

Kayako Hosting - Terms and Conditions

'ReZolve' shall mean ReZolve I.T. Limited of East Grange House Scruton Northallerton North Yorkshire DL7 0RD or any subsidiary or associate thereof contracted by ReZolve to provide the Service in whole or in part to the Customer.

'Customer' shall mean the person, business or company instructing ReZolve to provide services.

'Contract' shall mean the terms and conditions set out in this document and The Quotation.

'Quotation' shall mean the quotation and specification setting out details of the Service whether or not annexed to the contract.

'Services' shall mean services (in whole or in part) agreed in the Contract to be delivered to the Customer by ReZolve.

'Domain Name' shall mean the website address (URL) chosen by the Customer to access the Kayako software.

'Kayako' shall mean the Kayako web application installed by ReZolve at the Domain Name specified by The Customer.

'Software' shall mean the software, applications, navigation models, information architecture, database structures, content management systems, third party applications, software engineering, functionality and other generic components used in the Kayako web application.

'Content' shall mean all text, graphics, and other visual and audio material added to Kayako.

'Client Material' shall mean material provided by The Customer for ReZolve to use in the installation of Kayako.

'Visitor' shall mean a third party who has accessed or viewed Kayako via the Internet.

The headings in the contract are for convenience only and shall not affect its interpretation.

Charges

Save as varied by the Quotation the following charges provisions shall apply in respect of the Service:

1. The Customer shall pay ReZolve fees for the Services at the rate set in the Quotation.
2. Any work requested by the Customer, which is not specifically covered by the Quotation, will be confirmed to the Customer in writing, normally by fax or email, and will be charged at the current standard rates and invoiced to the Customer on completion of the work.
3. The Customer shall make payment on each invoice according to the terms set in the Quotation. All Hosting service are payable in advance. When invoices remain unpaid, ReZolve reserves the right to suspend all related Services and to add compound interest at the rate of 1.5% per month, calculated until the date payment is received.
4. The Customer shall accept invoices for Time & Materials Services on a monthly basis and make payment on each invoice within 30 days of the invoice date.
5. The Customer shall accept invoices for Fixed Price Services based on stages specified in the quotation and make payment on each invoice according to the terms set in the Quotation normally within 30 days of the invoice date.
6. ReZolve reserve the right to change fees subject to giving one-month written notice.

Confidentiality

1. ReZolve shall keep confidential such of the Customer's information which is specifically designated as confidential by the Customer at the time of the acceptance of the quotation by the Customer or which is subsequently so designated in writing by the Customer and shall not divulge the same to any third party without written consent of the Customer. This provision shall not apply where such information as is already in the public domain or is otherwise required to be divulged by ReZolve for the reasonable performance of its obligations under the Contract.

Liability

The following limitations shall apply to the liability of ReZolve under the contract: -

1. ReZolve shall not be liable for any indirect incidental or consequential loss or damage (including, but not limited to, loss of programs or data, loss of use of equipment, and loss of profits), howsoever caused, including costs associated with the use of additional personnel used to aid recovery from such a loss.
2. All terms and conditions and warranties whether made expressly or implicitly relating to the quality or fitness for purpose of the Service are excluded and where the materials equipment or specification contained or referred to in the Quotation have been specified by the Customer or any third party the Customer acknowledges that ReZolve is entitled to rely exclusively on the quality and fitness for purpose of such materials equipment or specification without liability for any consequential loss. Without prejudice to the

forgoing ReZolve shall not be liable for any direct or indirect damage or loss or delay or additional costs arising from any change required by the Customer or its users to the specification referred to in the Quotation

3. ReZolve shall be under no liability whatever (whether contractual tortious or otherwise) for any loss or damage (including loss of profit) suffered by the Customer or the Customer's employees, agents or any other third party arising out of a breach whether direct or indirect by ReZolve of the contract or otherwise in respect of the Service. This includes (without limitation) loss of or damage to data or the systems to which the Service or any related installation is connected, loss caused by interruption or cessation of services to the Customer beyond the reasonable control of ReZolve and loss arising from e-commerce or electronic financial or credit transactions conducted by or on behalf of the Customer or its users.
4. In the event of any breach of the contract by ReZolve the remedies of the Customer shall be limited to damages and under no circumstances shall the liability of the Contractor exceed the amount of the Quotation.
5. Where the Customer is not a consumer it acknowledges that it does not trade as such and that the terms of the contract are reasonable.

