Document	**Terms of Engagement DO NOT EDIT**
Provider	Kyanmedia Ltd (“Kyan” or “us”)
Client	
Author	
Version	
Effective Date	

The Agreement

Client name (hereafter known as “you” or “your”) has contracted Kyanmedia Ltd. (hereafter known as “we”, “us” or “our”) to provide consultancy, design and/or software development services ("the Services") for a period of time that shall be referred to as the “Term of the Agreement". We are not your employee or agent.

1. Contract Term

1.1 This agreement shall come into force on the date it has been executed by you, whenever the first Statement of Work (SoW, as defined in clause 3.1 of these terms) has been executed by you, or whenever we otherwise accept an instruction to commence works, whichever is earlier.

1.2 These terms and all SoWs that have not expired or been terminated shall apply to and constitute the legally binding agreement between the parties (the “Contract”), contain the entire agreement of the parties and prevail over any inconsistent terms or conditions contained, or referred to, in your purchase order, confirmation of order, acceptance of a quotation or specification, or implied by law, trade custom, practice or course of dealing.

1.3 To the extent of any inconsistency between these terms, a SoW and our Support & Maintenance Agreement, the provisions of the SoW shall take

precedence followed by these terms and then as required, the Support & Maintenance Agreement.

1.4 Each of the parties acknowledges and agrees that, in entering into this agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to these terms or not) relating to the subject matter of the agreement, save as set out Here.

2. Service Provision

2.1 We will use reasonable skill and care in performing the Services. Where the Services relate to a specific project we will use reasonable endeavors to complete the project in a timely manner.

2.2 We may harness the use of AI (artificial intelligence) in the provision of our services and our solution design. We are committed to being transparent about the use of AI in our offering and will provide clear explanations for how AI drives decision and outcomes in our work. AI will be used to complement not replace human decisions.

3. Statements of Work

3.1 Subject to the remaining provisions of this clause 3, you may from time to time enter into individual Statements of Work with us for the Services in any form that we may agree from time to time, each such Statement of Work being an individual contract and referred to in these terms as a "SoW".

3.2 At any time during the Contract:

- you may provide us with a written request for Services requiring us to submit a corresponding draft SoW;
- we will submit a draft SoW to you within a reasonable period of time of the date of receipt of your request under this clause 3.2; and
- you and we shall execute the SoW when it is agreed.

3.3 You will not be entitled to amend or withdraw a SoW once it is signed.

3.4 A draft SoW shall not constitute a binding obligation on us to supply the Services until such time as we have acknowledged and accepted the SoW in writing. We may accept or reject any request for a SoW in our absolute discretion.

3.5 No variation to a SoW shall be binding unless expressly agreed in writing, or otherwise as provided for in the SoW.

3.6 No SoWs may be placed following the date on which notice is validly served to terminate the Contract under these terms.

4. Your Obligations

4.1 You warrant and represent that any element of text, graphics, photos, designs, trademarks, or other artwork you provide to us for use as content in a project is owned by you, or you have permission to use it. You will hold us harmless from, and indemnify us against, any suit, loss, damage, expense (including reasonable legal and other professional fees), cost or claim arising from the use or possession of such elements.

4.2 Where the deliverable elements of a project include a website/application(s) you must test the website and/or application(s) within 4 weeks of us asking you to do so via email (“the Acceptance Testing Period”) and you will be deemed to have accepted them/it if you have not given detailed written notice to the us within such period of each issue which you would like addressed.

4.3 All site/application content shall be supplied electronically as per any agreed project Schedule.

5. Our Obligations

We will use our best endeavours to fix any faults, or address any issues identified by you during the Acceptance Testing Period within a reasonable timescale as agreed between both parties. The Acceptance Testing Period will not apply to any faults or issues that are fixed or addressed in accordance with

this clause.

6. Confidentiality

Both parties agree to keep each other's information absolutely confidential during the term of the Contract and for a period of 1 year following its expiry or termination.

7. Limitation of Liability

7.1 Software performance and functionality can vary according to many factors including the user's device and software, the state of the internet and other third party services. Therefore, notwithstanding our obligations in clause 4, we cannot and do not warrant that the operation of the web page(s) and/or web application(s) will be uninterrupted or error-free.

