

## KDVI LIMITED - SERVICES TERMS & CONDITIONS OF USE

### PROFESSIONAL DEVELOPMENT PROGRAMMES & DEVELOPMENT TOOLS

This document (together with the letter of agreement which this document is annexed to (the “**Letter of Agreement**”) and any Order or other terms agreed in writing between the parties) set out the legal terms and conditions (the “**Terms of Use**”) on which KDVI Ltd (“**KDVI**”) provides Services to you (the “**Client**”). If there is any conflict or ambiguity between these Terms of Use, the contents of the Letter of Agreement, or the terms of an Order, the terms of the Order shall prevail (unless otherwise indicated in the Order).

Where accessing the Services via KDVI’s website at [www.kdvi.com](http://www.kdvi.com) (the “**Website**”), the Client acknowledges that the Website terms of use at [Legal Centre](#) shall also apply and are incorporated herein by reference.

#### 1. Interpretation and understanding which sections of these Terms of Use apply

- 1.1 In this document, capitalised terms shall have the meaning set out in the Schedule.
- 1.2 The following terms and conditions apply to both the PDP Services and the Survey Services, and any other services made available by KDVI from time to time, except that:
  - a) Section 6 of these Terms of Use applies only to the PDP Services;
  - b) Section 7 of these Terms of Use applies only to the Survey Services;
  - c) Section 16 of these Terms of Use applies only where the Client is acting in its individual capacity as a consumer (“**Customer**”).

#### 2. Services

- 2.1 The Services will be performed for the duration of the Term, save where there is any lawful earlier termination of these Terms of Use, or as otherwise provided for in these Terms of Use.
- 2.2 KDVI shall:
  - a) provide the Services to the Client in accordance with these Terms of Use;
  - b) perform the Services using all reasonable care and skill and in accordance with industry standards; and
  - c) use reasonable efforts to provide the Services in accordance with agreed timescales.
- 2.3 The Client acknowledges that KDVI is free to provide the Services to other individuals, partnerships, corporations or any other legal entity.

### **3. Fees, Expenses & Payment**

In consideration for the Services to be provided by KDVI hereunder, the Client shall pay to KDVI the Fees and any agreed Expenses. Fees and Expenses are exclusive of any applicable taxes, which (if applicable) the Client shall additionally be liable to pay to KDVI at the prevailing rate, subject to receipt of a valid VAT invoice.

### **4. Confidentiality**

- 4.1 The parties shall treat as strictly confidential and shall not disclose or permit to be disclosed at any time to any person, the Confidential Information, except as permitted by these Terms of Use or otherwise specifically permitted in writing by the disclosing party.
- 4.2 Each party may disclose the other party's Confidential Information to its employees, officers and directors contractors who need to know such Confidential Information for the purpose of carrying out the party's obligations under these Terms of Use, provided that each party shall: (i) inform such persons of the confidential nature of the Confidential Information before disclosure; (ii) procure that such persons shall, in relation to any Confidential Information disclosed to them, comply with the obligations set out in these Terms of Use; and (iii) at all times be liable for the failure of any such persons to comply with the obligations set out in these Terms of Use.
- 4.3 Disclosure to any other person is expressly prohibited without the prior written permission of the disclosing party.
- 4.4 The obligations of confidentiality in these Terms of Use shall not apply to Confidential Information that: (i) is authorised by the disclosing party in writing to be disclosed; (ii) is or becomes publicly available through no fault of the recipient party or any of the recipient party's directors, officers or employees to whom it has been disclosed in accordance with this clause; or (iii) is independently developed by the recipient party without any use or knowledge of the Confidential Information. If any Confidential Information is required to be disclosed by law, the recipient party shall promptly notify the disclosing party prior to disclosing such Confidential Information unless prohibited by the terms of such legal requirement.
- 4.5 Subject to any materials or Intellectual Property rights licensed under these Terms of Use, on the termination or expiration of these Terms of Use, the recipient party shall promptly upon the disclosing party's request return to the disclosing party all documents and materials containing, reflecting, incorporating or based on the other party's Confidential Information. That portion of the Confidential Information which is copied or stored in electronic form (including computer and communications systems and data storage services provided by third parties) will be promptly deleted or destroyed upon the disclosing party's request (to the extent technically and legally practicable), such destruction to be confirmed in writing to the disclosing party.



