interest in or to the Kelvin Solution (excluding Installed Equipment transferred to Customer in accordance with Section 2.2), the Kelvin Technology, or any Service.

**2.5 Access and Availability.** During reasonable hours and upon no less than five (5) business days' notice, Customer will (or will cause its End Users to) (i) provide Kelvin with access to the Premises as necessary for Kelvin to provide the Services (including the Feasibility Study) and install the Kelvin Solution; (ii) provide to Kelvin and any granting authority, access to inspect the Premises and the Kelvin Solution for purpose of any grant or subsidy offered in connection with this installation; (iii) remove, at Customer's expense, existing radiator enclosures; and (iv) make available all Equipment necessary or desired for Kelvin to provide the Services, provided, however, that in the event of an emergency relating to the Services or an urgent need for maintenance, Customer will (or will cause its End Users to) provide such access or make available such Equipment promptly upon notice by Kelvin.

Without limiting the foregoing, (a) Customer will provide Kelvin free access to work/storage areas for workers and storage of materials and debris and (b) Customer will provide access to units and common spaces in the Premises for purpose of conducting the Feasibility Study and installation and maintenance of Cozys. Customer will obtain all third party licenses, consents and permissions needed for Kelvin to use the Equipment and to provide the Services (including all such licenses, consents and permissions needed from End Users).

**2.6 Required Specifications.** Customer will ensure that the Premises meet the specifications set forth below or such other requirements designated by Kelvin to conform with the specifications of new equipment: (a) a secure location (such as the boiler room) is internet-enabled to allow connectivity from the Gateway with an Ethernet or cellular connection, which such connectivity will be at Customer's cost; (b) the boiler(s) controller(s) on the Premises is/are connected via a stable connection to the Internet; (c) the boiler(s) on the Premises function properly and are in good working order; and (d) the boiler(s) on the Premises properly deliver heat to each radiator on the Premises upon which a Cozy is or will be installed.

**2.7 No Contract with End User.** This Agreement is by and between Customer and Kelvin, and nothing herein or any Order Form shall be construed as or deemed an agreement or contract, express or implied, between Kelvin and any End User.

**2.8 Personnel.** Customer will ensure that its personnel, including, but not limited to, Customer's staff at the Premises, attend any required training regarding the proper operation of the Kelvin Solution as communicated by Kelvin. All such training will be at Customer's own cost and expense.

**2.9 Ongoing Obligations.** Following the installation of the Kelvin Solution, Customer will be solely responsible for the ongoing operation of the Kelvin Solution, subject to Kelvin's limited ongoing obligations set forth herein.

**2.10 Restrictions.** Customer will not (and will ensure that its End User(s) do not): (a) modify, translate or create derivative works of any Service, the Kelvin Technology, or the Kelvin Solution, (b) reverse engineer or attempt to obtain any source code to the Kelvin Solution, (c) provide any third party with access to any Service or use any Service for any third party (other than End User(s)), (d) use the Service, the Kelvin Technology, or the Kelvin Solution to build a similar or competitive product or service, (e) use any device or software that could damage, interfere with, impair or disrupt

any Service or the Kelvin Solution, or (f) use any Service in a manner inconsistent with applicable law, Kelvin' documentation, or this Agreement.

**2.11 Energy Consumption Data.** During and after the Term of this Agreement, Customer agrees to provide to Kelvin up to five (5) years of utility or fuel bills after installation of each Cozy system on the Premises for the purpose of evaluating performance of said system.

### **3. MOBILE APPLICATION; DATA PROCESSING AND DISCLOSURE**

**3.1 Mobile Application.** Customer acknowledges that Customer and End Users may be able to download the Cozy Mobile Application. Customer's and End User's use of the Cozy Mobile Application will be governed by the Kelvin terms of use contained or referenced in the mobile application and any third party platform terms of use (e.g., the terms and conditions of the Apple App Store), and not this Agreement.

