

Kodergarten

Terms & Conditions

KODERGARTEN Software License and Maintenance Agreements for web based software applications, mobile Applications & Services v1.6 January 2024

This Online Agreement (the “Agreement”) is entered into by and between between KODERGARTEN Cyf. registered in England and Wales under registration number 12318651 whose registered address is 36 Stryd Fawr, Pwllheli, Gwynedd LL53 5RT (“Kodergarten”) and the entity agreeing to these terms (“Customer”).

Signed by:.....

Name:.....

Date:.....

Customer Organisation Name:..Near me now.....

Registered address: INSERT HERE

Signed by:.....

Name:.....

Date:.....

This Agreement is effective as of the date you click the “I accept” button (and / or, if applicable, the date of signature of this Agreement) . If you are accepting on behalf of your employer or another organisation, you represent and guarantee that: (a) you have necessary legal authority to commit your employer, or the applicable organisation, to the terms and conditions; (b) you have read and understand this Agreement; and (c) you agree, on behalf of the party that you represent, to this Agreement.

If you do not have the necessary legal authority to commit your employer or the applicable organisation, please do not click the “I Accept” button below (and / or, if applicable, do not sign this Agreement). This Agreement governs Customer’s access to and use of the Services

THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS

1.1 In this Agreement unless the context otherwise requires:

“Agreement” means this Agreement and the Schedules attached hereto;

“Agreed Rate” means KODERGARTEN’s prevailing daily rate notified to the Customer

from time to time;

“API” means the application programming interface that supports requests for web services made of it by other computer programs.

“Commencement Date” means the date on which the Customer certifies the completion of the Installation of the Software;

“Confidential Information” means any information (whether of a commercial or technical nature) relating to the subject matter of this Agreement including the Software, the Documentation, the terms of this Agreement and other information which is disclosed or made available by KODERGARTEN to the Customer;

“Customer” The individual, company or organisation who has entered into an agreement with KODERGARTEN for the provision of software and/or services.

“Customer’s Implementation” means a web-site or software application that uses the product to add, obtain and display content.

“Data storage” means any database, spreadsheet, chart, physical document, server, network, or other means of storing information, whether created or distributed by You or otherwise

“Delivery” means the delivery of the Software and Documentation to the Customer;

“Delivery Date” means the date on which the Software and Documentation is delivered which shall be within a reasonable period following execution of this

Agreement unless otherwise agreed between the Parties;

“Designated Equipment” means the machines on which the software will run.

“Documentation” means the information reasonably necessary of for the routine operation of the Software by the Customer to be made available from time to time during this Agreement by KODERGARTEN at its discretion in either printed or machine readable form to the Customer;

“End User(s)” means individuals or organisations who use the Customer’s

implementation of the product.

“Fees” means the fees to be paid by the Customer under this Agreement in respect of the grant of the license for the Software and the provision of the Maintenance Services, Support Services and Hosting Services (as applicable) and the terms “license Fee”, “Maintenance Fee”, “Support Fee” and “Monthly fee”

“High Risk Activities” means use where the failure of the product could lead to death, personal injury or environmental damage.

“Hosting Fee” shall be construed accordingly;

“Force Majeure” means any cause affecting the performance by a party of its obligations arising from acts, events or omissions beyond its reasonable control;

“Hosting Services” means the supply of software and services by KODERGARTEN to the Customer for the hosted KODERGARTEN services in accordance with the Hosting Services Agreement as set out at Schedule 4;

“Installation” means the installation of the Software by KODERGARTEN on the Designated Equipment at the Site;

“Installation And Configuration Tests” means the tests performed by or on behalf of KODERGARTEN to determine whether the Software can perform the functions specified by the customer;

“Installation And Configuration Test Date” means the date on which the Installation And Configuration Tests commence;

“Intellectual Property” means all patents, trade marks, service marks, trade names, domain names, business names, copyrights, design rights, database rights, rights to or in computer software, know-how, trade secrets, rights to or in confidential information and all other intellectual property rights and rights or forms of protection of a similar nature or effect which may subsist anywhere in the world whether or not registered or capable of registration, together with all applications for registration of, and any license to use, any of the foregoing and “Intellectual Property” shall be construed accordingly;

“Maintenance Release” means any patch or improved modified or corrected version of any or all of the Software from time to time issued by KODERGARTEN and made available as part of the Maintenance Services Agreement in consideration of the Maintenance Fees. Typically a Maintenance Release may be characterised by minor changes in version number, for example V1.0 to V1.1 or V1.01 to V1.02 etc.;

“Maintenance Services” means the maintenance services relating to the Software to be supplied by KODERGARTEN to the Customer in accordance with the Maintenance Services Agreement as set out at Schedule 3;

“New Release” means any improved, modified or corrected version of any

additional functionality that is made generally available to end user customers and in respect of which additional fees may be payable. Typically a new release may be characterised by a major change in version number, for example from V1.0 to V2.0 etc. For the purposes of this Agreement, New Release does not include Maintenance Release;

“Order Date” means the date on which KODERGARTEN receives a purchase order and signed Software license and Maintenance Agreement;

“KODERGARTEN Site” means KODERGARTEN’s web-site and all related properties, the url of which is located at www.KODERGARTEN.com or other Kodegraten run and maintained URLs.

“Customer Site” means the customer’s site and all related properties the url of which is located at www. “Customer Site Name” .com

“KODERGARTEN Data” means any data, images, text, content or other information or materials made available to You by KODERGARTEN through the API.