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4.6 If either KDVI or the Client is required by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction to disclose Confidential Information, that party shall (to the extent it is legally permitted to do so) provide the other with prompt notice of such disclosure.

## **5. Personal Data**

5.1 The Client acknowledges that KDVI's role in respect of personal data will depend on the Services being provided and the nature of the Client, as set out in this section 5.1:

a) Survey Services

- i) Where the Client is a Customer (as defined in clause 1.2(c)) and KDVI is providing the Survey Services directly to the Customer, KDVI shall be the data controller in respect of Customer's personal data.
- ii) Where the Client is a company or business and KDVI is providing the Survey Services to the Client for the Client to use in respect of the Client's employees, consultants or otherwise, KDVI shall be the data processor in respect of any personal data provided to KDVI by the Client, and the Client shall be the data controller.

b) PDP Services

- i) Where KDVI provides PDP Services to a Customer, KDVI shall be the data controller in respect of Customer's personal data;
- ii) Where KDVI provides PDP Services to a Client at the Client's premises, the Client shall be the data controller and KDVI shall be the data processor.

5.2 Where KDVI is the data controller, it will handle and process personal data in accordance with its privacy policy at [Legal Centre](#).

5.3 Where KDVI is the data processor, KDVI will process any personal data provided to it by the Client in accordance with KDVI's data processing addendum (as amended from time to time) which can be located at [Legal Centre](#), the terms and conditions of which are incorporated into these Terms of Use by reference.

## **6. PDP Services**

6.1 Delivery of the Programme

6.1.1 KDVI will use reasonable endeavours to deliver the Programme as described on the Website, or as otherwise agreed with the Client and set out in an Order or in the Letter of Agreement.

6.1.2 KDVI shall be entitled to adapt the Programme at any time, to alter the timetable, syllabus, location, number of classes, individual(s) teaching or external service providers, and/or the method of delivery of the Programme, in KDVI's sole discretion and without liability to the Client.

6.1.3 KDVI may cancel the Programme without cause or prejudice at any time by giving the Client notice in writing before the Commencement Date. If KDVI cancels the Programme, it shall refund the Tuition Fee already paid by the Client.

6.1.4 If the Client or the Participant commits a breach of these Terms of Use which results in KDVI cancelling the Programme, or if KDVI cancels the Programme for reasons of Force Majeure, no refund of the Tuition Fee shall be due to the Client.

6.1.5 KDVI shall not be liable for any loss or damage to the Client's property or the Participant's property that occurs whilst Participants are attending the Programme.

## 6.2 Client's Obligations

6.2.1 Client shall pay to KDVI the Tuition Fee before the Commencement Date in full and upon receipt of an invoice from KDVI. Until paid in full, KDVI reserves the right to suspend or exclude the Participant from attending all or any part of the Programme.

6.2.2 If for any reason KDVI cancels the Programme and an alternate date cannot be offered, Client shall be given a full refund. If the Client cancels or defers the Programme 30 days or more before the Commencement Date, a full refund will be given. In respect of cancellation by the Client or if the Client requests KDVI defers the Commencement Date less than 30 days before the Commencement Date, the Client shall pay the Tuition Fee in full, unless otherwise agreed in writing with KDVI.

6.2.3 If Client proposes another Participant attends the session of a Programme, the new candidate will be subject to the same admission process as the original Participant. If the new candidate is accepted by the KDVI Admission Committee, no cancellation fee will apply. Participants shall not be entitled to transfer to another session of the Programme or another module of the Programme after the Commencement Date.

