

KLUGO SERVICES AGREEMENT

Region	North America
Version	2.0
Last Revision Date	10-Dec-2024

ATTENTION! THIS AGREEMENT WILL BECOME LEGALLY BINDING ON THE CUSTOMER UPON EXECUTION OF AN APPLICABLE STATEMENT OF WORK (SOW). PLEASE READ THESE TERMS AND CONDITIONS CAREFULLY BEFORE EXECUTING THE SOW.

If the hyperlink location of this agreement (the “Agreement”) is referenced in a Statement of Work signed by an authorized representative of the procuring party (the “Customer”) and Klugo USA Inc. (EIN: 93-4890157), including its successors and assignees (“Klugo”); or is otherwise referenced in an agreement between Klugo and the Customer, then the services procured by the Customer (as defined below) shall be governed exclusively by the terms and conditions of this Agreement.

BACKGROUND

- A. Klugo has the necessary qualifications, experience, and resources to provide services to the Customer.
- B. Klugo will provide the Services to the Customer under the terms and conditions set forth in this Agreement.

IN CONSIDERATION OF the promises and mutual obligations set forth herein, the sufficiency of which is acknowledged, the Customer and Klugo (individually a “Party” and collectively the “Parties”) agree as follows:

1. SCOPE OF SERVICES

- 1.1. Subject to this Agreement, Klugo will provide the Customer with services as outlined in applicable Statements of Work (“SOW”) executed by the Parties.
- 1.2. The Parties may enter into multiple SOWs defining specific services to be provided (“Services”).
- 1.3. Each SOW will include, at minimum: (i) A description of the Services and deliverables or materials (“Deliverables”); (ii) The scope of the Services; and (iii) Applicable fees and payment terms, if not elsewhere specified.
- 1.4. All SOWs shall be incorporated into and governed by this Agreement.
- 1.5. Any technical services described in an SOW shall outline general requirements and are not considered final design specifications. Detailed requirements must be confirmed before development.
- 1.6. Klugo may decline requests for work for any reason at any time.

2. CONFIDENTIAL INFORMATION AND INTELLECTUAL PROPERTY

2.1. DEFINITIONS

- 2.1.1 Confidential Information: Any non-public information related to a Party’s operations, products, data, technology, financial details, business processes, or other sensitive details, regardless of format or designation, except where public disclosure occurs through no fault of the receiving Party.
- 2.1.2 Intellectual Property: Includes but is not limited to rights in inventions, trademarks, copyrights, trade secrets, know-how, processes, and work products developed under this Agreement.

2.2. OWNERSHIP AND USE

- 2.2.1. Klugo shall retain exclusive ownership of all rights, title, and interests in Deliverables and related Intellectual Property, excluding Customer-provided Confidential Information.
- 2.2.2. Customer grants Klugo a limited right to use its Confidential Information solely to perform Services.
- 2.2.3. Deliverables are considered Klugo's Confidential Information. The Customer agrees not to reverse engineer, reproduce, or otherwise exploit any Deliverables without express written consent.
- 2.2.4. Klugo grants the Customer a limited, non-exclusive, non-transferable license to use the Deliverables solely for its internal operations during the Agreement's term.

2.3 EXCLUSIONS

- 2.3.1 Proprietary tools, methodologies, or technologies used by Klugo to develop Deliverables ("Tools") remain the property of Klugo. Tools included in Deliverables are licensed under the same terms as the Deliverables unless otherwise agreed.
- 2.3.2 Deliverables do not include Tools, which are Klugo's Confidential Information.

2.4 OBLIGATIONS

- 2.4.1 The Parties shall not disclose or use the other Party's Confidential Information for any purpose other than as authorized by this Agreement.

2.5 CUSTOMER OBLIGATIONS

- 2.5.1 The Customer warrants it has the rights to provide any Intellectual Property needed for Klugo to perform Services and grants Klugo a perpetual, royalty-free license to use such Intellectual Property for this purpose.

2.6 SURVIVAL

- 2.6.1 The confidentiality and intellectual property obligations under this clause survive termination of this Agreement.