**3.2 Collection and Use.** In order to provide the Services, Kelvin may collect and use data in connection with Customer's (or End Users') use of the Services and Kelvin Solution, including the Cozy Mobile Application. Kelvin will collect, use and distribute all such data in accordance with applicable law. Customer acknowledges that data collected by Kelvin in connection with the Cozy Mobile Application will be governed by the privacy policy contained or referenced in the Cozy Mobile Application.

### **4. CONFIDENTIAL INFORMATION**

During the Term of this Agreement, each party will have access to certain Confidential Information of the other. Each party agrees: (a) not to disclose the Confidential Information of the other to anyone except its employees, contractors and advisors ("**Representatives**") on a strict need to know basis and subject to a written duty of confidence, (b) to use the Confidential Information strictly for the performance or receipt of this Agreement, and (c) to use commercially reasonable efforts to protect the confidentiality of the other party's Confidential Information. This Section will not apply to Confidential Information that (i) is or becomes publicly available through no fault of the recipient, (ii) is already in the recipient's possession at the time of its disclosure without any duty of confidence, or (iii) is independently developed by the recipient without use of the disclosing party's Confidential Information. Each party may disclose Confidential Information to the extent required to comply with a court or governmental order, or to comply with applicable law. Each party will be responsible for the acts and omissions of its Representatives related to any breach of this Section.

## 5. FEES

**5.1 Payment of Fees.** In consideration for the services performed by Kelvin hereunder, Customer will pay to Kelvin the Fees. All Fees are due and payable to Kelvin as set forth in any Order Form. All Fees are non-refundable.

**5.2 Additional Payment Terms.** Any additional payment terms may be set forth on any Order Form.

**5.3 Taxes.** All Fees owed by Customer in connection with this Agreement are exclusive of, and Customer is solely responsible for paying, all sales, use, excise and other taxes and applicable export and import fees, customs duties and similar charges that may be levied upon Customer in connection with this Agreement, except for employment taxes for Kelvin employees and taxes based on Kelvin' net income.

## 6. WARRANTY DISCLAIMER; LIMITATION OF LIABILITY

**6.1 Limited Warranty.** Kelvin warrants to Customer (and not any End User) that each installed Cozy will be free from defects in materials and workmanship for one (1) year following installation of the Cozy (the "**Warranty Period**"). In the event that Customer believes that this warranty has been breached, Customer will notify Kelvin by email or phone. If Customer obtains a warranty authorization from Kelvin (a "**WA**"), Kelvin will repair or replace the Cozy (with the same or a similar model, which may be a refurbished as new model), at Kelvin discretion, without charge for parts or labor. Customer will ensure that neither Customer nor End User tampers with or attempts to repair or return the Cozy directly. This limited warranty will not apply if the Cozy is modified, tampered with, misused, physically damaged, subjected to abnormal working conditions (including, but not limited to, electrical, fire, and water damage), combined with any other product or service that is not authorized by Kelvin, not maintained or operated in accordance with Kelvin' specifications, damaged by an act of God (such as a natural disaster), or repaired by Customer or any End User. Further, this limited warranty does not cover any incidental, consequential, indirect or special damages, to the maximum extent provided by applicable law. The remedies set forth in this Section 6.1 provide the exclusive remedies available to Customer, and Kelvin's sole liability, for any breach of this warranty.