“Services” means the Maintenance Services, Support Services and/or Hosting Services as applicable;

“Site” means (where appropriate) the address for Delivery of the Software and Documentation and Installation of the Software..

“Software” means the software programs in object code form identified in Schedule 1 including any New Release, Maintenance Release, images, photographs, films, music, sounds, text, ‘applets’ incorporated into the Software and any work derived from the Software;

“Territory” means the territory for which the Customer is licensed to Use the Software and Documentation in the EU;

“Third Party Service provider(s)” means any service provided to KODERGARTEN which includes but is not limited to – Timetable data, Digital mapping, Mobile Data Services, Content Feeds, Locational Services.

“Third Party Components” Any third party component embedded, included or provided by KODERGARTEN for use with the Products may only be used in conjunction with the Product.

“Use” means the copying or transmission of the Software or (where in machine readable form) the Documentation into the Designated Equipment for the processing of the instructions contained in the Software or (as the case may be) the Documentation.

1.2 Headings are used in this Agreement for convenience only and shall not affect its construction or interpretation.

2. GRANT OF LICENSE

2.1 In consideration of the payment by the Customer of the Setup Fee and subject to the terms and conditions of this Agreement, KODERGARTEN

hereby grants to the Customer a non-exclusive, transferable, license to Use and Sell and Distribute the Software (and where appropriate the Documentation) within the Territories upon the Designated Equipment and to possess and refer to the Documentation.

2.2 Kodergarten represents and warrants that it is with the exception of any open source components, the sole owner (or is an authorised licensee) of the Software and Source Code and all portions thereof and that it has the right to modify same and to grant Licensee the Software and Source Code License.

2.3 The license does not include licenses for third party components or services, the operating systems or third party runtime or development licenses or for the provision of third party content or data which may be accessible through the use of the Software. The Customer shall be responsible for obtaining the relevant licenses, keys, and permissions for any third party components and content and shall establish on request that they are in place. To the extent that third party components covered by open source licenses requiring the provision of corresponding source code for those components, KODERGARTEN hereby offers the provision of such source code consistent with those licenses.

2.4 The Software and Documentation are licensed in English Language version only unless referred to in Relevant Schedules.

2.5 The Software is licensed on the understanding that the Customer shall ensure that End Users of the Customer's implementation will not use KODERGARTEN products to record, upload, post, share or otherwise transmit any content that is Unlawful, Obscene, Harmful, Threatening, Defamatory or hateful or that contains objects or symbols of hate, invades the privacy of any third party, or is otherwise objectionable

2.6 That the customer shall ensure that the Software is not used in conjunction with or to facilitate High Risk Activities.

3. SERVICES

3.1 In consideration of the payment of the Maintenance Fee, KODERGARTEN shall supply the Maintenance Services in accordance with the Maintenance Services Agreement set out at Schedule 3.

3.2 Where the Parties have agreed the provision of Support Services and/or Hosting Services then in consideration of the payment of the Fees in relation to such Services, KODERGARTEN shall supply the Support Services and/or Hosting Services (as applicable) to the Customer on the terms of the Support Services Agreement and Hosting Services Agreement set out at Schedules 4 and 5 respectively.

4. FEES

4.1 In consideration of the grant of the license of the Software and Documentation, Delivery and Installation, the Customer agrees to pay to KODERGARTEN the Setup Fees.

4.2 In consideration of the supply of the Services the Customer shall pay the Annual Fees as applicable.

4.3 All Fees are stated in Schedule 2 and save as expressly agreed otherwise: (a) the setup Fee shall be due and payable in full at the Order Date; and the Fees for all or any other work and Services shall be due and payable within thirty (30) days of the date of the invoice.

Where applicable Monthly fees are payable by Direct Debit and are deducted monthly on the 28th day of every month.

4.4 All Fees are exclusive of Value Added Tax ("VAT") or any similar taxes. All such taxes are payable by the Customer on receipt of a valid VAT invoice and shall be applied in accordance with UK legislation in force at the tax point.

4.5 KODERGARTEN reserves the right to charge the Customer interest in respect of the late payment of any sum due under this agreement (as well after as before judgement) at the rate of four per cent (4%) per annum above the base rate (or other rate which may be substituted from time to time for base rate) of Barclays Bank plc (or in the absence thereof of another major London clearing bank) calculated on a daily basis from the date payment was due until the date payment is made

4.6 The Customer shall not be entitled to withhold more than a proportionate amount of the sum due or set-off any disproportionate sum owed by them to Kodergarten by reason of any alleged minor defect.

4.7 In the event of non-payment KODERGARTEN shall have the right to immediately and without notice suspend or terminate the license hereby granted to the Customer. KODERGARTEN may repossess any copies of the Software or Documentation for which payment has not been received by KODERGARTEN and any documentation, data, records or information relating thereto.

5. DELIVERY, INSTALLATION & CONFIGURATION

5.1 KODERGARTEN shall use all reasonable endeavours to deliver the Software on the Delivery Date. KODERGARTEN shall use all reasonable endeavours to deliver the Documentation as soon as is reasonably practicable following the acceptance by the Customer of the Software.

5.2 Risk in the Software and Documentation will pass to the Customer upon Delivery. If subsequently the Software or Documentation are (in whole or in part) destroyed, damaged or lost KODERGARTEN will upon request replace the same at the Customer's cost on a time and materials basis at the Agreed

Rate. The Customer will acknowledge all deliveries promptly in writing.

