

Kainos | G-Cloud 15

Terms and Conditions

Status
Security
Version No.

Definitive
Commercial - In Confidence
1/0

Index of Terms & Conditions

- Kainos Subscription Service Order Form (Smart Shield; Smart Audit; Smart Test; and/or Kainos EDM).
 - Subscription Service Terms of Use

Kainos Subscription Service Order Form

Status
Security
Version No.

Definitive
Confidential
5.0

KAINOS SUBSCRIPTION SERVICE ORDER FORM

Customer Details						
Customer Name						
Registered Office Address						
Customer Contact, Phone, Email						
Invoice Contact, Phone, Email						
Hosting Platform	Choose an item.					
Kainos Details						
Kainos Name	Choose an item.					
Registered Office Address	Choose an item.					
Kainos Contact, Phone, Email						
Contract Reference (PID)						
Subscription Term						
Start Date	Day		Month		Year	
End Date	Day		Month		Year	
Subscription Service	Modules	Selected	Built on Workday			
Smart Audit Subscription Service	Segregation of Duties	☐	✓			
	Privileged Access & Security Design Validation	☐				
	User Activity Monitoring	☐				
	Configuration Change Detection	☐				
	User Access Review	☐				
Smart Shield Subscription Service	N/A	☐				
Smart Test Subscription Service	Advanced Compensation	☐				
	Financials	☐				
	HCM	☐				
	Payroll	☐				
	Recruitment	☐				
	Security	☐				
	Talent and Performance	☐				
	Learning	☐				
Kainos EDM	N/A	☐				
Charging Band(s)						
Staff Number (FSE)	Subscription Service Charge (Annual)					
Up to [x]	[\$/£/€]					☐
[x] – [x]	[\$/£/€]					☐
[x] – [x]	[\$/£/€]					☐
Summary of Charges						
Services	Invoice Amount	Frequency	Duration	Total		
Choose an item - Audit	[\$/£/€]	Annually in advance	[X] years	[\$/£/€]		
Choose an item - Shield	[\$/£/€]	Annually in advance	[X] years	[\$/£/€]		
Choose an item - Test	[\$/£/€]	Annually in advance	[X] years	[\$/£/€]		
Kainos EDM	[\$/£/€]	Annually in advance	[X] years	[\$/£/€]		
Kainos EDM Onboarding	[\$/£/€]	On signature	N/A	[\$/£/€]		
Total Charges				[\$/£/€]		

Customer		Kainos	
Signature		Signature	
Print Name		Print Name	
Title		Title	
Date		Date	
The Order Form and the Terms of Use are accepted on signature.			

Subscription Service Terms of Use

Status
Security
Version No.

Definitive
Commercial - In Confidence
13.0

KAINOS | SUBSCRIPTION SERVICE TERMS OF USE

1. THE SUBSCRIPTION SERVICE

- 1.1 The Subscription Service. These Terms of Use include the [SLA](#), the [DPA](#), the [Definitions](#) and the Relevant Security Program (collectively the Terms). The Terms apply to the Customer's (and Authorized Persons') use of the Subscription Service(s) and any associated Onboarding, for the Subscription Term, as set out in the Order Form.
- 1.2 Staff Numbers & Growth. The Parties will review the Staff Number annually, during the Subscription Term. Increases in the Staff Number will attract an additional Subscription Service Charge where this brings the Customer into a higher Charging Band. Additional Charges will be pro-rated and billed from the date of the increase for the remainder of the Subscription Term.
- 1.3 Authorized Persons. Only Authorized Persons may use the Subscription Service(s). Customer shall identify Authorized Persons to Kainos and promptly notify Kainos of any change in an individual's Authorized Person status under the Agreement.
- 1.4 Onboarding. Kainos will provide Onboarding, as set out in the Order Form. Onboarding will be carried out remotely. Attendance at the Customer's site is by prior agreement and subject to the reimbursement of expenses.
- 1.5 Support. Kainos will provide Support for the Subscription Service(s) during the Subscription Term, as set out in the SLA.
- 1.6 Additional Smart Test Modules. Where the Customer has purchased a Smart Test subscription, it may subscribe to additional Smart Test Modules during the Subscription Term, using an additional Order Form. These Terms of Use will apply to any additional Modules.
- 1.7 Workday Services. Kainos offers a full suite of Workday Services. No purchase of Workday Services is required to use the Subscription Service and the Customer is under no obligation to purchase Workday Services. Where the Customer elects to purchase Workday Services, they will be set out in an Order Form and these [Workday Services Terms](#) apply.
- 1.8 Responsibilities. Each Party's responsibilities are set out in this section 1.8., breaches of which will be considered material breaches.
- 1.8.1 Kainos will: (i) process Personal Data in accordance with its obligations under the DPA; (ii) comply with its confidentiality obligations under the Agreement; (iii) comply with Laws; (iv) comply with the Relevant Security Program; (v) not change the Customer's Hosting Platform Location without the Customer's express written consent.
- 1.8.2 The Customer will: (i) arrange access to the facilities or systems required for Onboarding; (ii) comply with the Relevant Security Program; (iii) comply with the DPA; (iv) ensure that Authorized Persons comply with the Agreement; (v) not make the Subscription Service(s) available to any unauthorized party; (vi) not knowingly interfere with or disrupt the Subscription Service(s); (vi) be responsible for procuring all relevant Workday licenses.
- 1.9 Relevant Security Programs.
- 1.9.1 For Smart Test, Smart Audit and Smart Shield the [Smart Security Program](#) applies.
- 1.9.2 For Kainos EDM the [Kainos EDM Security Program](#) applies.

