

Kovaion Consulting Limited, UK

G-Cloud 15 Terms and Conditions

PLEASE NOTE:

This Agreement incorporates the terms and conditions set out in the G-Cloud Framework Agreement, the G-Cloud Call-Off Contract, and the completed Order Form. Should there be any conflict between those agreements, the parties agree that the following order of precedence applies:

1. G-Cloud Framework Agreement
2. G-Cloud Call-Off Contract
3. The completed Order Form
4. The Kovaion G-Cloud 15 Terms and Conditions (this document)

1. Definitions and Interpretation

1.1 **"Affiliate"** means any person, partnership, joint venture, corporation, subsidiary, or other form of enterprise, domestic or foreign, directly or indirectly controlling, controlled by, or under common control with the Customer or Kovaion.

1.2 **"Agreement"** means these terms and conditions together with the Schedules and any Agreed Form documents (including the Project Documents).

1.3 **"Confidential Information"** means all information (whether written, oral, or in electronic form) concerning the business, affairs, customers, or suppliers of a party that is marked as confidential or which ought reasonably to be considered confidential.

1.4 **"Equipment"** means any computer hardware and equipment owned by the Customer and/or to be acquired and supplied by the Customer relating to the Services in accordance with the Agreement.

1.5 **"Fees"** means the charge rates for the Services to be provided under this Agreement as detailed in an Order Form or Statement of Work.

1.6 **"Location(s)"** means an address of the Customer at which Software is to be installed or Services are to be delivered as detailed in an Order Form or other Project Documentation.

1.7 **"Order Form"** means the G-Cloud Call-Off Order Form agreed between the parties that details the Services and the related Fees.

1.8 **"Project Document"** means the latest dated project document, implementation plan, Statement of Work (SOW), or handbook issued by Kovaion in respect to any aspect of the Services being provided.

1.9 **"Ready for Use"** means installed and capable of live production or actually used by the Customer in its business.

1.10 **"Services"** means the services to be provided by Kovaion to the Customer under this Agreement as more particularly described in an Order Form and associated Project Documentation.

1.11 **"Software"** means any Third-Party Software (e.g., Oracle SaaS, PeopleSoft) specified



in an Order Form.

1.12 **"Statement of Work (SOW)"** means a document signed by each of the parties detailing the scope of the Services, project plans, implementation timelines, and acceptance criteria.

2. Performance of Services

2.1 Subject to the Customer's compliance with this Agreement, Kovaion shall, in accordance with applicable Project Documents:

(a) Perform the Services with all reasonable skill and care and in a timely, reliable, and professional manner using employees with appropriate skills, qualifications, and experience.

(b) Ensure all personnel are properly supervised and are competent and suitable in every respect to provide the Services.

(c) Ensure staff comply with the Customer's Access, Health and Safety, and Security Policy Procedures while on the Customer's premises.

2.2 **Service Recommendations:** Kovaion is not a manufacturer of Software. Any advice provided by Kovaion on Software selection is based upon the requirements of the Customer's business as made known to Kovaion at the time of the Order Form and shall be consistent with professional IT standards.

2.3 **Corrective Maintenance:** Following formal sign-off of any deliverables or Solutions by the Customer, the provision of any corrective maintenance or bug-fixing shall be defined in a separate Statement of Work and subject to additional charges, except where the defect was caused by the direct negligence of Kovaion.

3. Supply of Third-Party Software

3.1 The Customer's use of any Third-Party Software is governed by the terms of the agreement with the provider of that Third-Party Software, including their specific warranties and end-user license agreements (EULA).

3.2 Third-Party Software is provided "as is" and Kovaion is not responsible for any Third-Party Software's performance, features, or failures. Kovaion makes no warranty in respect to Third-Party Software being fit for the Customer's specific purposes beyond the vendor's standard specifications.

4. Agreeing Project Documents

4.1 On receipt of any Project Document from Kovaion, the Customer shall promptly review such documents and may reject them (providing written reasons) no later than seven (7) Business Days after delivery.

4.2 Any documents not rejected within seven (7) Business Days shall be deemed to have been accepted in full by the Customer.

5. Delivery and Extensions of Time

5.1 Kovaion shall use reasonable endeavours to meet performance dates specified in any Project Document, but unless otherwise agreed in writing, any such dates shall be estimates only and time shall not be of the essence.

5.2 Extensions of Time: Kovaion shall be entitled to an extension of the timetable if a delay is caused by:

(a) A variation to Services requested by the Customer.

(b) A Force Majeure Event.

(c) A delay caused in whole or in part by an action or omission of the Customer, its employees, or third-party contractors.

5.3 Force Majeure: Neither party shall be liable for any delay or failure in performing its obligations under this Agreement if such delay is caused by circumstances beyond its reasonable control (including but not limited to acts of God, war, riot, fire, explosion, accident, flood, or industrial dispute).

6. Project Personnel

6.1 Both Parties shall appoint qualified Project Leads who shall have the responsibility and authority for the overall progress of the Services and to whom all questions can be referred.

6.2 Replacement of Personnel: If the Customer reasonably considers that the performance or conduct of Kovaion's personnel is unsatisfactory, the Customer shall have the right to require a replacement, and Kovaion shall promptly provide suitable replacement personnel.

7. Customer Obligations

7.1 The Customer shall complete all its obligations as detailed in any Project Documents and provide Kovaion with timely co-operation and access to information, premises, and facilities as may be required.