5.3 As soon as is reasonably practicable following Delivery, KODERGARTEN shall Install or configure the Software on the Designated Equipment.

5.4 The Customer shall ensure that prior to Delivery and Installation it has all computer equipment and operating systems software necessary for such Installation and that the Designated Equipment is operating correctly.

5.5 Save as expressly agreed by KODERGARTEN, time shall not be of the essence for Delivery and Installation.

6. Installation And Configuration Tests.

6.1 As soon as is reasonably practicable following Installation, KODERGARTEN or a third party designated by KODERGARTEN shall perform the Installation And Configuration Tests in relation to the Software in accordance with the procedures specified by KODERGARTEN and current at the Installation And Configuration Test Date.

6.2 If the results of the Installation And Configuration Tests show that the Software meets the Customer Requirements in all material respects then the Customer shall be deemed to have accepted the Software on such date. Minor defects not materially affecting the functionality of the Software shall not preclude acceptance of the Software by the Customer.

6.3 If the results of the Installation And Configuration Tests show that the Software fails to meet the Customer Requirements in all material respects then:

(a) the Installation And Configuration Tests shall be repeated at a time to be agreed;

(b) if the failure was due to the act or omission of KODERGARTEN then KODERGARTEN shall be responsible for its expenses relating to the repeat Installation And Configuration Tests otherwise the Customer shall be responsible for KODERGARTEN costs and expenses relating to the repeat Installation And Configuration Tests on a time and materials basis at the Agreed Rate;

6.4 If the Installation And Configuration Tests are repeated in accordance with Clause 6.3(a) above and the results of the repeat Installation And Configuration Tests show that the Software fails to meet the Customer Requirements in all material respects then either party shall be entitled to terminate this Agreement without further liability..

6.4 Any period quoted by KODERGARTEN for completion of a satisfactory Installation And Configuration Test shall commence from KODERGARTEN receipt of all information and documentation which KODERGARTEN requires to perform the Installation And Configuration Tests. The time for the completion of such Installation And Configuration Tests shall be extended by

a reasonable period if delay in such completion is caused by reason of Force Majeure.

7. THIRD PARTY COMPONENTS AND CONTENT PROVIDERS

7.1 As specified by third party content providers , the Customer and KODERGARTEN agree that:

(a) an API service in relation to the Software does not constitute any warranty, representation, guarantee, term, condition, undertaking or promise to Customers or any other third party in respect of Software will be error-free or free from any inaccuracies or defects or will operate in accordance with Customers' or any other third parties' requirements.

7.2 As specified by third party component providers, the Customer and KODERGARTEN agree that:

(a) any services provided by third party components in relation to the Software does not constitute any warranty, representation, guarantee, term, condition, undertaking or promise to Customers or any other third party in respect of Software will be error-free or free from any inaccuracies or defects or will operate in accordance with Customers' or any other third parties' requirements.

7.3 As specified by third party providers, the Customer and KODERGARTEN agree that:

(a) KODERGARTEN has no control over and does not host third party content and third party services. These resources, content and services are provided via the Product to the Customer and its End Users on an "as is" basis.

8. CONFIDENTIALITY

8.1 The Customer will:

(i) keep in confidence any Confidential Information disclosed to it by KODERGARTEN and will not disclose that information to any person (other than in confidence to their employees or professional advisers on a need to know basis) without the written consent of KODERGARTEN; (ii) use the Confidential Information disclosed to it by KODERGARTEN only for the purpose for which it was disclosed; (iii) ensure that all people to whom the Confidential Information is disclosed are aware of and bound by the terms of this Clause; and (iv) make copies of the Confidential Information only to the extent strictly permitted by this Agreement and necessary to the purpose for which it was disclosed.

8.2 Paragraph 8.1 shall not apply to information which has been published other than through a breach of paragraph 8.1, information which the Customer can show was lawfully in its possession before its disclosure, information the Customer obtained from a third party who is free at law to disclose it, or information which the Customer is required to disclose

pursuant to an order made by a court or regulatory body of competent jurisdiction.

8.3 The Customer further agrees to keep the existence and terms of this Agreement confidential and shall not disclose or publish the same without the express written consent of KODERGARTEN.

8.4 Not allow the software to be used in anyway that would cause third party content providers to withdraw their services to the site

8.5 The obligations of this Clause 8 shall survive the termination of this Agreement without limit of time.

8.6 The Customer undertakes to KODERGARTEN to take all such steps as shall from time to time be necessary to ensure compliance with the provisions of clause 8.1 above by its employees agents and sub-contractors.

9. INTELLECTUAL PROPERTY

9.1 The Intellectual Property Rights and Confidential Information in the Software and Documentation are the property of KODERGARTEN or its licensors. Without prejudice to this, and solely applicable to where software components are sourced from a third party all Intellectual property contained within these elements of the software and Documentation shall be provided for by the specific Open Source license, or commercial license for each component.

9.2 Save where expressly permitted by this Agreement or by applicable law, the Customer shall not:

- (a) save as provided in Clause 10 below make back-up copies of the Software;
- (b) copy, adapt, disassemble or reverse compile the whole or any part of the Software;
- (c) assign, transfer, sell, lease, rent, charge, distribute, sub-license or otherwise deal in or encumber the Software or use the Software on behalf of any third party or make available the same to any third party;
- (d) remove or alter any copyright or other proprietary notice on any of the Software or Documentation;
- (e) use the Software other than as directed or approved by KODERGARTEN in writing or otherwise in any manner not contemplated by this Agreement;
- (f) create derivative works based on the Software or Documentation;
- (g) knowingly use or allow End Users to use the software for any illegal or harmful purposes;
- (h) use KODERGARTEN or 's name, service marks , strap lines, or trade marks (whether registered or unregistered) in any of its advertising, promotions, information, content or in connection with its business or the services described herein and will not claim that it is associated in any way without

KODERGARTEN's prior express written consent.

9.3 The Customer shall:

- (a) reproduce on any copy (whether in machine readable or human readable form) of the Software and Documentation KODERGARTEN's copyright and trade mark notices;
- (b) maintain an up-to-date written record of the number of copies of the Software and their location and upon request forthwith produce such record to KODERGARTEN; and
- (c) notify KODERGARTEN immediately if the Customer becomes aware of any unauthorised use of the whole or any part of the Software or Documentation by any third party; and
- (d) supervise and control the use of the Software and Documentation in accordance with this Agreement;
- (e) without prejudice to the foregoing take all such other steps as shall from time to time be necessary to protect the Confidential Information and Intellectual Property Rights of KODERGARTEN in the Software and Documentation; and
- (f) in all correspondence and other dealings relating directly or indirectly to the Software and Documentation indicate that it is acting as licensee and not as the author, copyright holder or developer of the Software and Documentation.

9.4 In the event that new inventions, designs or processes evolve in performance or as a result of this Agreement, the Customer acknowledges that the same shall belong to KODERGARTEN unless otherwise agreed in writing by KODERGARTEN.

9.5 The Customer shall indemnify KODERGARTEN fully against all liabilities, costs and expenses which KODERGARTEN may incur as a result of work done in accordance with the Customer's specifications involving infringement of any patent or other proprietary right.

10. COPYING OF PROGRAM MATERIALS

10.1 The Customer shall be entitled to make two (2) copies of the Software on any storage medium for back-up purposes only provided always that the Software shall not reside on more than one computer at any point in time for each license granted to the Customer. Any such copy shall in all respects be subject to the terms and conditions of this Agreement and shall be deemed to form part of the Software.

Where all or part of the Documentation is provided in electronic format, the Customer may print one copy of such electronic documentation but shall not copy the printed materials comprising the Documentation.

11. DEFECTS

11.1 KODERGARTEN will make good by repair or by the supply of replacement Software defects which under proper use, care and maintenance appear in the Software within a period of three (3) calendar months after the Software has passed the Installation And Configuration Tests .

11.2 If during the Remedy Period an apparent defect in the Software occurs and the Customer is unable to identify the cause of the apparent defect using proper skill and care following KODERGARTEN's fault finding procedures then KODERGARTEN will at the Customer's request and expense locate and rectify the apparent defect for the Customer provided that such work will be provided free of charge if a defect was due to KODERGARTEN's faulty design materials or workmanship.

11.3 KODERGARTEN's liability in respect of any fault or defect in the Software or any part thereof arising from design materials or workmanship shall be limited in all cases to the reasonable costs of replacing or repairing such a defective Software or any part thereof and shall not in any event exceed that part of the license Fee set out against such Software in Schedule 2.

11.4 KODERGARTEN shall have no liability to remedy a defect where such defect arises as a result of any of the following circumstances:

- (a) improper use operation or neglect of the Software or the Designated Equipment;
 - (b) any unauthorised modification, alteration, repair or substitution of the Software or their merger (in whole or in part) with any other software by any person other than KODERGARTEN;
 - (c) the incompatibility of the Software with the Customer's data or conversion by the Customer of its pre-existing data in order for it to conform to the requirements of the Software;
 - (c) the provision of data services to the customer's implementation of the site from third party content providers is materially modified or changed without reasonable notice to either KODERGARTEN or the Customer, made unavailable, stopped by the provider for breaches of its obligations under any assigned terms of service;
 - (d) the failure by the Customer to implement recommendations in respect of or solutions to faults previously advised by KODERGARTEN;
 - (f) any breach by the Customer of any of its obligations under any the Maintenance Services Agreement, Support Services Agreement or Hosting Services Agreement in respect of the Software or the Designated Equipment;
- the Customer's failure to install and Use upon the Designated Equipment in

substitution for the previous release any New Release or Maintenance Release of the Software within thirty (30) days of receipt of the same. where Operating System or Network modifications from third parties are upgraded by the Customer or End user on their hardware without the relevant upgrade having been tested and approved by KODERGARTEN.

11.5 Subject to the foregoing all conditions warranties terms and undertakings express or implied statutory or otherwise in respect of the Software, Documentation and the provision of the Services are hereby excluded. KODERGARTEN makes no warranty as to fitness for purpose and satisfactory quality are hereby excluded.

12. DISCLAIMER

Except as expressly provided herein, the Software, Documentation and Services are provided during the term of this Agreement “as is”.

KODERGARTEN gives no other representations, terms, conditions or warranties of any kind, either express or implied, statutory or otherwise, regarding the Software, Documentation and Services, and KODERGARTEN specifically disclaims any implied warranties and/or terms of satisfactory quality, fitness for a particular purpose or non-infringement. KODERGARTEN does not warrant that the Use of the Software will meet the Customer’s data processing requirements or that the operation of the Software (including where in machine-readable form the Documentation) will be uninterrupted or error free. Except as expressly provided herein, KODERGARTEN makes no representations regarding account, terrain, timetable traffic, weather mapping or other data held on the system in terms of their correctness, accuracy, reliability or otherwise. KODERGARTEN is not aware of any virus or malicious code within the Software and uses industry standard anti-virus software and procedures to minimise the risk of viruses however KODERGARTEN does not warrant that the Software is free of viruses.

13. LIMITATION OF LIABILITY

13.1 Nothing in this Agreement shall operate to limit KODERGARTEN’s liability to the Customer

for death or personal injury resulting from its negligence or that of its employees, agents or sub-contractors.

13.2 Subject to Clause 14.1 above, KODERGARTEN’s entire liability (including any liability for the acts and omissions of its employees agents and sub-contractors) to the Customer in respect of any breach of its contractual obligations arising under this Agreement, the Maintenance Services Agreement, Support Services Agreement and Hosting Services Agreement or any representation statement or tortious act or omission including negligence arising under or in connection with this Agreement shall be

limited to the aggregate of license Fees paid by the Customer in the preceding twelve (12) months.

13.3 Subject to Clause 14.1 above, KODERGARTEN shall not be liable to the Customer for special, incidental, indirect or consequential loss or damage, including without limitation any direct or indirect loss or damages resulting from loss of use, loss of data, loss of third party content services, loss of profits, loss of goodwill, loss of business arising out of or in connection with this Agreement or the Software or loss or damage suffered by the Customer as a result of an action brought by a third party, even if such loss was reasonably foreseeable or KODERGARTEN had been advised of the possibility of the Customer incurring the same.

13.4 KODERGARTEN shall ensure the confidentiality of any personal data held on the product.

13.5 KODERGARTEN reserves the right to correct possible errors on the Software and more, generally, to modify, from time to time and without notice the Software or any part thereof. KODERGARTEN may not be held liable for any modification, interruption, or suspension of any Services that may result from these actions.

13.6 Nothing in this clause shall confer any right or remedy upon the Customer to which it would not otherwise be legally entitled.

13.7 KODERGARTEN's liability to the Customer shall cease on termination of this Agreement.

14. TERM AND TERMINATION

14.1 This Agreement shall commence on the date of execution and shall continue for an initial period of 12 months and shall continue thereafter on a 12 monthly basis unless and until terminated by either party by giving thirty (30) days prior notice in writing to that effect to the other party to expire at the first initial period of 12 months or at any time thereafter subject always to the provisions for earlier termination contained in this agreement.

14.2 Without prejudice to any other provisions of this agreement either party may terminate this Agreement forthwith on written notice to the Customer:

(a) if the Customer fails to pay any sum due hereunder within thirty (30) days of the due date;

(b) if the Customer commits a breach of any term of this Agreement, the Maintenance Services Agreement, Support Services or Hosting Services Agreement;

(c) if the Customer shall convene a meeting of its creditors or if a proposal shall be made for a voluntary arrangement within Part I of the Insolvency

Act 1986 or a proposal for any other composition scheme or arrangement with (or assignment for the benefit of) its creditors or if the Customer shall be unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or if a trustee receiver administrative receiver or similar officer is appointed in respect of all or any part of the business or assets of the other or if a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the other or for the making of an administration order (otherwise than for the purpose of an amalgamation or reconstruction).

14.3 This Agreement shall terminate automatically on termination of the Maintenance Services Agreement.

14.4 Any termination of this Agreement pursuant to this Clause 14 shall be without prejudice to any other rights or remedies a party may be entitled to hereunder or at law and shall not affect any accrued rights or liabilities of either party nor the coming into or continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.

14.5 On termination of this Agreement for any reason:

(a) each Party shall immediately pay to the other all amounts due under this Agreement; and;

(b) all rights and obligations of the Parties shall cease to have effect immediately upon termination of this Agreement except that termination shall not affect the accrued rights and obligations of the Parties at the date of termination; and a duly authorised officer of the Customer shall certify in writing to KODERGARTEN that the Customer has complied with its obligation as aforesaid.

15, NON-COMPETE

15. FORCE MAJEURE

15.1 Save for a Party's obligations to make payments when due, neither Party shall be deemed to be in breach of this Agreement or have any liability to the other in so far as it is prevented from performing its obligations under this Agreement by reason of any circumstances beyond its reasonable control.

16. GENERAL

16.1 No failure or delay to exercise, or a single or partial exercise of, any right or remedy under this Agreement shall be construed or operate as a waiver of it. The rights and remedies provided in this Agreement are cumulative and are not exclusive of any rights or remedies provided by law.

16.2 Neither party shall be entitled to assign this Agreement nor any of its

rights or obligations under it without the prior written consent of KODERGARTEN.

KODERGARTEN may assign this Agreement without reference to the Customer.

16.3 Any notice to be given hereunder shall be delivered or sent by first class post to the address of the other party set out in this Agreement (or such other address as may have been notified and any such notice or other document shall be deemed to have been served (if delivered) at the time of delivery (if sent by post) upon the expiration of forty-eight (48) hours after posting.

16.4 Nothing in this Agreement shall constitute any relationships of joint venture, partnership or agency. This Agreement may only be varied in writing signed by duly authorised representatives of both Parties.

16.5 This Agreement constitutes the entire agreement of the Parties with respect to its subject matter and supersedes all non-fraudulent prior representations, warranties, arrangements and agreements between them relating to it. Neither Party shall be entitled to rely on any non-fraudulent representation, warranty, arrangement or agreement which is not expressly contained in this Agreement. If any part of this Agreement is held to be invalid, unlawful or unenforceable it shall be severed from the remainder which shall continue to be valid and enforceable to the fullest extent permitted by law.

16.6 This Agreement shall be governed by the laws of England and Wales and the Parties submit to the non-exclusive jurisdiction of the English Courts. In the event that the Customer resides or is established outside of England and Wales, the place of supply and place of agreement shall be deemed to be the location of the main KODERGARTEN download server located in Wales and will therefore remain under the jurisdiction of the laws and courts of England and Wales.

IN WITNESS WHEREOF the parties have signed by their duly authorised representatives on the date first above written:

SCHEDULE 1

1. The Software

The license granted in this Agreement shall apply in respect of the following Software:

siop.io

Development of bespoke web applications

KODERGARTEN applications – governed in part by GNU AFFERO GENERAL PUBLIC LICENSE

Version 3, 19 November 2007 <http://www.gnu.org/licenses/agpl-3.0.html>

2. Territories

The license granted to the Customer in this Agreement is for the UK and EU.

SCHEDULE 2

FEES

1. Setup Fees

The Customer shall pay KODERGARTEN the following fees in respect of the license of the Software:

See <http://www..com/products> for relevant Monthly or Annual fee and Setup Fees

Professional Services –

£ rate of £550 /day plus reasonable expenses

To include (but not exclusive to : Setup, Design, Coding, Deployment, Testing, Modifications & amendments, Technical project management

Payment terms –

Set up fee – 100% of License fee on initiation of contract (if applicable).

Professional Services – monthly on initiation of contract based on the number of days worked. The balance to be paid on acceptance by Customer.

Support contract does not commence until acceptance received from the Customer, this to be payable from date of acceptance.

2.Maintenance and Support Fees

For the duration of the first twelve months of the Initial Period (as defined in the Maintenance Services Agreement), the Maintenance Fee shall be included within the Setup and monthly Fees set out above. Thereafter, the Customer shall pay the following in respect of the Maintenance and Support Services:

20% of the annual total monthly or where appropriate annual fees paid on an annual basis.

(For first twelve months of the agreement). KODERGARTEN reserves the right based on usage of these services during the first twelve months to notify and provide the Customer with revised Maintenance and Support Fees.

3. Hosting Fees

Where applicable – The Customer shall pay KODERGARTEN the following fees in respect of the Hosting Services:

£ per month TBA

1. license Fees

The Customer shall pay KODERGARTEN the following fees in respect of the license of the Software:£0.00 (for the duration of the Initial period).

SCHEDULE 3

MAINTENANCE SERVICES AGREEMENT

1. Save as provided in this Maintenance Services Agreement, capitalised terms shall have the meanings given in the Software license and Maintenance Agreement. Clauses 3 (Services), 4 (Fees), 8 (Confidentiality), 9 (Intellectual Property), 14 (Disclaimer), 15 (Limitation of Liability), 16 (Termination), 17 (Force Majeure) and 18 (General) of the Agreement shall where appropriate be deemed to be repeated in full in this Maintenance Services Agreement.
2. In consideration of the payment of the Maintenance Fee, KODERGARTEN will supply the Maintenance Services as set out in this Maintenance Services Agreement for the duration of this Maintenance Services Agreement.
3. KODERGARTEN shall provide to nominated representatives of the Customer access to a telephone help line exclusively for Software-related problems between the hours of 9:30 am and 5 pm (GMT) Monday to Friday (excluding UK Public Holidays).
4. KODERGARTEN shall use all reasonable endeavours to correct critical errors in the Software within a reasonable time having regard to the severity of the error (as determined by KODERGARTEN) or shall provide assistance to overcome specific problems with the Software. KODERGARTEN may, in its sole discretion, correct any errors by Maintenance Release as described in paragraph 6 below.
5. KODERGARTEN shall use at its discretion remote fault diagnosis. Should the customer not agree to this, the Customer will be liable for all costs suffered in the diagnosis and assistance in overcoming any problems with the software.
6. KODERGARTEN may from time to time issue Maintenance Releases for the installed version of the Software.
7. It is a condition of this Maintenance Services Agreement that the Customer shall:
 - (a) report all errors in the Software promptly on discovering the same;
 - (b) permit KODERGARTEN or its designated third party access to the Site during working hours as may be required by KODERGARTEN for the purpose of diagnosing and correcting errors in the Software;
 - (c) provide to KODERGARTEN all information available to the Customer relating to the error to enable KODERGARTEN to properly diagnose the cause of the error and assess the severity of the error;
 - (d) comply with all reasonable instructions given by KODERGARTEN in relation to the correction of the error; and
 - (e) install such Maintenance Releases as soon as is reasonably practicable

following the Customer's receipt of the same from KODERGARTEN;
(f) comply with all third party content provider terms and conditions of service;

7. The Parties agree that the Software relies for its operation on the use of third party APIs and Services which are periodically changed by the Providers of these Services. KODERGARTEN will use all reasonable efforts to ensure that the Software will continue to operate correctly upon the introduction of modifications to these API's if sufficient and reasonable notice is provided to KODERGARTEN and that these modifications are compatible with the services provided by KODERGARTEN applications and any related mobile applications.

8. KODERGARTEN reserves the right to withdraw Maintenance Services for obsolete versions of the Software by giving the Customer twelve months notice in writing. During this period the Customer will be given the option to upgrade to the current version of the Software at a discount to the current list price.

9. Subject to This Maintenance Services Agreement shall commence on the Commencement Date and shall continue for a minimum period of three years ("Initial Period") and shall continue thereafter until terminated:

(a) at any time within the Initial Period by the Customer on giving KODERGARTEN three (3) calendar months notice in writing, such notice to

(b) expire at the end of the Initial Period; or

(c) at any time after the expiry of the Initial Period by either party giving to the other not less than three (3) calendar months notice in

(d) writing expiring on the third anniversary of the Commencement Date provided that a valid annual Maintenance Fee has been paid in advance.

10. The license granted to the Customer under the Agreement shall expire immediately upon termination of this Maintenance Services Agreement.

11. The following are not included within the Maintenance Services Agreement and shall be charged for additionally on a time and materials basis at the Agreed Rates:

(a) Support of other software, accessories, attachments, machines, systems or other devices not supplied by KODERGARTEN.

(b) Rectification of lost or corrupted data arising for any reason other than KODERGARTEN's own negligence.

(c) Support rendered more difficult because of any changes, alterations, additions, modifications or variations to the Software or operating environment initiated by the Customer.

(d) Attendance to faults caused by the Customer's use of the Software outside the provisions laid down in any Documentation or contrary to

KODERGARTEN's instructions.

(e) Diagnosis and/or rectification of problems not associated with the Software.

SCHEDULE 4

HOSTING SERVICES AGREEMENT

1. DEFINITIONS AND INTERPRETATION

1.1 Save as provided in this Hosting Services Agreement, capitalised terms shall

have the meanings given in the Software license and Maintenance Agreement. Clauses 3 (Services), 4 (Fees), 8 (Confidentiality), 9 (Intellectual Property), 14 (Disclaimer), 15 (Limitation of Liability), 16 (Termination), 17 (Force Majeure) and 18 (General) of the Agreement shall where appropriate be deemed to be repeated in full in this Maintenance Services Agreement

1.2 In this Hosting Services Agreement unless the context otherwise requires:

"Linx Network" means The London Internet Exchange Peering point;

"Network Boundary" means the port through which the hosted system is accessed; whether this is accessed via terrestrial (cable) or mobile (wireless) network providers.

"Server Network" means the currently deployed KODERGARTEN systems (servers, hardware and associated software) that are responsible for delivering the Hosting Services;

"Scheduled Maintenance" mean any maintenance performed to the KODERGARTEN Service of which Customer is notified 48 hours in advance. Notice of Scheduled Maintenance will be provided to Customer's designated point of contact by email; and

"Service Outage" means the KODERGARTEN Servers were unavailable for more than thirty (30) consecutive minutes.

2. SCOPE

This Hosting Services Agreement applies to KODERGARTEN locative platform and services provided to the Customer.

3. AVAILABILITY

3.1 KODERGARTEN guarantees 99.5% availability using redundant servers.

3.2 The following downtime events shall not be considered part of a Service Outage:

(a) Scheduled Maintenance; or

(b) Unavailability of the Services due to Customer misuse, application programming, non-performance or other negligent or unlawful acts by Customer or its agents or its suppliers, problems with, access to third party

content API's, Customer's registrar, network unavailability outside of the KODERGARTEN Server Network; or

(c) events of Force Majeure.

3.3 KODERGARTEN, in its sole discretion, shall determine whether an event will be considered a "Service Outage" based on its records and data.

3.3 The system will be deemed to be unavailable if the customer cannot connect to <http://.Kodergarten.com/> through their browser, whilst at the same time being able to access reference sites <http://www.google.co.uk> & <http://www.bbc.co.uk>

4. REMEDIES

4.1 When Customer becomes aware of a Service Outage, Customer shall inform KODERGARTEN Customer Support within two (2) calendar days.

4.2 If KODERGARTEN determines in its reasonable commercial judgement that the Service Outage event lasted more than eight (8) consecutive hours during a calendar month, KODERGARTEN, upon Customer's request, will credit Customer's account for ten percent (10%) of the Customer's previous month's Hosting Fee for every one percent (1%) reduction in availability for the calendar month up to a maximum of credit of one hundred percent (100%) of the previous months charges.

4.3 To qualify for any credit, Customer must have a current and valid subscription for the Services directly with KODERGARTEN and must have an account in good standing with KODERGARTEN.

4.4 Customer's account shall not be credited more than once per month under the Service Level Agreement – (Schedule 6)

4.5 Service Credits are the sole and exclusive remedy if KODERGARTEN does not meet the commitments set forth in this Hosting Services Agreement.

Schedule 5

ADDITIONAL WORKS AND Customer SPECIFIED MODIFICATIONS

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Schedule 6

Kodergarten Ltd

V1.3 December 2023

SERVICE LEVEL AGREEMENT

Customer Support Service:

KODERGARTEN will provide the following Customer Support Services

Customer Support Desk – 09:30 to 17:00, Monday to Friday (not including UK Bank Holidays).

Support Desk

KODERGARTEN will provide Support Desk Services to respond to customer service and technical questions and enquiries. The staff will be knowledgeable personnel with appropriate technical and communication skills. They will aim to assist customers in resolving Product or Service issues and to impart necessary relevant knowledge or understanding related to the KODERGARTEN product(s) or Service(s).