2. CHARGES, INVOICING & PAYMENT

- 2.1 Charges for the Subscription Service(s). Subscription Service Charges are invoiced annually in advance during the Subscription Term.
- 2.2 General Charging Provisions. Charges will be calculated in the currency set out in the Order Form and save as set out in these Terms. Charges are not refundable. Payment terms are thirty (30) days net and Customer taxes (where applicable) will be set out in the invoice. Customer will provide a purchase order (where required) as soon as possible following signature of the Order Form. Where travel from Kainos' normal place of business is required for the provision of the Subscription Services, reasonable receipted travel expenses and subsistence will be reimbursed and invoiced monthly in arrears. Where estimated Charges are stated on an Order Form for time and materials Services, such Charges are indicative only.

3. INTELLECTUAL PROPERTY

- 3.1 Customer's Rights of Use. The Customer has the right to use the Subscription Service(s), for the Subscription Term. Kainos reserves all other rights, title and interest in and to the Subscription Service(s), including all related Intellectual Property Rights. The Agreement is not a sale and does not give any ownership rights in the Subscription Service(s), or any other Kainos technology or Intellectual Property Rights, to the Customer. The Kainos name, the Kainos logo and the product names associated with the Subscription Service(s) are trademarks of Kainos and no right or license to use them is granted under this Agreement.
- 3.2 Customer Data. The Customer exclusively owns all rights, title and interest in and to Customer Data. Nothing in the Agreement provides Kainos with any rights or license to use Customer Data other than as specifically provided for in the Agreement. The Customer will ensure that its use of the Subscription Service(s) does not infringe the rights of, or otherwise harm a third party.
- 3.3 Usage Metrics. Kainos owns the Usage Metrics derived from the operation of the Subscription Service(s), which are used together with Workday configuration analytics to operate and enhance the Subscription Service(s).
- 3.4 Suggestions. Kainos may, free of charge and without restriction use or incorporate into the Subscription Service(s) any suggestions, enhancement requests, recommendations or other feedback provided by Customer, or Authorized Persons relating to the operation of the Subscription Service(s).

4. DATA

- 4.1 Data Compliance and Remedies. Kainos will comply with the DPA and shall reimburse Customer's reasonable costs, including fines levied on the Customer by a governmental authority which are directly attributable to Kainos' breach (Data Losses) provided that Customer: (i) promptly gives written notice of the Data Claim to Kainos (a delay of notice will not relieve Kainos of its obligations under this section except where prejudice is caused by such delay); (ii) gives Kainos sole control of the defense and settlement of the Data Claim; and (iii) provides to Kainos, at Kainos' cost, all reasonable assistance. Kainos will not be liable for Data Claims or Data Losses where a Customer has breached its responsibilities or uses the Subscription Service(s) in a manner inconsistent with the Agreement.
- 4.2 Data Retention and Deletion. The data retention policy for the Subscription Service(s) is set out in the Relevant Security Program.