7.2 This clause 6 sets out our entire financial liability (including any liability for the acts or omissions of our employees, agents and sub-contractors) to you in respect of any breach of this agreement, any use made by you of the Services (and the products of the Services) or any part of them and any representation, statement or tortious act or omission (including negligence) arising under or in connection with this agreement.

7.3 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this agreement.

7.4 Nothing in this agreement limits or excludes our liability for death or personal injury resulting from negligence or for any damage or liability incurred by you as a result of fraud or fraudulent misrepresentation by us or for any liability incurred by you as a result of any breach by us of the condition as to title or the warranty as to quiet possession implied by section 2 of the Supply of Goods and Services Act 1982.

7.5 Subject to clauses 7.3 and 7.4, we shall not be liable, whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation or otherwise for loss of profits, loss of business, depletion of goodwill and/or similar losses, loss of anticipated savings, loss of goods or loss of contract.

7.6 Our total liability in contract, tort, misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of this shall be limited to the amount which it has been paid for the Services by you in the calendar year within which the act or omission giving rise to the claim first occurred (and in the event of a series of acts or omissions, the relevant year shall be the year of the first such act or omission).

7.7 We shall have no liability to you if we are prevented from – or delayed in performing – our obligations by acts, events, omissions or accidents beyond our reasonable control.

8. Promotional use of work

8.1 Unless otherwise agreed in writing, we reserve the right to display, publish, or otherwise use any work created or delivered by us under this Agreement, including designs, websites, applications, branding materials, and related content, for the purpose of promoting our services. This may include, but is not limited to, use on our website, in case studies, in social media posts, in pitches, and in award submissions.

8.2 We will never disclose any confidential or sensitive client information and will, where appropriate, anonymise or generalise materials where specific disclosure is not suitable. If you would prefer that certain work not be used for promotional purposes, you must notify us in writing prior to or at the time of project commencement.

9. Pricing and Payment

9.1 The guide price for provision of the Services and/or for any projects undertaken is as specified in the Statement of Work for the applicable project. All payments shall be made to: Kyanmedia Ltd, Third Floor, Friary Court, 13 - 21 High Street, Guildford, GU1 3DG.

9.2 Invoices shall be paid by you within 30 days of the date of the invoice.

9.3 Both parties agree to follow the project schedule(s) contained in the Statement of Work for the applicable project.

9.4 Project-related expenses incurred in the course of business, including travel to meetings, third party costs, accommodation will be invoiced in arrears, with receipts available on request.

9.5 We reserve the right to review and notify you of any pricing changes on an annual basis.

10. Ending the Agreement

10.1 You may at any time terminate the Services by giving at least 30 days notice in writing. We may at any time terminate the Services by giving at least 30 days notice in writing, provided that such termination may only be given after the Acceptance Testing Period.

10.2 Either party may terminate immediately on giving notice to the other, if the other party breach any of the terms of this agreement or suffers any event of insolvency or bankruptcy (including circumstances which entitle a court to make a winding-up order, the appointment of any receiver, administrator, administrative receiver, liquidator or other office holder, any arrangement or composition with its creditors and any cessation to, or threat to cease, the trade).

10.3 On any termination you will pay costs incurred for the performance of the services performed as at the date of termination only.

11. Intellectual Property

We will assign to you without further charge all assignable intellectual property rights in any design, application, code or other deliverable which has been created by us for you as part of the Services to such extent as is necessary to enable you to make reasonable use of the products of the Services and provided that you have settled in full all payments due to us for the Services and any other payments you owe us at that time. For the avoidance of doubt, this agreement to assign does not cover:

any open-source software; any material not developed for the sole purpose of providing the Services to you; and any material which is used in the course of

our business.

12. Non-solicitation and Non-hire of Company Employees

You agree that during the Term of the Agreement and a further period of 12 (twelve) calendar months after termination, for whatever reasons, you shall not either directly or indirectly solicit or entice away or endeavor to solicit or to entice away or assist any other person to solicit or hire or entice away from us, any of our employees who provided Services on our behalf during the 12 (twelve) calendar months prior to the termination of the Agreement.