**6.2 Warranty Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED IN SECTION 6.1, Kelvin DOES NOT MAKE ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, STATUTORY OR

OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, QUIET ENJOYMENT OR FROM A COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE IN TRADE. Kelvin DOES NOT WARRANT, AND SPECIFICALLY DISCLAIMS, THAT THE SERVICES OR THE Kelvin SOLUTION WILL BE ACCURATE, WITHOUT INTERRUPTION OR ERROR-FREE OR PROVIDE ANY SPECIFIC LEVEL OF ENERGY EFFICIENCY OR COST SAVINGS. EXCEPT AS EXPRESSLY STATED IN THIS SECTION, Kelvin PROVIDES THE SERVICES AND THE Kelvin SOLUTION "AS IS," "AS AVAILABLE," AND WITH ALL FAULTS. ANY ENERGY SAVINGS PROVIDED BY Kelvin TO CUSTOMER ARE ESTIMATES ONLY AND DO NOT REPRESENT ANY WARRANTY OR GUARANTEE THAT SUCH SAVINGS WILL BE ACHIEVED. TO THE EXTENT THAT Kelvin MAY NOT AS A MATTER OF APPLICABLE LAW DISCLAIM ANY IMPLIED WARRANTY, THE SCOPE AND DURATION OF SUCH WARRANTY WILL BE THE MINIMUM PERMITTED UNDER SUCH LAW.

## 7. LIMITATION OF LIABILITY

**7.1 Disclaimer of Indirect Damages.** IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, LOSS OF DATA, INTERRUPTION OF SERVICE, OR LOSS OF BUSINESS OR BUSINESS OPPORTUNITY, EVEN IF SUCH DAMAGES ARE FORESEEABLE AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY THEREOF.

**7.2 Limitations on Liability.** OTHER THAN Kelvin' LIMITED WARRANTY SET FORTH IN SECTION 6.1, Kelvin' MAXIMUM AGGREGATE LIABILITY UNDER THIS AGREEMENT AND ANY AND ALL ORDER FORM(S) WILL NOT EXCEED THE TOTAL AMOUNT OF FEES PAID BY CUSTOMER TO Kelvin UNDER THE LAST PURCHASE ORDER ISSUED UNDER THIS AGREEMENT PRIOR TO THE FIRST DATE ON WHICH THE LIABILITY AROSE.

## 8. INDEMNIFICATION

**8.1 By Customer.** Customer will defend, indemnify, and hold harmless Kelvin and its affiliates, and their respective directors, officers, employees, agents, successors and assigns, from and against any loss, damage, settlement, cost, expense, and any other liability (including reasonable attorneys' fees and costs) (collectively "**Losses**") related to or arising out of any third party allegation, claim, lawsuit, or proceeding (a "**Claim**") (i) associated with the Premises or the Equipment, except for Claims arising solely from Kelvin' negligence or willful misconduct and (ii) arising out of



Customer's negligence or willful misconduct. "Claim" excludes any allegation or claim brought by any affiliate of the indemnified party.

**8.2 By Kelvin.** Kelvin will defend, indemnify, and hold harmless Customer and its affiliates, and their respective directors, officers, employees, agents, successors and assigns, from and against any Losses related to or arising out of any Claim (i) that the Services or the Kelvin Solution infringes any third party intellectual property rights or (ii) arising out of Kelvin' negligence or willful misconduct.

Notwithstanding the foregoing, Kelvin will have no obligation under this Section or otherwise with respect to any infringement claim based upon (a) any use of the Services or the Kelvin Solution that is not in accordance with Kelvin' documentation or this Agreement; (b) any use of the Services or the Kelvin Solution in combination with other products, equipment, software, or data not supplied by Kelvin if such infringement would not have arisen but for such combination; or (c) any modification or alteration of the Services or Kelvin Solution by any person other than Kelvin. This Section 8.2 states Customer's sole and exclusive remedy, and Kelvin' sole and exclusive liability, regarding infringement or misappropriation of any intellectual property rights of a third party.

**8.3 Procedure.** The indemnified party will promptly notify the indemnifying party in writing of the claim for which the indemnified party is seeking indemnification. The indemnifying party will solely control the defense of the indemnified claim, including through choice of counsel, provided that the indemnified party may appear at its own expense through its own counsel. The indemnifying party may not settle any indemnified claim that imposes any liability on the indemnified party without the indemnified party's prior written consent.