Duties of ReZolve

In consideration of appropriate payment by the Customer and subject to the terms and conditions of this Agreement, ReZolve will:

1. Install Kayako as set out in the agreement, and to the agreed timescale.
2. Provide web, email and database hosting according to the Quotation
3. Provide access to Kayako for The Customer to all parts of Kayako, including the Kayako Staff & Admin portals.

Where the Customer has engaged third party suppliers in the provision of brand identity, design other material, the delivery obligations set out in Clause 1 will be conditional on the performance of these third parties.

Domain Names and IP Addresses

1. The Customer is the intellectual owner of the domain name.
2. The Customer grants the usage rights of the domain name to ReZolve for the purpose of hosting Kayako for the duration of the contract.
3. In the event of termination of the contract all usage rights of the domain name will revert to The Customer.
4. ReZolve will maintain control and ownership of the IP address that is assigned to the Customer as part of the Services. ReZolve reserves the right to change or remove IP addresses, using its best endeavours to avoid disruption for the Customer.

Operation of Kayako

1. The Customer is responsible for all Content on Kayako. This includes Content added by end users as well as The Customer via the Admin and Staff portals. ReZolve shall take no part in and have no responsibility or liability for such content and accordingly the Customer represents and warrants that it shall:
 - Agree its own contract terms with Visitors and perform those contracts in accordance with their terms and with all legal requirements;
 - comply with the Data Protection Act 1998 including the data protection principles set out in that Act;
 - indemnify and hold ReZolve harmless from and against any and all claims, damages and costs arising out of any claim brought by any third party (including without limitation those arising out of a breach or alleged breach by the Customer of the contract with a Visitor).
2. ReZolve shall be responsible for the hosting and maintenance of Kayako. ReZolve will use its reasonable endeavours to keep Kayako available on the internet at all times. However, ReZolve cannot guarantee against interruption of service for local or national technical reasons, breakdowns, or for other reasons within or outside the control of ReZolve.
3. The Customer accepts that ReZolve cannot ensure that Kayako in all respects is visible in all browsers and versions of these browsers.
4. ReZolve reserves the right at any time and without notice to remove any Client Content from sites if it reasonably believes that the Customer content or link would put the Customer in breach of the law, moral codes, reasonable web practice or otherwise would be detrimental to the general goodwill of ReZolve.
5. ReZolve will use its reasonable endeavours to preserve the privacy of Kayako. However, the responsibility for maintaining security to the account and Kayako via the Admin & Staff portals rests with the Customer who also takes responsibility for anyone whether or not authorised who uses their username and password to access Kayako.

Copyright and Intellectual Property Rights

1. The Customer shall be responsible for ensuring the accuracy of any specifications submitted by the Customer,
2. The Customer shall indemnify ReZolve against all loss, damages, costs and expenses awarded against or incurred by ReZolve in connection with, or paid, or agreed to be paid by ReZolve in settlement of any claim for infringement of Patent, Copyright, design, Trademark, or industrial or intellectual property rights of any other person which results from ReZolve 's use of the Customer's specification.
3. The Customer shall ensure that any necessary permissions, authorisations, licences or consents are obtained at its own expense prior to the Work being carried out and shall indemnify ReZolve against all loss, damages, costs and expenses awarded against or incurred by ReZolve in connection with any claim arising as a result of the Customer's failure to obtain any such permissions.
4. The Customer shall continue to own copyright of any text or graphics provided to ReZolve in connection with the Work that are unique and exclusive to the Customer.
5. ReZolve shall own and continue to own copyright of any programming language; asp, html, java script, meta content or keywords, graphics, designs, scripts or other creative work produced by ReZolve as part of the work.