5. CONFIDENTIALITY

- 5.1 Confidentiality. The receiving Party will only use Confidential Information within the scope of the Agreement, and where necessary to provide or receive the Subscription Services and Onboarding. The receiving Party shall limit access to Confidential Information to its personnel only, on a 'need-to-know' basis and shall not disclose, reveal or otherwise release any Confidential Information to any third party unless (i) it has obtained the disclosing Party's prior written consent; and (ii) there is a confidentiality agreement in place with that third party. When the Agreement ends, the receiving Party shall either return, or provide written confirmation of the destruction of, all Confidential Information received in connection with the Agreement.
- 5.2 Protection. Each Party will protect the Confidential Information of the other Party in the same manner that it protects its own (but in no event using less than reasonable care).
- 5.3 Compelled Disclosure. If the receiving Party is compelled by law to disclose the Confidential Information of the disclosing Party, it will give the disclosing Party prompt prior notice (to the extent legally permitted) and reasonable assistance, at disclosing Party's cost, if the disclosing Party wishes to contest the disclosure. Neither Party shall make any negative publicity statements regarding the other Party.
- 5.4 Remedies. If the receiving Party discloses or uses (or threatens to disclose or use) any Confidential Information of the disclosing Party in breach of the confidentiality protections in the Agreement, the disclosing Party shall have the right, in addition to any other remedies available to it, to seek injunctive relief. The Parties agree that other available remedies may not be adequate.

6. WARRANTIES & DISCLAIMERS

- 6.1 Warranties. Each Party represents and warrants that: (i) it has the legal power to enter into the Agreement and it shall comply with all Laws applicable to it; (ii) it will not engage in any activity, practice or conduct which would constitute an offence under any applicable anti-corruption laws/anti-slavery laws; and (iii) it has not been investigated, prosecuted or convicted of any offence under any applicable anti-corruption laws.
- 6.2 Kainos Additional Warranties. Kainos represents and warrants that: (i) the functionality of the Subscription Service(s) will not be materially decreased during a Subscription Term; (ii) it shall perform Onboarding with reasonable skill and care; (iii) it will not introduce any Malicious Code; and (iv) it will use commercially reasonable efforts in accordance with industry standards, to ensure that the Subscription Service(s) do not knowingly contain any Malicious Code.
- 6.3 Exclusions. Except as expressly provided in the Agreement, no warranties of any kind whether expressed, implied, statutory or otherwise are conferred on either Party and each Party disclaims all implied warranties (including any warranties of merchantability or fitness for a particular purpose) to the maximum extent permitted by law.

7. INDEMNIFICATION

- 7.1 Intellectual Property. Kainos will defend Customer, at Kainos' expense, from claims made or brought against Customer by a third party alleging that the use of the Subscription Service(s) (as contemplated) infringes that third party's Intellectual Property Rights (IP Claim(s)). Kainos will indemnify and hold Customer harmless against loss, damage and/or costs finally awarded or entered into in settlement (collectively IP Losses); provided that Customer: (i) promptly gives written notice of the IP Claim to Kainos (a delay of notice will not relieve Kainos of its obligations under this section except to the extent that Kainos is prejudiced by such delay); (ii) gives Kainos sole control of the defense and settlement of the IP Claim; and (iii) provides to Kainos, at Kainos' cost, all reasonable assistance. Kainos shall have no liability for IP Claims or IP Losses to the extent arising from: (iv) modification of the Subscription Service(s) by anyone other than Kainos; (v) use of the Subscription Service(s) in a manner inconsistent with the Agreement; or (vi) use of the Subscription Service(s) in combination with any other product or service, with the exception of Workday. If Customer is enjoined from using the Subscription Service(s) or Kainos reasonably believes it will be enjoined, Kainos shall have the right, at its sole option, to obtain for Customer the right to continue use of the Subscription Service(s) or to replace or modify the Subscription Service(s) so that it is no longer infringing. If neither of the foregoing options is reasonably available to Kainos, then the Agreement may be terminated at either Party's option and Kainos' sole liability, in addition to these indemnification obligations, shall be to refund any prepaid Charges for the remainder of the Subscription Term.