## **9. TERM AND TERMINATION**

**9.1 Term.** This Agreement will begin on the Effective Date and continues in full force and effect as long as any Order Form remains in effect, unless earlier terminated in accordance with the Agreement (the "Term").

**9.2 Termination.** Either party may terminate this Agreement at any time immediately upon written notice to the other if the other party materially breaches any provision of this Agreement and does not remedy the breach within thirty (30) days after receiving written notice of the breach requiring its remedy.

**9.3 Effects of Termination.** Upon termination or expiration of this Agreement for any reason (a) any amounts owed to Kelvin before or at such termination will become immediately due; and (b) each party will promptly destroy or return any Confidential Information of the other party that remains in its possession or control. In the event that Kelvin has terminated the Agreement for Customer's failure to make any payment, Kelvin has the right to retrieve the Cozys and the Gateway contained on the Premises, if any.

**9.4 Survival.** Sections 1, 2.4, 2.10, 2.11, 3.2, 4, 5, and 6 through 11 will survive termination of this Agreement.

## **10. GENERAL**

**10.1 Entire Agreement.** This Agreement, together with all Order Forms entered into hereunder, constitutes the entire agreement between the parties regarding its subject matter and supersedes all prior or contemporaneous agreements, understandings, and communication, whether written or oral. This Agreement may be amended only by a written document signed by both parties. Any waiver of any provision of this Agreement must be in writing and will not be deemed a waiver of any other provision. If any portion of this Agreement is determined to be or becomes unenforceable or illegal, then such portion will be reformed or eliminated to the minimum extent necessary for this Agreement to be enforceable and legal, and this Agreement will remain in effect in accordance with its provisions as modified by such reformation or elimination.

**10.2 Governing Law; Disputes; Venue.** This Agreement will be governed by and construed in accordance with the laws of the State of New York, without reference to its conflict of law principles. If any dispute arises between Customer and Kelvin or its affiliates, Customer agrees to contact Kelvin first and give Kelvin a fair and reasonable opportunity to remedy the dispute. For any disputes arising out of this Agreement, the parties consent to personal and exclusive jurisdiction of and venue in the state or federal courts within New York, New York.

**10.3 Assignment.** Neither party may assign or transfer any rights or delegate any duties under this Agreement without the other party's prior written consent, except that Kelvin may assign or transfer (a) this Agreement in connection with a sale, transfer or other disposition of all or substantially all of Kelvin' assets, stock or business by sale, merger, consolidation, liquidation, dissolution, or similar transaction, and (b) rights to Customer payments hereunder in its sole discretion. In the event that Kelvin is dissolved or liquidated under any bankruptcy,

insolvency or other similar law now or hereafter in effect, then Kelvin shall use its commercially reasonable efforts, in compliance with all applicable laws, to ensure that Customer has all necessary data and control of the Kelvin Solution solely for the purpose of continuing to operate the Cozy(s) installed in the applicable Premises. Any purported assignment or transfer in violation of this Section will be void. Subject to the foregoing restrictions, this Agreement, and the parties' respective obligations hereunder, will bind and benefit the parties and their successors and permitted assigns.

**10.4 Independent Contractor.** Each party is an independent contractor with respect to the other party hereunder. This Agreement will not be construed to (i) create any employment, partnership, joint venture, or agency relationship between the parties, or (ii) authorize any party to enter into any commitment or agreement binding on the other party.

**10.5 Force Majeure.** Kelvin shall not be liable for any delay or failure to perform resulting from causes outside its reasonable control, including, but not limited to, acts of God, war, terrorism, riots, embargos, acts of civil or military authorities, fire, floods, accidents, strikes or shortages of transportation facilities, fuel, energy, labor or materials.

**10.6 Notices.** All notices pursuant to this Agreement will be in writing and delivered by certified mail and sent to the addresses set forth on the applicable Order Form or to such other address as a party may later specify in writing, and will be effective upon receipt.