6.2.4 The Client acknowledges and agrees and shall ensure that:

- a) Participants must be punctual, attend all appropriate lectures, sessions, workshops, practical and theoretical activities of the entire Programme as required by KDVI, and contact KDVI as soon as is practicable if unable to attend any class;
- b) Participants must at all times behave with honesty, show courtesy, consideration and respect during the course of the Programme. Participants are expected to avoid any behaviour or conduct that could be interpreted as inappropriate by another Participant, KDVI employees or any third party. Inappropriate behaviour may include (without

limitation) unwelcome conduct whether verbal, physical or visual that denigrates or shows hostility or aversion toward an individual, including (without limitation) in relation to gender, race, religion, national origin, age, disability or sexual orientation;

- c) Participants shall be responsible for arranging any necessary visas prior to attending the Programme, and the Client acknowledges and agrees that it shall procure that its Participants hold all necessary visas or permits prior to attending the Programme;
- d) Participants shall not leave any personal belongings unattended at any time.

## **7. Survey Services**

- 7.1 Clients may purchase the Survey Services from the Website.
- 7.2 Client acknowledges that the Survey Services constitute KDVI's Confidential Information and that Client may not sub-license or resell the Survey Services, unless expressly appointed by KDVI as a Reseller pursuant to these Terms of Use.
- 7.3 Client acknowledges that the results of Client's use of the Survey Services are not guaranteed and are based on the information provided to KDVI by Client. Client shall not make available any templates or other documentation provided to it by KDVI as part of the Survey Services to any third party.
- 7.4 Client shall ensure that any information it or its users provide during use of the Survey Services is accurate and not misleading in any way.
- 7.5 Client shall not, unless expressly authorised by KDVI to be a Reseller, purchase Survey Services for its end users or otherwise resell or offer the Survey Services to any third party.
- 7.6 Client acknowledges that KDVI's logo, trade marks and branding ("**Trade Marks**") will be featured on the Survey Services, and that in reselling the Survey Services, Client must comply with any brand guidelines provided to it by KDVI from time to time. Client further agrees that it will not do or fail to do any act or thing whereby the validity, enforceability or KDVI's ownership of the Trade Marks, or the reputation or goodwill associated with the Trade Marks anywhere in the world, is likely to be prejudiced.

## **8. Reselling the Survey Services**

- 8.1 Reseller shall only resell the Survey Services in accordance with these Terms of Use and the terms and conditions contained in an Order and/or the Letter of Agreement.
- 8.2 Reseller shall not resell the Survey Services at a price exceeding the maximum resale price from time to time specified by KDVI in writing.



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- 8.3 Reseller undertakes not to copy the Survey Services or produce its own versions of the Survey Services nor authorise any third party to do so.
- 8.4 Reseller shall not:
- a) act as, or represent itself as, an agent of KDVI's for any purpose;
  - b) pledge KDVI's credit;
  - c) give any condition or warranty on KDVI's behalf;
  - d) make any representation on KDVI's behalf; or
  - e) attempt to commit KDVI to any sales contracts or any other legally binding agreement.
- 8.5 Reseller shall inform KDVI immediately of any changes in ownership or control of the Reseller, and of any change in its organisation or method of doing business which might affect the performance of the Reseller.
- 8.6 Reseller shall pay all fees due to KDVI for the Survey Services on the due date, as specified in the Letter of Agreement or an Order.
- 8.7 KDVI reserves the right to make changes to the Survey Services, and shall give notice of any changes to the Survey Services to Reseller as soon as reasonably practicable.
- 8.8 Reseller shall at its own expense comply with all laws and regulations relating to its activities under this agreement, as they may change from time to time, and with any conditions binding on it in any applicable licences, registrations, permits and approvals. shall at its own expense comply with all laws and regulations relating to its activities under this agreement, as they may change from time to time, and with any conditions binding on it in any applicable licences, registrations, permits and approvals.

## **9. Client Information**

In performing the Services hereunder, KDVI will use all information supplied by the Client without having independently verified the same and KDVI assumes no responsibility for the accuracy or completeness of such information.

## **10. Intellectual Property**

- 10.1 In consideration of the Fees, KDVI hereby grants to Client in respect of any Services purchased by the Client, a non-exclusive, non-transferable, revocable, limited licence to use the Services for its own internal business use or, if Client is a Customer, for Customer's own personal use, strictly in accordance with these Terms of Use.
- 10.2 KDVI and its licensors shall retain ownership of all data, Confidential Information and KDVI IP in the Services. Except as expressly provided for in these Terms of Use, nothing in these Terms of Use is intended to transfer ownership of or grant any rights to the Client in respect of any data, Confidential Information, or KDVI IP in the Services.