8. LIMITATION OF LIABILITY

- 8.1 No Limitation. NO LIMITATION OF LIABILITY WILL APPLY TO CLAIMS UNDER THIS AGREEMENT FOR: DEATH, PERSONAL INJURY, FINES LEVIED ON A PARTY BY A REGULATORY AUTHORITY FOR DATA BREACHES ARISING FROM A PARTY'S ACT OR OMISSION, BREACH OF CONFIDENTIALITY (SECTION 5), DAMAGES CAUSED BY GROSS NEGLIGENCE OR WILFUL MISCONDUCT, FRAUD, OR KAINOS' IP INDEMNIFICATION OBLIGATIONS.
- 8.2 General Cap. IN NO EVENT SHALL EITHER PARTY'S TOTAL AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THE AGREEMENT (WHETHER IN CONTRACT, TORT OR OTHERWISE) EXCEED A SUM EQUIVALENT TO TWELVE (12) MONTHS' SUBSCRIPTION SERVICE CHARGES.
- 8.3 Enhanced Cap. AN ENHANCED CAP OF TWENTY-FOUR (24) MONTHS' SUBSCRIPTION SERVICE CHARGES SHALL APPLY TO CLAIMS UNDER THIS AGREEMENT FOR BREACHES OF THE RELEVANT SECURITY PROGRAM, THE DPA, OR ANY CONFIDENTIALITY CLAIMS RELATED TO THE RELEVANT SECURITY PROGRAM OR DPA.
- 8.4 Exclusions. NEITHER PARTY SHALL BE LIABLE FOR LOST PROFITS OR REVENUES, BUSINESS INTERRUPTION, REPUTATIONAL HARM, WASTED EXPENDITURE, OR INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, CONSEQUENTIAL, OR OTHER DAMAGES, HOWEVER CAUSED (WHETHER IN CONTRACT, TORT OR OTHERWISE) EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE EXCLUSIONS IN THIS SECTION WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW, AND MAY BE MODIFIED TO THE EXTENT NECESSARY TO ENFORCE THIS SECTION.
- 8.5 Allocation of Risk. Sections 7 and 8 have been negotiated by the Parties at arm's length, and the Parties agree that Sections 7 and 8 provide for a reasonable allocation of their respective risks.

9. TERM & TERMINATION

- 9.1 Termination for Cause. A Party may terminate the Agreement for cause: (i) upon thirty (30) days written notice of a material breach to the other Party, which remains uncured at the end of such period; or (ii) if the other Party becomes the subject of a petition in bankruptcy (or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors or any similar event in relation to that other Party). Where the Customer terminates under this section 9, Kainos shall refund prepaid

Subscription Service Charge(s) for the unused remainder of the Subscription Term.

10. SUPPLEMENTARY TERMS FOR KAINOS EDM

- 10.1 Application. This Section 10 applies if the Customer has subscribed to Kainos EDM in the Order Form. In the event of any inconsistency between this Section 10 and the remainder of these Terms of Use, this Section 10 shall prevail to the extent that it relates to Kainos EDM.
- 10.2 Continued Use. At the end of the Kainos EDM Subscription Term, the Customer may either: (i) enter into a new Order Form for Kainos EDM by emailing the Kainos Contact set out in the Order Form, or (ii) cease to use Kainos EDM. On request, the Customer will provide written confirmation to Kainos (email will suffice) that it has ceased using Kainos EDM. Continued use of Kainos EDM beyond the end of its Subscription Term is a material breach of the Agreement. Kainos may upon reasonable prior written notice remotely audit via time limited access provided by the Customer to Kainos by AppHub, Customer's cessation of use of Kainos EDM. Where Kainos EDM has been used beyond the end of the Kainos EDM Subscription Term, an invoice will be raised for the continued use, retrospective to the end of the Kainos EDM Subscription Term, in annual increments.

11. SUPPLEMENTARY TERMS FOR BUILT ON WORKDAY

- 11.1 Application. This Section 11 applies to those Subscription Services(s) indicated in the Order Form as being Built on Workday. In the event of any inconsistency between this Section 11 and the remainder of these Terms of Use, this Section 11 shall prevail to the extent that it relates to Built on Workday.
- 11.2 The Customer will be required to accept the [Built on Workday Terms](#), which will be provided by Workday to the Customer prior to downloading and using Subscription Service(s) which are Built on Workday. The Customer has the authority to agree to the Built on Workday Terms notwithstanding anything to the contrary in the Customer's agreement with Workday.