3. DELIVERY OF SERVICES

- 3.1 Klugo will perform the Services with reasonable care and skill.
- 3.2 Any item or activity not explicitly included in an applicable SOW is deemed outside the scope of Services.
- 3.3 The Customer is responsible for defining the scope and prioritizing objectives to maximize the value of the Services.
- 3.4 The Customer affirms that its personnel involved in the Services have the necessary authority to make decisions on business practices.
- 3.5 Services outlined in the applicable SOW will be delivered remotely in English (both verbal and written), using telephone, email, and web conferencing tools from Klugo's facilities.
- 3.6 If onsite Services are specified in the SOW, the schedule for onsite delivery will be agreed upon at the commencement of Services and may incur additional fees and expenses.
- 3.7 The Customer may not record or film the delivery of Services or Klugo materials without Klugo's prior written consent, which may be withheld at Klugo's sole discretion.
- 3.8 Hours worked outside of normal business hours or exceeding 8 hours per day or 40 hours per week per Klugo resource require prior written approval from Klugo.
- 3.9 Both Parties will use commercially reasonable efforts to attend scheduled meetings. Repeated cancellations or delays may result in service delivery delays and additional fees, which the Customer indemnifies Klugo against.

- 3.10 The Customer is solely responsible for assessing the suitability of the Services and acknowledges that reliance on the Services is at its own risk. To the extent permitted by law, Klugo is not liable for any harm, loss, or damage arising from advice or recommendations provided during the Services.
- 3.11 While Klugo will make reasonable efforts to meet agreed delivery timelines, Klugo is not liable for any delays, losses, or damages resulting from unmet timelines.

4. CUSTOMER RESPONSIBILITIES

- 4.1 The Customer will designate an Administrator responsible for providing access to the Customer's system(s) as required for Klugo to deliver the Services.
- 4.2 The Customer agrees to promptly and adequately respond to Klugo's requests for information, assistance, or review of work related to the Services.
- 4.3 The Customer is responsible for procuring, at its own expense, all necessary rights for the use of its or third-party technology required for the Services.
- 4.4 The Customer acknowledges that any additional third-party technology and/or services not already licensed or purchased by the Customer may require separate licenses or fees, which must be obtained and paid for by the Customer before the Services commence.
- 4.5 The Customer agrees to provide Klugo with a designated General Access NetSuite user license with Administrator role access to the Customer's Production NetSuite instance for the duration of this agreement. If a Sandbox instance is applicable, the Customer will also provide Administrator role access to the Sandbox instance.
- 4.6 The Customer is responsible for validating and approving any changes performed in the Customer's NetSuite instance. Upon validation and approval, Klugo will consider Customer testing complete, and the changes accepted. Any additional changes or revisions requested after approval and/or migration to the Production instance will be subject to additional charges.

5. OWNERSHIP OF DATA

- 5.1 All data provided by the Customer to Klugo to facilitate the Services ("Input Data") and all data generated or delivered by Klugo as part of the Services ("Output Data") remain the property of the Customer.
- 5.2 Klugo will not use Input Data, Output Data, or other information obtained during the Services for any purpose other than fulfilling its obligations under this Agreement without the Customer's prior written consent.
- 5.3 Upon termination of this Agreement, the Customer may retrieve Input Data, Output Data, or other information generated or obtained during the Services, except for data that constitutes Klugo's Confidential Information or Intellectual Property. Klugo will facilitate such retrieval, and the costs of retrieval will be borne by the terminating Party.
- 5.4 To ensure prompt and efficient delivery of Services:
- 5.4.1 The Customer is responsible for the accuracy of all Input Data provided to Klugo.
 - 5.4.2 Upon receipt of Output Data, the Customer will promptly review it against the corresponding Input Data and notify Klugo of any errors.
 - 5.4.3 If an error is identified, Klugo will promptly reprocess the relevant Input Data. The cost of reprocessing will be borne by the Party responsible for the error.
 - 5.4.4 Both Parties will collaborate to ensure the Customer's staff are adequately trained to provide the Input Data required for Klugo to perform the Services.

6. VARIATION PROCESS

- 6.1 If either Party requests a variation to the scope, Deliverables, or Services described in a Statement of Work (SOW), the requesting Party shall propose the applicable variations by written notice.

- 6.2 Within three (3) business days of receipt of the written notice, each Party's project leader shall arrange to meet, either via video conference or by telephone, to discuss and agree upon proposed variations.
- 6.3 Klugo will prepare a Variation Order that describes the proposed variations to the SOW and the applicable change in fees, expenses, and timeline, if any.
- 6.4 Variation Orders are not binding unless and until they are executed by both Parties.
- 6.5 Executed Variation Orders shall be deemed part of, and subject to, this Agreement.
- 6.6 If the Parties disagree about the proposed variation, the matter shall be promptly escalated to their respective senior management officers for resolution.

7. TERM AND TERMINATION

- 7.1 The term of this Agreement (the "Term") shall commence on the effective date of this Agreement or the SOW referencing this Agreement and shall continue in effect until terminated as provided herein.
- 7.2 Each SOW shall commence on the date it is last signed and shall expire upon completion of the Services set forth in the applicable SOW.
- 7.3 Upon execution of a SOW by both Parties, the SOW and this Agreement cannot be terminated except as otherwise explicitly stated in the SOW or this Agreement.
- 7.4 Either Party may terminate this Agreement for convenience by providing the other Party with thirty (30) days' written notice, provided there are no active SOWs.