10.3 Client shall not sub-license, assign or otherwise transfer the rights granted in clause 9.1 to any affiliates, customers or third parties.

## **11. Conflicts of Interest**

It is KDVI's practice to serve multiple clients within various industries, including those with potentially opposing interests. Accordingly, the Client agrees KDVI may have served, may currently be serving or may in the future serve other clients whose interests may be adverse to those of the Client.

## **12. Non-Solicitation**

During the Term and for the period of one year thereafter, both parties agree not to solicit for employment, employ or otherwise engage the service of any consultant or other professional or managerial level employee who is employed by the other party and was involved with the Services (or assist any third party in doing so).

## **13. Faculty Replacement**

In the event that KDVI faculty is unable to attend any session or to continue coaching at all, KDVI shall use its best endeavours to provide suitable and experienced faculty by way of a replacement as soon as practicable and shall where practicable consult the Client on any such appointment.

## **14. Limitation of Liability & Insurance**

14.1 KDVI shall not be liable to the Client, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with these Terms of Use for: (i) loss of profits; (ii) loss of sales or business; (iii) loss of agreements or contracts; (iv) loss of anticipated savings; (v) loss of use or corruption of software, data or information; (vi) loss of or damage to goodwill; and (vii) any indirect or consequential loss.

14.2 KDVI's total liability to the Client, whether in contract, tort (including negligence), breach of statutory duty or otherwise, arising under or in connection with these Terms of Use shall be limited to the total Fees paid or payable to KDVI under these Terms of Use.

14.3 Nothing contained in these Terms of Use shall limit or exclude any liability for death or personal injury caused negligence, fraud or fraudulent misrepresentation or any other liability that cannot be limited or excluded by law.

14.4 KDVI shall ensure that all of its employees performing the Services have the necessary professional liability insurance cover (to include liability cover and cover for the costs of any postponement or cancellation).

## 15. Dispute Resolution

If a dispute arises out of or in connection with these Terms of Use or the performance, validity or enforceability of it (“**Dispute**”) then, the parties shall follow the procedure set out in this clause:

- a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (“Dispute Notice”), together with relevant supporting documents. On service of the Dispute Notice, an appropriate representative of each of the parties shall attempt in good faith to resolve the Dispute;
- b) if such representatives of the parties are for any reason unable to resolve the Dispute within 14 days of service of the Dispute Notice, the Dispute shall be referred to the executive officer of each of the parties who shall attempt in good faith to resolve it; and
- c) if such executive officers of the parties are for any reason unable to resolve the Dispute within 14 days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a party must serve notice in writing (“ADR notice”) to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not later than 30 days after the date of the ADR notice.

This clause is without prejudice to each party’s right to seek interim relief against the other party through any court of competent jurisdiction to protect its rights and interests, or to enforce the obligations of the other party.

## 16. Acknowledgments

Each party represents and warrants that:

- a) it is free to enter into these Terms of Use;
- b) it is not subject to any restrictions which might prohibit it from performing its obligations under these Terms of Use or which might enable another person or entity to claim any rights in or to technology, data or information developed (whether developed alone or with others) pursuant to these Terms of Use; and
- c) it will comply with all applicable laws, rules and regulations in performing its obligations hereunder.

## 17. General

Governing Law and Jurisdiction: These Terms of Use and any dispute or claim arising out of and in connection with them or their subject matter or formation (including non-contractual disputes or claims) shall be subject to the laws of England and Wales and in respect of any



dispute or claim so arising, the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

Variation: No variation of these Terms of Use - including this clause - shall be effective unless it is in writing and signed by both parties (or their authorised representatives).

Waiver: A waiver of any right or remedy under these Terms of Use or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default or the waiver of any other term or condition herein.

Severance: In the event that any provision or part-provision of these Terms of Use shall be held invalid, unenforceable or illegal, it shall be deemed modified to the minimum extent necessary to make it valid, enforceable and legal. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. In the event of such modification or deletion, the remaining provisions and part-provisions shall continue in force and effect and shall in all respects be binding on the parties.

Writing: Any reference to “writing” or “written” in these Terms of Use shall include email.

Entire Terms of Use: These Terms of Use contain the entire understanding of the parties with respect to the subject matter contained herein, superseding all prior agreements, understandings and negotiations with respect to such matters.

Successors: These Terms of Use shall be binding upon and inure to the benefit of the parties' respective successors.

Survival of termination: The obligations of the parties under these Terms of Use that by their nature continue beyond the termination of these Terms of Use, including confidentiality obligations, shall survive termination or expiry of these Terms of Use.

Force Majeure: Neither party shall have any liability for any failure or delay in performance of its obligations under these Terms of Use because of circumstances beyond its reasonable control, including, without limitation, acts of God, fires, floods, earthquakes, acts of war or terrorism, civil disturbances, sabotage, accidents, unusually severe weather, governmental actions, power failures, computer/ network viruses that are not preventable through generally available retail products, catastrophic hardware failures or attacks on its server.

Third Parties: There are no third party beneficiaries with respect to these Terms of Use.

## Schedule 1

In this document, capitalised terms shall have the following meaning:

<b>“Cancellation”</b>	means the Participant or Client withdraws and does not participate in the Programme at any stage or leaves before the end of the Programme.
<b>“Commencement Date”</b>	means the date on which the Programme is due to commence.
<b>“Confidential Information”</b>	means any confidential or proprietary information (however recorded or preserved) of the disclosing party, its parent, affiliates, or subsidiaries such as, without limitation, any development, sales, financial or accounting procedures, accounts, reports, operations, computer programs, software and databases, customer and supplier information, customer lists, market and pricing information, business know-how, techniques, methods, business plans, trade secrets, any and all information regarding the disclosing party’s business or how the disclosing party does business, or any other property or commercial information belonging to the disclosing party, whether or not marked as confidential.
<b>“Expenses”</b>	shall refer to those items which are permitted expenses pursuant to the Letter of Agreement for which the Client shall reimburse KDVI.
<b>“Fees”</b>	shall refer to the fees payable by the Client for the Services, specified in an Order and/or the Letter of Agreement.
<b>“Force Majeure”</b>	means any cause beyond KDVI’s control such as, but not limited to, acts of God, fires, floods, earthquakes, storms, explosions, epidemics, quarantine, sabotage, riot, civil commotion, and delivery delays by sub-contractors.
<b>“KDVI IP”</b>	means Intellectual Property rights owned by or licensed to KDVI.
<b>“Order”</b>	means the order form which KDVI provides to the Client in order for the Client to order the Services;
<b>“Participant”</b>	means the individual who has applied to participate in a Programme and that KDVI has accepted into a Programme by providing written confirmation to Client.
<b>“PDP Services”</b>	means KDVI’s professional development and leadership programmes, whether provided to an individual or a group of individuals in a class



room setting, as amended from time to time and as detailed on the Website at <https://www.kdvi.com/pages/programmes>.

- “Programme”** means a professional development and leadership programme that KDVI provides as part of the PDP Services which the Participant attends, as more particularly described in the Letter of Agreement and/or an Order.
- “Reseller”** means a Client who has been approved by KDVI to resell the Survey Services to its end users, pursuant to clause 8 and as specified in an Order or in the Letter of Agreement.
- “Services”** shall refer to the services to be performed by KDVI, specifically the Survey Services and/or the PDP Services, or any other services provided by KDVI from time to time, and as specified in an Order and/or the Letter of Agreement.
- “Survey Services”** shall mean the leadership development tools which KDVI provides from time to time, as detailed on the Website at <https://www.kdvi.com/tools>.
- “Term”** shall refer to the period between the start date and end date during which the Services are to be performed (including the length and number of particular sessions (if applicable)), as more particularly described in an Order and/or the Letter of Agreement.
- “Tuition Fee”** means the fees payable by the Client to KDVI in relation to the Participant’s participation in the Programme.