Such individuals shall be contactable via the appropriate Telephone numbers and e-mail addresses.

The appropriate contact details for all support desk communications are as follows:

e-mail – INSERT@kodergarten.com

The following information will be required when reporting an incident to the help desk.

Customer or site reference no.

Customer Contact name and contact details (telephone number and e-mail address)

Short description of the problem

KODERGARTEN will provide the Customer with a unique incident reference number and a classification and estimated resolution time based on the incident severity level detailed below.

The following information will be required when a status update is required on any previously reported incident. KODERGARTEN site reference no. and the relevant incident reference number.

Upon the successful resolution of the incident. KODERGARTEN will notify the merchant via e-mail and the case will be closed.

Faults; Priorities and responses.

For the purpose of prioritising and escalating KODERGARTEN faults, faults will be categorised as either Critical, Severe, Degraded or Minimal

INCIDENT PROCESS AND SEVERITY LEVEL TABLE

The target time for KODERGARTEN to respond to all faults is outlined below, the target time being from receipt and logging of fault notification. KODERGARTEN will update the customer at the target interval indicated until a solution is found.

The following shall define the actions to be taken per the problem's assigned level:

Step 1 – represents the acknowledgement of the problem and the beginning of the information gathering process. KODERGARTEN will notify the Customer on identification of the problem if an incident has not already been reported and classified.

Step 2 – represents the target time frame during which the problem is being actively addressed and a temporary patch, correction or workaround is provided. The goal will be to provide a fix or a work-around for the problem as soon as possible. Critical problems will be worked on continually until a satisfactory problem resolution can be reached.

Step 3 represents the target time within which a permanent solution will be made available which meets KODERGARTEN's internal quality standards and tests.

Escalation

Incident escalation

Incidents reported to the KODERGARTEN Help Desk will be escalated in line with the details below. KODERGARTEN management will be made aware of issues according to the below timeframes. Elapsed time represents the number of clock hours that have passed since the issue was first classified by KODERGARTEN. Resolution is deemed to have been achieved if a temporary fix is released.

Senior developer - if Level 1 or 2 are not resolved within 1hr of target resolution time.

Managing Director – If level 1 or 2 are not resolved within 2hrs of target resolution time, if level 3 if not resolved within a period of 12hrs of target resolution time.

The following information will be required when reporting an incident to the help desk.

Operator or site reference no.

Operator Contact name and contact details (telephone number and e-mail address)

Short description of the problem

Kodergarten will provide the Operator with a unique incident reference number and a classification and estimated resolution time based on the incident severity level detailed below.

The following information will be required when a status update is required on any previously reported incident. Kodergarten Operator or site reference no. and the relevant incident reference number.

Upon the successful resolution of the incident. Kodergarten will notify the Operator via e-mail and the case will be closed.

Faults; Priorities and responses.

For the purpose of prioritising and escalating Kodergarten faults, faults will be categorised as either:

a) SEV1- Critical,

- b) SEV 2 - Severe
- c) SEV 3 - Degraded
- d) SEV 4 - Minimal
- e) SEV 5 - Minor deficiency

Severity Description	
SEV 1	A critical incident that affects a large number of users in production.
SEV 2	A significant problem affecting a limited number of users in production.
SEV 3	An incident that causes errors, minor problems for users, or a heavy system load.
SEV 4	A minor problem that affects the service but doesn't have a serious impact on users.
SEV 5	A low-level deficiency that causes minor problems.

INCIDENT PROCESS

The target time for Kodergarten and its partner Software Services supplier to respond to all faults is outlined below, the target time being from receipt and logging of fault notification. Kodergarten will update the customer at the target interval indicated until a solution is found.

The following shall define the actions to be taken per the problem's assigned level:

Step 1 – represents the acknowledgement of the problem and the beginning of the information gathering process. Kodergarten will notify the Customer on identification of the problem if an incident has not already been reported and classified.

Step 2 – represents the target time frame during which the problem is being actively addressed and a temporary patch, correction or workaround is provided. The goal will be to provide a fix or a work-around for the problem as soon as possible. Critical problems will be worked on continually until a satisfactory problem resolution can be reached.

Step 3 represents the target time within which a permanent solution

will be made available which meets Kodergarten's internal quality standards and tests.

Escalation

Incident escalation

Incidents reported to the Kodergarten Help Desk will be escalated in line with the details below. Kodergarten management will be made aware of issues according to the below timeframes. Elapsed time represents the number of clock hours that have passed since the issue was first classified by Kodergarten. Resolution is deemed to have been achieved if a temporary fix is released.

Partner Software supplier senior developer - if Level 1 or 2 are not resolved within 1hr of target resolution time.

Partner Software supplier Managing Director – If level 1 or 2 are not resolved within 2hrs of target resolution time, if level 3 if not resolved within a period of 12hrs of target resolution time.

General Disclaimer

KODERGARTEN does not control the availability of associated third party service i.e. SIRI VM, TNDS, Google Maps / OSM or the Customer's networks. System will not be deemed unavailable if the source of the problem lies with an associated third party service or the Customer's networks.

The burden of proof as to where the problem occurred lies with KODERGARTEN. KODERGARTEN will take all commercially reasonable efforts to work with third parties to ensure the speedy resolution of any problems.