8. PRICING AND PAYMENT PROVISIONS

- 8.1 The Customer shall pay the fees and expenses as specified in the SOW.
- 8.2 The pricing set forth in the SOW represents the fees for the Services described in the SOW.
- 8.3 The Customer acknowledges that the SOW price is based solely on the information provided to Klugo and the assumptions documented in the SOW, and includes only the Services specified in the SOW.
- 8.4 Any requirements or additional hours and Services not included in a SOW, or items not contemplated, will be considered outside the scope and will be handled in accordance with clause 6 of this Agreement.
- 8.5 Except as otherwise set forth in the SOW, Klugo shall issue invoices to the Customer for Services monthly in arrears. Payment shall be made in U.S. dollars within thirty (30) days from the invoice date.
- 8.6 Klugo may charge the Customer a late fee for payments not made by the due date. The late fee will be calculated daily at a rate of 4% over the U.S. Federal Reserve's prime rate, from the date the payment first becomes due until the payment is received by Klugo.
- 8.7 For the avoidance of doubt, "tax invoice" refers to an invoice that complies with the applicable U.S. tax regulations.

9. TRAVEL

- 9.1 Where a consultant is required to perform Services at the Customer's premises or at a location nominated by the Customer (provided the premises and/or location is within the city of the consultant's ordinary place of residence), Klugo may charge travel fees, including travel time from Klugo's office in that city, as itemized in the applicable SOW.
- 9.2 Where a consultant is required to travel interstate to perform Services at the Customer's premises or at a location nominated by the Customer, reasonable travel and living expenses required in connection with delivering the Services will be incurred and invoiced to the Customer in addition to the Services fee, in accordance with Klugo's travel policy.
- 9.3 The Customer acknowledges that the main consulting office for Klugo is in Denver, Colorado. The customer also acknowledges that Klugo Consultants perform work remotely, and Consultants may be located outside of Denver as their primary place of residence.

10. FORCE MAJEURE

- 10.1 Neither Party shall be liable for any loss or delay (including those arising from a failure to perform the Services or discharge obligations under a Statement of Work) resulting from any force majeure event, including, but not limited to, acts of god, fire, natural disaster, terrorism, labor stoppage (other than those involving Klugo employees), internet service provider failures or delays, civil unrest, war or military hostilities, criminal acts of third parties, and any payment date or delivery of Services shall be extended to the extent of any delay resulting from any force majeure event.

11. SUBCONTRACTING

- 11.1 Klugo's relationship with the Customer pursuant to this Agreement will be that of an independent contractor.
- 11.2 Neither Party will have any authority to bind the other, to assume or create any obligation, to enter into any agreements, or to make any warranties or representations on behalf of the other Party.
- 11.3 Nothing in this Agreement shall be deemed to create any agency, partnership, or joint venture relationship between the parties.
- 11.4 Except as otherwise provided by this Agreement, each Party is solely responsible for all its employees and agents and its labor cost and expenses and for any and all claims, liabilities, or damages or debts of any type whatsoever that may arise on account of each Party's activities or those of its employees or agents in the performance of this Agreement.
- 11.5 Klugo reserves the right to use third parties (who are under a covenant of confidentiality with Klugo), including, but not limited to, onshore and offshore subcontractors to assist with the Services, including, without limitation, any data migration, configuration, implementation, and custom code development processes. Third parties who are not Klugo's employees or Klugo's direct contractors (Third Parties) will be the Customer's responsibility. Klugo will not be responsible for the services provided by Third Parties.

12. CONSUMER LAW AND LIMITATION OF LIABILITY

- 12.1 To the extent permitted by law, it is understood and agreed that Klugo will not be liable to the Customer, or any agent, associate of the Customer or third party claiming through the Customer, for any mistake or error in judgment or for any act or omission done in good faith and believed to be within the scope of authority conferred or implied by this Agreement.
- 12.2 Neither Party will be liable to the other Party for any claims for damages including claims for consequential or economic loss or loss of profits arising from or because of termination of this Agreement in accordance with the terms and conditions of this Agreement or a Statement of Work.
- 12.3 To the extent permitted by law, if Klugo becomes liable to the Customer in any manner whatsoever for a breach in relation to the supply of any defective goods and/or services (or services provided in relation to the defective goods), then Klugo's liability will be limited solely to the price paid by the Customer for such goods and/or services or the cost of their repair or resupply, whichever Klugo determines at its sole discretion.

13. MARKETING

- 13.1 Unless the Customer specifically refuses permission, a general description of the work undertaken for the Customer, the name of the Customer and a general overview press release (if applicable) will be used in Klugo's general marketing information to indicate to prospective customers the type of work undertaken by Klugo for the Customer.

14. NON-SOLICITATION

- 14.1 To the extent permitted by law, during the Term and for a period of twelve (12) months following termination or expiration of the Agreement, the Customer agrees that it will not directly solicit the engagement or employment of any of the employees or contractors of Klugo who have been engaged in the provision of Services, without written permission of Klugo.

15. DISPUTE RESOLUTION

- 15.1 Each Party agrees that before it seeks mediation, arbitration, litigation or any other form of Dispute resolution, it shall provide written notice to the other Party of the specific issues in dispute (and referencing the specific portions of any contract between the Parties which are allegedly being breached) (Initial Notice).
- 15.2 Within thirty (30) days after issuing an Initial Notice, knowledgeable executives of the Parties shall hold at least one meeting (in person or by video or tele-conference) for the purpose of attempting in good faith to resolve the dispute.
- 15.3 Except as provided herein, any and all disputes, claims or controversies (“Disputes”) arising out of or relating to this Agreement shall be submitted to mediation before arbitration or any other form of legal relief may be instituted.
- 15.4 Mediation may be commenced by a Party by providing a written request for mediation setting forth the subject of the Dispute and the relief requested. The Parties will cooperate in selecting a single mediator and scheduling a mediation, which should take place within ninety (90) days following a request for mediation.
- 15.5 The Parties agree to maintain the confidential nature of all disputes and disagreements between them, including, but not limited to, informal negotiations, mediation, arbitration or litigation, except as may be necessary to prepare for or conduct these dispute resolution procedures or unless otherwise required by law.
- 15.6 The dispute resolution procedures contained in this clause shall not apply prior to a Party seeking a provisional remedy related to claims of misappropriation or ownership of Intellectual Property, trade secrets or Confidential Information.
- 15.7 The mediator shall be accredited by the American Arbitration Association (AAA) or another recognized professional body and be experienced with technology disputes. The Parties agree that they will participate in the mediation in good faith and share equally in its costs. The mediation shall take place in Denver, Colorado, United States.

16. ORDER OF PRECEDENCE

- 16.1 Any inconsistency in any documents relating to the Agreement shall be resolved by giving precedence in the following order:
- 16.1.1 (i) the terms and conditions of this Agreement;
 - 16.1.2 (ii) the text appearing in the applicable Statement of Work; and
 - 16.1.3 (iii) other documents, exhibits, and attachments which accompany such Statement of Work or this Agreement.

17. GENERAL PROVISIONS

- 17.1 Any notice required or permitted to be given by either Party to the other Party under this Agreement will be in writing addressed to the other Party at their nominated address as itemised in the SOW, this Agreement, or any other ancillary document. Any notice may be sent by standard post or email, and the notice will be deemed to have been served on the expiry of five (5) business days in the case of post, or at the time of transmission in the case of transmission by email.

- 17.2 Headings are inserted for the convenience of the Parties only and are not to be considered when interpreting this Agreement.
- 17.3 It is agreed that there is no representation, warranty, collateral agreement, or condition affecting this Agreement except as expressly provided in this Agreement.
- 17.4 This Agreement shall inure to benefit and bind the Parties hereto, their successors and assigns, but neither Party may assign this Agreement without written consent of the other Party, except to a related entity or the successor of all or substantially all the assignor's business or assets to which this Agreement relates.
- 17.5 It is the intention of the Parties to this Agreement that this Agreement and the performance under this Agreement, and all suits and special proceedings under this Agreement, be construed in accordance with and governed, to the exclusion of the law of any other forum, by the laws of the State of Colorado, United States, without regard to the jurisdiction in which any action or special proceeding may be instituted.
- 17.6 The waiver by either Party of a breach, default, delay, or omission of any of the provisions of this Agreement by the other Party will not be construed as a waiver of any subsequent breach of the same or other provisions.
- 17.7 If any of the provisions of this Agreement are held to be invalid or unenforceable in whole or in part, all other provisions will nevertheless continue to be valid and enforceable with the invalid or unenforceable parts severed from the remainder of this Agreement.

THE CUSTOMER ACKNOWLEDGES THAT THEY HAVE READ THIS AGREEMENT, UNDERSTAND IT, AND AGREE TO BE BOUND BY ITS TERMS, AND THE PERSON SIGNING THE APPLICABLE STATEMENT OF WORK HAS BEEN AUTHORISED TO DO SO.