13. Data Protection

13.1 "Data Protection Laws" means all laws applicable in the United Kingdom from time to time relating to the processing of personal data and/or privacy, including, but not limited to, the Data Protection Act 2018 (and any successor legislation), the General Data Protection Regulation (Regulation (EU) 2016/679) ("GDPR") and the Privacy and Electronic Communications Regulations 2003.

The terms "controller", "processor", "data subject", "personal data", "personal data breach"and "processing" used in this agreement shall have the meanings set out in the Data Protection Laws.

13.2 Both parties shall comply at all times with the Data Protection Laws.

13.3 You agree that, in carrying out our obligations under this agreement, we will process personal data as a data processor for you, where you are the data controller of that personal data.

13.4 We, as a data processor for you in relation to any personal data provided to us hereunder by or on behalf of you, shall:

13.4.1 only process data in accordance with your instructions or your data protection policy, if a copy has been provided to us, (unless otherwise required by applicable EU or member state law to which we are subject and in such circumstances and we shall inform you of such requirement unless prohibited by applicable EU or member state law on important grounds of public interest);

13.4.2 ensure that any persons authorised by us in accordance with or obligations under this agreement to process personal data are bound by appropriate confidentiality obligations in relation thereto;

13.4.3 taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the severity of the risk to the rights and freedoms of natural persons, implement appropriate technical and organisational measures in relation to the personal data to ensure a level of security appropriate to the level of risk (and in assessing risk shall take account, in particular, of the risks that are presented by processing in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or access to the personal data);

13.4.4 not approve any sub-processor (where applicable) to process any personal data without your prior written consent (which shall not be unreasonably be withheld) and if such consent is given only if a written contract is in place (we shall remain liable for all acts and omissions of any sub-processor);;

13.4.5 not transfer such personal data outside of the European Economic Area or other countries deemed to have adequate data protection laws without your prior written consent and if we agree that relevant safeguards under Article 46 of the GDPR and/or other relevant conditions have been fulfilled;

13.4.6 taking into account the nature of the processing, the information available to the processor and all other circumstances, when requested by you, provide reasonable assistance to you, at your cost, to respond to requests from data subjects exercising their rights under the Data Protection Laws and to assist you in the discharge of your obligations under the Data Protection Laws in relation to security of processing, notification of personal data breaches and data protection aspect assessments;

13.4.7 notify you immediately if we receive a data subject access request (or a purported data subject access request) or a request to rectify, block or erase any personal data or any other request, complaint or communication relating to our respective obligations under the Data Protection Laws or any communication from the Information Commissioner or other relevant regulatory authority in connection with any processing or if we receive any third party requests to disclose personal data where compliance with such request is required or purported to be required by law;

13.4.8 forthwith on the termination of the agreement delete or return to you (as requested by you) all personal data in its possession or control (except to the extent that applicable EU or member state law requires storage of that personal data by us) and shall, on your request, certify in writing to you that we have done so;

13.4.9 termination of this agreement, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination;

13.4.10 keep, and make available to you on your request all such documentation and information as is reasonably necessary to demonstrate our compliance with its obligations under Article 28 of the GDPR in relation to personal data;

13.4.11 allow for and contribute to audits (including inspections) conducted by you or another independent auditor mandated by you to verify our compliance with our obligations as a processor under Article 28 of the GDPR in relation to personal data, provided that such audits shall only take place on reasonable prior notice during normal business hours, shall not take place more than once per annum, you and/or such mandated auditor shall enter into a confidentiality agreement with us prior to each such audit taking place and the costs incurred by us in facilitating and enabling such audits shall be met by you;

13.4.12 inform you if we become aware of a personal data breach under the Data Protection Laws relating to personal data; and

13.4.13 immediately inform you if in our opinion an instruction from you infringes the Data Protection Laws.

13.4.14 The parties agree to take account of any guidance issued by the Information Commissioner.

13.5 Each party hereby indemnifies the other in full and on demand against all losses, liabilities, damages, costs, claims and expenses (including but not limited to legal costs) arising from or incurred by the indemnified party as a result of any failure by the indemnifying party to comply with this clause 11.

14. Law and Disputes

14.1 This agreement shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.

14.2 No variation of these terms shall be valid unless it is in writing and signed by or on behalf of each of the parties.

Approved by

Kyan	**Client**
Signature:	Signature:
Date:	Date: