

## KYND TERMS OF SERVICE

### OVERVIEW

**KYND Limited**, a private limited company organized under the law of England and Wales (registration number 10943213), with a registered office at Unit 3-4, The Grain Store, 70 Weston Street, London, SE1 3QH (together with its affiliates, ("**KYND**") owns and operates a cybersecurity software solutions platform (the "**KYND Platform**"), and provides software-as-a-service solutions and associated services in connection with the KYND Platform (the "**Services**"). Customer desires to access and use the KYND Platform and the Services for its own internal business purposes, as further described in these Terms of Service and one or more associated Order Forms. These Terms of Service, together with the KYND Privacy Policy found at <https://www.kynd.io/privacy-policy/>, the Documentation found at <https://www.kynd.io/legal-information>, and signed Order Form(s) are collectively referred to as the "**Agreement**".

By executing an Order Form or otherwise affirmatively accepting the Agreement through another means that KYND offers you (including by using online functionality that KYND makes available (e.g., clicking a box), your organization ("**Customer**" or "**You**") agrees to be bound by this Agreement. The individual accepting this Agreement on behalf of Customer represents and warrants that he has the authority to bind Customer to this Agreement. If the individual does not have such authority, or if the individual does not agree with the terms and conditions of this Agreement, such individual must not accept this Agreement and Customer may not use the Services.

### 1. Right of Access and Use

1.1 Upon the effective date of your signed Order Form (the "**Order Form Effective Date**") and subject to the terms of this Agreement, including payment of the Subscription Fee in accordance with the terms of the Agreement, KYND grants Customer a limited, non-exclusive, and non-transferable right to access and use the KYND Platform and the Services, as well as the Documentation, for the term of the applicable Order Form (the "**Subscription Period**") solely for Customer's internal business use in connection with the Permitted Use. "**Permitted Use**" means use of the KYND Platform and the Services for the purposes described in the Documentation and as specified in the Order Form. "**Authorized Users**" are those individuals whom Customer authorizes to use the KYND Platform. Customer is responsible for all use of the KYND Platform by its Authorized Users and agrees that it will not provide or permit access to the KYND Platform (including without limitation, the user interface and reporting) to anyone other than Authorized Users who require such access.

1.2 Customer agrees and acknowledges that its use of the KYND Platform and the Services may be subject to certain volume, usage, tiers, and other limits, if and to the extent specified on the applicable Order Form (the "**Usage Limitations**"). Any usage in excess of the Usage Limitations will obligate Customer to pay additional fees as stated in the applicable Order Form.

1.3 Customer shall not, and shall not allow a third party or its Authorized Users, to:

(i) copy, reverse engineer, modify, decompile or disassemble the KYND Platform or the Services or seek to access the source code or non-public APIs to the KYND Platform or the Services, except to the extent expressly permitted by Applicable Law (and then only with prior notice to KYND);

(ii) attempt to probe, scan, penetrate, breach or test the vulnerability of any system or network or the KYND Platform's or the Service's security or authentication measures, whether by passive or intrusive techniques;

(iii) monitor the data or traffic on any system or network;

(iv) use the KYND Platform or the Services to develop a similar or competing product or service;

(v) modify or create derivative works of the KYND Platform or the Services or copy any element of the KYND Platform or the Services or remove or alter any logos, trademarks, links, copyright or other notices, legends or markings from the KYND Platform or the Services or the Documentation;

(vi) remove or obscure any proprietary notices in the KYND Platform or the Services, including attempting to bypass or tamper with the security, operation, usage limits, or access control technology of the KYND Platform or the Services;

(vii) publish benchmarks or performance information about the KYND Platform or the Services or otherwise analyze their workings and features for competitive purposes;

(viii) interfere with the operation of the KYND Platform or the Services, circumvent any access restrictions, or conduct any security or vulnerability test of the KYND Platform or the Services;

(ix) transmit any viruses or other harmful materials to the KYND Platform or the Services;

(x) risk harm to others or to the security, availability, or integrity of the KYND Platform or the Services including using the KYND Platform or the Services or the Documentation in a way that violates applicable law or infringes upon the rights of a third party, including those pertaining to contract, intellectual property, privacy, or publicity, or that effects or facilitates the storage or transmission of libelous, tortious, or otherwise unlawful material; or

(xi) use the KYND Platform or the Services in a manner that imposes unusual demands on the KYND Platform or the Services outside of normal functions and operations.