12. GENERAL PROVISIONS

- 12.1 Relationship of the Parties. The Parties are independent contractors. The Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the Parties. The Agreement is between the Customer and the Kainos entity set out in the Order Form. No other party, be it an Affiliate, officer, director, parent or subsidiary, is a party to the Agreement or accepts responsibility for the other Party's obligations under it.
- 12.2 No Third-Party Beneficiaries. Only Parties to the Agreement are intended to benefit under it.
- 12.3 Third Party Software. Customer's use of any Third Party Software which interacts with the Subscription Services, is governed by the contract between the Customer and the Third Party Software vendor. Kainos is not responsible for the use, operation or issues with Third Party Software, whether perceived, actual, latent, or manifest. The Customer will procure the relevant licenses for Third Party Software (if any) required to use the Subscription Services and Customer's use of Third Party Software which interacts with the Subscription Services is governed by the contract(s) between the Customer and the applicable Third Party Software vendor.
- 12.4 Force Majeure. Neither Party shall be liable to the other for any delay or failure to perform arising from a force majeure event.
- 12.5 Notices. Any requirement for either Party to serve notice, shall be met where the notice is sent by the serving Party to the other Party's Contact at the address set out in the Order Form.
- 12.6 Dispute Resolution. Any dispute arising out of or in connection with the Subscription Service(s) will in the first instance be referred to the Kainos Contact and the Customer Contact who will arrange a call, within a reasonable time following the escalation date to attempt to resolve the dispute. If the dispute is not resolved, it will be escalated to the Head of Onboarding and a nominated Customer representative.
- 12.7 Waiver. No failure or delay by either Party in exercising any right under the Agreement shall constitute a waiver of that right. Unless the Agreement says otherwise, remedies provided are in addition to, and not to the exclusion of, other remedies available to a Party at law or in equity.
- 12.8 Severability. If any provision of the Agreement is held invalid, illegal or unenforceable in the agreed jurisdiction the provision shall be modified by the Parties, or by the court where the Parties cannot agree and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of the Agreement shall remain in effect.
- 12.9 Assignment. Either Party may assign the Agreement in its entirety (including all Order Forms), without consent of the other Party, in connection with a merger, acquisition, corporate reorganization, or asset sale not involving a direct competitor of the other Party. Except as set out in this section 12.9, neither Party may assign any of its rights or obligations under the Agreement without the prior written consent of the other Party (not to be unreasonably withheld or delayed).
- 12.10 Governing Law - USA. Where the Customer's hosting platform is located in the USA, the Agreement shall be governed by and construed in accordance with the laws of Delaware, without consideration as to its conflicts of laws rules and the state and federal courts of Delaware shall have exclusive jurisdiction in connection with the Agreement. The Parties consent to the jurisdiction of the Delaware courts and waive any objection to venue.
- 12.11 Governing Law - Other. Where the Customer's hosting platform is located outside the USA the Agreement shall be governed by and construed in accordance with the laws of Ireland and the courts of Ireland shall have exclusive jurisdiction in connection with the Agreement. The Parties consent to the jurisdiction of the Irish courts and waive any objection to venue.
- 12.12 Insurance. Kainos shall maintain levels of insurance to perform its contractual obligations. Details of cover will be provided at the Customer's written request.
- 12.13 Entire Agreement. The Agreement constitutes the entire agreement between the Parties, and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, variation, amendment, or waiver of any provision of the Agreement shall be effective unless it is set out in an executed Order Form. Any terms or conditions stated in a purchase order, invoice or in any other documentation will not form any part of the Agreement.
- 12.14 Order of Precedence. Where there is a conflict between the Terms and an Order Form, the Order Form shall prevail.
- 12.15 Further Assurance. Each Party shall do all ancillary activities reasonably required to implement and give full effect to the Agreement.
- 12.16 Affiliates. Affiliates/Authorized Persons are entitled to use the Subscription Service(s) however, the Agreement is between Kainos and the Customer and all limitations of liability set out in the Agreement are aggregated for the Customer, the Affiliates and the Authorized Persons and do not constitute 'per Affiliate' or 'per Authorized Person' limits.
- 12.17 Surviving Provisions. The following provisions shall survive any termination or expiration of the Agreement: Sections 2, 3, 4, 5, 8, 10, 11, 12 and the Definitions.