Data Transmission

1. ReZolve may collect, hold, control, use and transmit data obtained from and about the Customer and visitors to Kayako in the course of providing the web hosting services and the Kayako website. By accepting this agreement, the Customer agrees to such data being so used and further agrees that it may be transmitted to others in accordance with the Company's registration under the Data Protection Act 1998.

Acceptable Use Policy

1. The Customer must comply with the Acceptable Use Policy for his/her website or and other services provided by ReZolve.
2. The Customer or those acting on his/her behalf must not use the Service to obtain unauthorised access to any computer, system or network. Unlawfully accessing or damaging data in a computer is not only a breach of the Acceptable Use Policy but it may also be a criminal offence punishable by fine, imprisonment or both. If you do not have authorisation, you must not:
 - access or use any data, systems or networks;
 - probe, scan or test the vulnerability of a system or network;
 - breach any security or authentication measures for a system or network; or
 - attempt to gain access to the account of any other user.
3. The Customer must not use the Service in a manner which interferes with the rights of other users or which breaches Internet etiquette. You must not:
 - monitor data or traffic on any network or system if you do not have the authorisation of the owner of the network or system to do so;
 - forge any TCP-IP packet header, any part of the header information or an email source address in an email or newsgroup posting;
 - provide false user information to ReZolve or other users;
 - send large amounts of unsolicited or unwanted email to individuals or individual business accounts;
 - gain access to a person's private information (or attempt to do so); disobey the rules of any newsgroup, forum, email mailing list or other similar group; or
 - post the same or similar messages to one or more newsgroups (including by excessive cross-posting or multiple-posting, also known as 'spam').
4. You must not use the Service in a manner that may interfere with the technical operation of the Service or any other computer, system or network.
5. You must not attempt to interfere with the regular workings of ReZolve's systems or network connections. ReZolve may override any attempt by you to specify a particular traffic routing pattern. You must not impair the ability of other people to use ReZolve's systems or the Internet.
6. You must not use the Service as a staging ground to disable other systems.
7. In using the Service, you must not break any laws or infringe the rights of other persons. For example, you must not:
 - distribute or make available any abusive, obscene, defamatory or pornographic material;

- distribute or make available any material which would be classified R or X (or refused classification) by the Classification Board; or
 - copy any material if you do not have the owner's permission to do so.
8. To detect and deal with breaches of the Acceptable Use Policy, ReZolve may take the following actions:
- ReZolve will co-operate with other Internet service providers to control unacceptable user behaviour.
 - ReZolve may give details of users who are suspected of breaking any laws in connection with the Service to the police and to other law enforcement agencies.
 - ReZolve may implement technical mechanisms to prevent behaviour which breaches this Policy (for example, which block multiple postings before they are forwarded to their intended recipients).
 - ReZolve may exercise any rights it has under its contract with the Customer whose account is being used in breach of this Policy. Such rights include the right to suspend or terminate the Customer's use of the Service.
 - ReZolve may take any other action it deems appropriate, including taking action against offenders to recover relevant costs and expenses.

Restrictions

1. The Customer acknowledges and agrees that the services and the ReZolve company names and logos and related product and service names, design marks and slogans, are the property of ReZolve or suppliers (collectively, the "Marks"). The Customer is not authorised to use any of the Marks in any advertising, publicity or any other commercial manner without the prior written consent of ReZolve. The Customer's use of the Services confers no title or ownership in the Service, the Software or the Marks and is not a sale of any rights in the Service, the Software or the Marks. All ownership rights remain in ReZolve or its third party suppliers, as the case may be
2. The Customer represents, covenants and warrants that he/she will use the services only in compliance with the Agreement and all applicable laws (including but not limited to policies and laws related to spamming, privacy, obscenity or defamation). The Customer agrees to indemnify and hold harmless ReZolve against any damages, losses, liabilities settlements and expenses (including without limitation costs and reasonable legal fees) in connection with any claim or action that arises from an alleged violation of the foregoing or otherwise arising from or relating to the Customer's use of the Services. Although ReZolve has no obligation to monitor the content provided by the Customer or the Customer's use of the Services, ReZolve may do so and may remove any such content or prohibit any use of the Services it believes may be (or is alleged to be) in violation of the foregoing.
3. email messages sent in connection with the Services as part of an email circulation list must contain an "unsubscribe" link that allows visitors to remove themselves from your mailing list and a link to the current Email Privacy Policy. The Customer acknowledges and agrees that he/she will not remove, disable or attempt to remove or disable either link. ReZolve, at its own discretion, may disable the Customer's access without refund to the Services if the Customer violates any of these restrictions
4. The Customer represents warrants and undertakes that the Customer Content is:
 - Legal proper decent honest and accurate and that its compliant with all relevant laws and codes prevailing without limitation the British codes of Advertising Practice and all other codes under the general supervision of the Advertising Standards Agency
 - Not an advertisement under the Financial Services Act 1986
 - The Customer represents warrants and undertakes that the Customer content and or any site linked to Kayako;
 - will not contain obscene indecent or unlawful material nor will sell or offer to sell pornographic, escort services, illegal goods, drugs, pirated computer programming or instructions on how to assemble or otherwise make bombs grenades or other weapons
 - will not contain material that exploits children
 - will not contain material that infringes the copyright trademark, database patent, moral or any other intellectual property rights of any third party
 - complies with all applicable laws
 - will not contain defamatory libellous or any other untrue material
 - will not contain any computer virus
 - will not contain any material likely to harm the reputation or good will of ReZolve
5. If in the opinion of ReZolve and at the reasonable discretion of ReZolve it deems any Client content on Kayako to contravene or otherwise put the Customer in breach of the above then ReZolve may (without prejudice to other rights and remedies available to it remove either the Customer content or the relevant Client link).

6. Should ReZolve deem that a particular Client is monopolising the services available from ReZolve server or Kayako, then ReZolve shall have the right to suspend the operation of that Client's website and the Customers access to Kayako. Clients may be offered continued service on payment of an appropriate additional fee.
7. The Customer agrees that he/she will not upload any malicious code.
8. The Customer undertakes that he/she will not carry out or attempt any reverse engineering on the ReZolve software.

Termination

1. Either party can terminate this Contract on giving 3 months notice in writing to the other party.
2. Termination by notice under this paragraph does not avoid any liability for Service already provided
3. In the event of cancellation of this Contract the Customer shall indemnify ReZolve in full against all loss, costs, charges and expenses incurred by ReZolve up to the moment of termination.

Breach of Contract

1. If The Customer commits a breach of this Contract and if it is possible to remedy, fails to remedy the breach within a reasonable time of written notice to do so or if it is not possible to remedy the breach; or ReZolve believes the Contract is being used in a manner prohibited under paragraph 8 even if the Customer is unaware that the Contract is being used in such a way ReZolve can terminate this Contract without notice, and claim for the resulting losses or expenses. If ReZolve suspends the Contract, ReZolve can refuse to restore the Contract until ReZolve receives an acceptable assurance from the Customer that there will be no further breach of this Contract

Assignment

1. Neither party shall have any right or ability to assign, transfer, or sub-license any obligations or benefit under this Agreement without the written consent of the other (and any such attempt shall be void), except that a party may assign and transfer this Agreement and its rights and obligations under this Agreement to a third party who succeeds to substantially all its business or assets.

Force Majeure

1. ReZolve shall not be liable to the Customer if it is prevented from or delayed in the delivery of the Goods or performance of the Services due to circumstances beyond the reasonable control of ReZolve including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, riot, civic commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, or other reasons.

English Law

1. This Agreement shall be governed by and construed in accordance with the laws of England and the parties submit to the exclusive jurisdiction of the English courts.

Acceptance

1. Upon first use of Kayako, the Customer is deemed to have read and accepted the terms and conditions herein.