7.2 **Backups:** The Customer shall keep full security copies and back-ups of all relevant electronic information, including database instances and computer records, in accordance with best computing practice.

7.3 **Training:** The Customer is solely responsible for ensuring that all users of the Services are trained in the use of the Software. Kovaion shall have no responsibility to provide support for issues deemed to be the result of a lack of appropriate training.

8. Fees, Expenses, and Payment

8.1 **Payment Terms:** Undisputed invoices shall be payable within **30 days** of receipt.

8.2 **Disputed Invoices:** Should the Customer have a bona fide dispute regarding an invoice, it must notify Kovaion in writing within seven (7) days of receipt. The Customer shall pay the undisputed portion of the invoice in accordance with this Agreement.

8.3 **Interest:** If any undisputed sum is not paid by the Due Date, Kovaion reserves the right to charge simple interest on a day-to-day basis at the rate of **2% per annum** above the base rate of HSBC Bank from time to time in force.

9. Intellectual Property

9.1 **Ownership:** The Customer shall own the Intellectual Property Rights in any materials specifically developed by Kovaion on behalf of the Customer in relation to the Services ("Customer Materials").

9.2 **Kovaion Tools:** Kovaion reserves the right to use in any way it thinks fit any programming tools, skills, generic code, and techniques acquired or used by Kovaion in the performance of this Agreement ("Kovaion Background IP").

10. Warranties and Liability

10.1 Kovaion does not warrant that the Services will be uninterrupted or error-free. It shall use all reasonable endeavours to rectify defects in accordance with the service levels in the applicable Support Agreement.

10.2 Liability Cap: Kovaion's total aggregate liability arising from or relating to this Agreement, whether in contract or tort, shall not exceed the Fees paid to Kovaion for the Services in the calendar year in which the claim is made.

10.3 Exclusions: In no event shall Kovaion be liable for any loss of profits, loss of business, loss of revenue, loss of goodwill, loss of anticipated savings, or for any special, indirect, or consequential loss or damages whatsoever.

11. Non-Solicitation

11.1 Neither party shall, without prior written consent, at any time from the Commencement Date to the expiry of **12 months** after termination, solicit or employ any person who is, or has been, engaged as an employee or sub-contractor of the other party.

11.2 Any consent given shall be subject to the Customer paying Kovaion a sum equivalent to **20%** of the then-current annual remuneration of the employee or sub-contractor.

12. Dispute Resolution and ADR

12.1 Both parties shall use all reasonable endeavours to resolve disputes through meetings between authorized representatives.

12.2 If the dispute is not resolved within 14 days, it shall be referred to the Chief Executives of both parties.

12.3 If still unresolved, the parties may agree to enter into an **Alternative Dispute Resolution (ADR)** procedure with the assistance of a mediator agreed by the parties or appointed by the Centre for Dispute Resolution (CEDR).

13. Bribery and Corruption

13.1 Kovaion shall comply with all applicable laws relating to anti-bribery and anti-corruption (including the Bribery Act 2010) and shall ensure its personnel do not engage in any activity that would constitute an offence.

13.2 Any breach of this clause by either party shall entitle the other to terminate this Agreement with immediate effect.

14. Data Protection

14.1 Each party warrants that it shall comply with the Data Protection Act 2018 and the UK

General Data Protection Regulation (UK GDPR) in relation to any personal data processed under this Agreement.

14.2 Where Kovaion processes personal data on behalf of the Customer, it shall do so only in accordance with the Customer's written instructions and shall maintain appropriate technical and organizational measures to protect such data.

15. TUPE

15.1 It is the parties' intention that the provisions of TUPE do not apply to this agreement.

15.2 Each party shall fully indemnify the other against all costs and claims arising from either the intended or unintended transfer of personnel under TUPE.

16. Termination

16.1 This Agreement may be terminated by either party on giving three (3) month's notice in writing for any reason.

16.2 Either party may terminate immediately if the other party commits a material breach and fails to remedy it within fourteen (14) days of notice.

17. Sub-Contracting

17.1 Kovaion may appoint sub-contractors to perform any of the Services provided that Kovaion shall remain primarily liable for the acts and omissions of its sub-contractors as if they were its own.

17.2 Kovaion shall ensure that any sub-contractors are bound by confidentiality obligations no less onerous than those contained in this Agreement.

18. Insurance

18.1 Kovaion shall maintain in force during the term of this Agreement and for a period of one year thereafter, adequate insurance policies with reputable insurance companies, including:

- (a) Professional Indemnity Insurance.
- (b) Public Liability Insurance.
- (c) Employer's Liability Insurance (as required by law).

19. General Provisions

19.1 **Assignment:** Neither party may assign or transfer any of its rights or obligations under this Agreement without the prior written consent of the other, except that Kovaion may assign this Agreement to an Affiliate.

19.2 **Waiver:** No failure or delay by a party to exercise any right or remedy provided under this Agreement shall constitute a waiver of that or any other right or remedy.

19.3 **Severability:** If any provision of this Agreement is found to be invalid or unenforceable, the remaining provisions shall continue in full force and effect.

19.4 **Entire Agreement:** This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, understandings, or representations (except for fraudulent misrepresentations).

19.5 **Notices:** All notices shall be in writing and delivered by hand, post, or email (provided a delivery receipt is obtained) to the address of the relevant party set out in the Order Form.

19.6 **Third Party Rights:** No provision of this Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it.

20. Governing Law

20.1 This Agreement and any dispute arising out of it shall be governed by and construed in accordance with the laws of **England and Wales**.