Customer may use the KYND Platform only for the Permitted Use, in accordance with all applicable laws, rules, and regulations (including without limitation, those applicable to privacy, (collectively, "**Applicable Laws**"), as well as in compliance with the KYND Privacy Policy.

## **2. Support**

2.1 KYND shall provide Customer with Support Services for each Service included in an Order Form (a "**Subscribed Service**") during the Subscription Period to the extent and in the manner specified in the relevant Order Form.

2.2 KYND shall use reasonable endeavors to notify the Customer in advance of scheduled maintenance, but the Customer acknowledges that it may receive no advance notification for downtime caused by force majeure or for emergency maintenance.

## **3. Changes to the Services**

The Customer acknowledges that KYND shall be entitled to modify the features and functionality of the Services. KYND shall use reasonable endeavors to ensure that any such modifications do not materially adversely affect the use of the relevant Subscribed Service(s).

## **4. Fees**

4.1 Customer shall pay the Subscription Fees and any other charges expressly agreed between the parties in writing at the rates and in the manner described in the Order Form.

4.2 Unless stated otherwise in an Order Form KYND, shall invoice Customer for each year's annual Subscription Fees annually in advance, with the first invoice to be issued within 30 days of the Order Form Effective Date. Customer shall pay each invoice within 30 calendar days of the date on the invoice.

## **5. Warranties**

5.1 KYND warrants that:

5.1.1 each Subscribed Service shall operate in accordance with its Documentation in all material respects when used in accordance with this Agreement and the Documentation under normal use and normal circumstances during the relevant Subscription Period; and

5.1.2 it shall provide each of the Subscribed Services with reasonable care and skill.

5.2 If there is a breach of any warranty in clause 5.1, KYND shall, at its option, use commercially reasonable efforts to repair or replace the impacted Services within a reasonable time (at least 30 days) or refund the Fees for the impacted Services which were otherwise payable for the period during which KYND was in breach of any such warranty (provided such period is at least 30 consecutive days). To the maximum extent permitted by law, this clause 5.2 sets out the Customer's sole and exclusive remedy (however arising, whether in contract, negligence or otherwise) for any breach of any of the warranties in clause 5.1.

5.3 The warranties in clause 5.1 shall not apply to the extent that any error in the Services arises as a result of:

5.3.1 incorrect operation or use of the KYND Platform or the Services by the Customer, or any Authorized User (including any failure to follow the Documentation or failure to meet minimum specifications);

5.3.2 use of any of the Services other than for the Permitted Use;

5.3.3 use of the KYND Platform or any of the Services with other software or services or on equipment with which it is incompatible (unless KYND recommended or required the use of that other software or service or equipment;

5.3.4 any act by any third party (including hacking or the introduction of any virus or malicious code);

5.3.5 any modification of the KYND Platform or the Services (other than that undertaken by KYND or at its direction); or

5.3.6 any breach of this Agreement by the Customer (or by any Authorized User).

5.4 EXCEPT AS EXPRESSLY SET FORTH HEREIN, KYND PROVIDES THE KYND PLATFORM, THE SERVICES, AND THE DOCUMENTATION “AS IS” AND “AS AVAILABLE” AND MAKES NO WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY REGARDING ANY OF THE FOREGOING, INCLUDING ANY IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, OR NON-INFRINGEMENT, AND DOES NOT GUARANTEE THAT THE KYND PLATFORM, THE SERVICES, OR THE DOCUMENTATION WILL BE UNINTERRUPTED OR ERROR-FREE.

## 6. Customer Data; Customer’s responsibilities; Suspension

6.1. Customer is responsible for the content and accuracy of all, data, information, content, and other materials provided or submitted by or on behalf the Customer (“**Customer Data**”), and will comply with Applicable Laws and the Documentation when using the Services. Customer represents and warrants that it has made all disclosures, provided all notices, and has obtained all rights, consents, and permissions necessary for KYND to process Customer Data set forth in this Agreement without violating or infringing laws, third-party rights, or terms or policies that apply to the Customer Data.

6.2 The Customer shall (and shall ensure all Authorized Users shall) at all times comply with all Applicable Laws relating to the use or receipt of the Services, including laws relating to privacy, data protection and use of systems and communications.

6.3 KYND may immediately suspend Customer’s access to the KYND Platform and the Services if: (i) Customer breaches clause 1 or clause 6.1 or fails to pay any amount when due; or (ii) KYND determines in good faith that such suspension is necessary to avoid possible harm to KYND’s other customer’s, or any third party’s property, systems, or information. KYND will notify Customer of the suspension and reason therefor as soon as commercially practicable, and restore service as soon as commercially practicable once the underlying issue is resolved.

6.4 The Customer is obliged to provide KYND with the names of the Authorized Users who will be using the KYND Platform in advance of the Order Form Effective Date.

## 7. Intellectual property

7.1 As between the parties, all right, title, and interest in and to (a) the KYND Platform, the Services, and the Documentation, (including any and all updates, improvements, or modifications thereto or derivatives thereof), (b) Aggregated Data, and (c) Usage Data are and will remain the sole and exclusive property of KYND. “**Aggregated Data**” means aggregated and anonymized Customer Data, provided that the identity of Customer and its Authorized Users cannot be identified as the source of the data. “**Usage Data**” means anonymized data relating to Customer’s access or use of the KYND Platform and the Services, including statistics, measurement data, and telemetry collected by or generated from Customer’s use of the Platform and the Services.

7.2 All right, title, and interest in and to Customer Data are and will remain the sole and exclusive property of Customer.

7.3 Customer grants KYND a non-exclusive, worldwide, sublicensable right to use Customer Data as necessary: (i) to provide the Services and to perform its obligations under this Agreement; (ii) to derive or generate Usage Data; (iii) to derive, create, and compile Aggregated Data; and (iv) as otherwise required by Applicable Laws or as agreed to in writing between the parties.

7.4 KYND may use any feedback and suggestions for improvement relating to the Services provided by the Customer or any Authorized User without charge or limitation (“**Feedback**”).

7.5 This clause 7 shall survive the termination or expiration of this Agreement.

## 8 Indemnification

8.1 Subject to clauses 8.3 below, KYND shall:

8.1.1 defend at its own expense any claim brought against Customer by any third party alleging that Customer's use of the KYND Platform or the Services infringes or misappropriates any copyright, registered trade mark, or issued patent in the United Kingdom, the European Union, or the United States (an "**IP Claim**"); and

8.1.2 pay all costs and damages awarded or agreed by Company in settlement or final judgment of an IP Claim.

8.2 Subject to clause 8.3 below, Customer shall defend at its own expense any claim brought against KYND by any third party alleging that KYND's use of the Customer Data infringes, misappropriates, or violates any intellectual property rights or privacy rights of a third party, and indemnify and hold harmless KYND from and against any losses, damages, liability, expenses, and costs (including legal and other professional fees) incurred in connection therewith.

8.3 The party claiming indemnification shall:

8.3.1 promptly notify the indemnifying party upon becoming aware of any actual or threatened claim and provide full written particulars;

8.3.2 make no comment or admission and takes no action that may adversely affect the indemnifying Party's ability to defend or settle the claim;

8.3.3 provide all assistance reasonably required by the indemnifying Party, subject to the indemnifying party paying the indemnified party's reasonable costs; and

8.3.4 give the indemnifying party sole authority to defend or settle the claim.

8.4 KYND's obligations in this clause 8 do not apply: (a) to infringement or misappropriation resulting from Customer's modification of the KYND Platform or the Services or use of the KYND Platform or the Services in combination with items not provided by KYND (including third-party materials); (b) to unauthorized use of KYND Platform or the Services; (c) if Customer settles or makes any admissions about a claim without KYND's prior consent; or (d) to trials, beta testing of new features, or other free or evaluation use.

8.5 In the event that use of the KYND Platform or the Services may be enjoined, KYND may elect to terminate this Agreement immediately by written notice and promptly refund to the Customer on a pro-rata basis for any unused portion of pre-paid Subscription Fees. This clause 8.5 is without prejudice to Customer's rights and remedies under clauses 8.1.

8.6 The provisions of this clause 8 set out each party's sole and exclusive remedy (howsoever arising, including in contract, tort, negligence or otherwise) for any third-party infringement claim.

## 9. Confidentiality

9.1 Each party agrees to protect the Confidential Information of the other party in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind, but in no event using less than a reasonable standard of care.

9.2 "**Confidential Information**" means all non-public information (whether in oral, written or electronic form) relating to a party's business which may reasonably be considered to be confidential in nature including non-public information relating to a party's technology, know-how, intellectual property rights, assets, finances, strategy, products and customers. All information relating to the pricing, and any technical or operational specifications or data relating to each Subscribed Service shall be part of KYND's Confidential Information. Confidential Information does not include information that: (a) is already known to the receiving party without obligation of confidentiality prior to its disclosure by the disclosing party; (b) is in or enters the public domain through no wrongful act of the receiving party; (c) is or was lawfully received by receiving party from a third party without confidentiality obligations; or (d) can be established by written documentation to have been independently developed by receiving party without access to the Confidential Information.

9.3 Either party may disclose Confidential Information if and to the extent the disclosure is:

- 9.3.1 approved by the other party in writing in advance;
- 9.3.2 required by the law of any relevant jurisdiction or a court of competent jurisdiction;
- 9.3.3 lawfully required by any regulatory or governmental body to which either party is subject; or
- 9.3.4 of information which has already come into the public domain through no breach of confidence.

## 10. Modifications

10.1 KYND may modify these KYND Terms of Service at any time (each, a “**Modification**”); provided, that KYND will use commercially reasonable efforts to notify the Customer in advance of any material changes to these KYND Terms of Service. By continuing to use the Services after receiving notice of any material changes to the KYND Terms of Service, you indicate your agreement to the revised terms.

10.2 In the event that Customer reasonably believes that any Modification to the Agreement made by the Company will materially impact it negatively in any manner, it may by notice elect to terminate this Agreement in respect of all impacted Subscribed Services provided it exercises such right by providing written notice to KYND prior to such Modification taking effect pursuant to clause 10.1 and notifies KYND at the time of exercising such right of the negative impact which has caused it to exercise this right. In the event of such termination the Customer shall receive a pro rata refund of any pre-paid unused portion of the Subscription Fees in respect of such terminated Services.

## 11. Limitation of liability

**11.1 IN NO EVENT WILL EITHER PARTY BE LIABLE FOR: (A) ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING WITHOUT LIMITATION LOSS OF PROFITS, BUSINESS, REPUTATION, OR DATA) IN CONNECTION WITH THIS AGREEMENT, WHETHER ARISING OUT OF CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER LEGAL OR EQUITABLE THEORY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

**11.2 EXCEPT WITH RESPECT TO A BREACH OF CONFIDENTIALITY, BREACH OF PRIVACY, IP INFRINGEMENT, AND A PARTY’S INDEMNIFICATION OBLIGATIONS HEREUNDER, EACH PARTY’S AGGREGATE LIABILITY UNDER THIS AGREEMENT SHALL NOT EXCEED THE SUBSCRIPTION FEES ACTUALLY PAID BY CUSTOMER TO KYND UNDER THIS AGREEMENT IN THE 12 MONTHS PRECEDING THE EVENT GIVING RISE TO THE CLAIM.**

## 12. Renewals

On expiration of the Subscription Period indicated in the Order Form for each Subscribed Service, and each twelve months thereafter, the Subscription Period shall automatically renew for a further period of twelve months each, unless one party provides the other party with written notice of non-renewal at least 90 days prior to the expiration of the then-current Subscription Period.

## 13. Term and termination

13.1 The Agreement shall come into force on Order Form Effective Date and, unless terminated earlier in accordance with its terms, shall continue for the duration of the Subscription Period, as renewed in accordance with clause 12.

13.2 Either party may terminate this Agreement immediately for cause at any time by giving notice in writing to the other party if:

13.2.1 the other party commits a material breach of this Agreement, and such breach is not capable of cure;

13.2.2 the other party commits a material breach of this Agreement which is not remedied within 30 Business Days of receiving written notice of such breach; or

13.2.3 the other party has failed to pay any undisputed amount due under this Agreement on the due date and such amount remains unpaid within 20 Business Days after the other party has received notification that the payment is overdue.

13.3 Consequences of termination

13.3.1 Immediately on termination or expiration of this Agreement (for any reason), the rights granted by KYND under this Agreement shall terminate and the Customer shall (and shall procure that each Authorized User shall):

13.3.2 stop using the KYND Platform and the Services; and

13.3.3 destroy and delete or, if requested by KYND, return any copies of the Documentation in its possession or control (or in the possession or control of any person acting on behalf of any of them).

13.4 Termination or expiration of this Agreement shall not affect any accrued rights and liabilities of either party at any time up to the date of termination or expiration and shall not affect any provision of this Agreement that is expressly or by implication intended to continue beyond termination, including clauses 5.4, 6-11, 13.3, 15-22.

#### **14. Marketing**

Subject always to obtaining Customer's prior written consent to any proposed wording, such consent not to be unreasonably withheld, Customer grants KYND the right to use Customer's logo, name, and branding (the "Customer Marks") for marketing, promotional, and advertising purposes, including but not limited to, on KYND's website, in press releases, case studies, social media, and other marketing materials. KYND agrees to use the Customer Marks in a manner that is consistent with the Customer's branding guidelines.

#### **15. Taxes**

KYND's fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, "Taxes"). Customer is responsible for paying all Taxes associated with its purchases hereunder. If KYND has the legal obligation to pay or collect Taxes for which Customer is responsible under this section, KYND will invoice Customer and Customer will pay that amount unless Customer provides KYND with a valid tax exemption certificate authorized by the appropriate taxing authority.

#### **16. Entire agreement**

16.1 This Agreement constitutes the entire agreement between the parties and supersedes all previous agreements, understandings and arrangements between them in respect of its subject matter, whether in writing or oral.

16.2 Each party acknowledges that it has not entered into this Agreement in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in this Agreement.

#### **17. No partnership or agency**

The parties are independent and are not partners or principal and agent and this Agreement does not establish any joint venture, trust, fiduciary or other relationship between them, other than the contractual relationship expressly provided for in it. Neither party shall have, nor shall represent that it has, any authority to make any commitments on the other party's behalf.

#### **18. Severance**

If any provision of this Agreement (or part of any provision) is or is deemed to be illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of this Agreement shall not be affected. To the extent any provision of this Agreement is judicially determined to be unenforceable, the parties hereby authorize and request the court of competent jurisdiction to reform any such provision to make it enforceable. The provisions of this Agreement will, where possible, be interpreted so as to sustain its legality and enforceability.

#### **19. Waiver**

No failure, delay or omission by either party in exercising any right, power or remedy provided by law or under this Agreement shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy.

#### **20. Assignment**

Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the other party's prior written consent (not to be unreasonably withheld); provided, however, either party may assign this

Agreement in its entirety (including all Order Forms), without the other party's consent to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Notwithstanding the foregoing, if a party is acquired by, sells substantially all of its assets to, or undergoes a change of control in favor of, a direct competitor of the other party, then such other party may terminate this Agreement upon written notice. In the event of such a termination, KYND will refund Customer any prepaid fees covering the remainder of the term of all subscriptions for the period after the effective date of such termination. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.

**21. Third party rights**

A person who is not a party to this Agreement shall not have any rights under any Applicable Law (including, for Customers based in the United Kingdom, the Contracts (Rights of Third Parties) Act 1999) to enforce any of its provisions.

**22. Contracting Entity; Governing Law and Jurisdiction**

The domicile of the Customer listed on the Order Form will determine the law that will apply in any dispute or lawsuit arising out of or in connection with this Agreement, and the courts that will have jurisdiction over any such dispute or lawsuit, as set out in the table below.

Customer Location	KYND Contracting Entity	Address for Notices	Governing Law and Jurisdiction
North America	KYND LTD	Unit 3-4, The Grain Store, 70 Weston Street, London, SE1 3QH legal@kynd.io	Laws of Delaware Jurisdiction in Delaware
United Kingdom and European Union	KYND LTD	Unit 3-4, The Grain Store, 70 Weston Street, London, SE1 3QH legal@kynd.io	Laws of England and Wales Jurisdiction in London

If you are in a geographic region that does not fall into one of these designations described in the table, then the Governing Law will be England and Wales, and Jurisdiction will be London.