

**Bespoke Software - 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 entering into this agreement and referred to in the Quotation.

'Contract' shall mean the agreement between ReZolve and the Customer for the provision of the Service as set in this agreement and the Quotation.

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

'Service' shall mean the provision of any time, resource and materials by ReZolve for the Customer referred to in the Quotation.

'Fixed Price' shall mean a Service whereby an all-inclusive price is specified in the Quotation to deliver a specified Service.

'Time & Materials' shall mean a Service whereby an hourly or daily charge rate applies for all time expended by ReZolve on behalf of the Customer and additional charges for travel and accommodation expenses required to complete the Service will be charged at cost and invoiced monthly.

*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 normally within 30 days of the invoice date. 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.

**Confidentiality**

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 foregoing 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 clients 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 clients 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 clients.

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.

### **Customer Responsibilities**

The Customer shall:

1. provide timely access to information and personnel necessary to progress and complete the works. Where excessive delays are encountered during Fixed Price Services, ReZolve reserves the right to charge the Customer for any additional time and expenses incurred and to change the delivery schedule appropriately.
2. provide ReZolve's service personnel free of charge with fully adequate and safe working space and facilities for all installation and maintenance works to be carried out.
3. ensure that all software and files are adequately replicated at the Customer's expense prior to any works being carried-out on the Customers equipment. File back-up, file restore and data retrieval are not covered by the contract and ReZolve reserves the right to make charges for such work carried out at the Customers request.
4. shall indemnify ReZolve against any claim for infringement of copyright and royalty payments associated with materials, information and software supplied or made available by and warrants with ReZolve that it is itself exclusively entitled to the intellectual property and all other rights in or has the previous licence and agreement of the proprietors thereof to the use adaptation and development of the same by ReZolve pursuant to the contract.
5. maintain an adequate back-up strategy to ensure that when current data is corrupt, the Customer can recreate data without causing loss of the staff time or resources of ReZolve.
6. not either on its own account nor for any other body or person solicit or endeavour to entice away from ReZolve any employee or director of ReZolve nor any person who to its knowledge is at the date of the Quotation a customer of ReZolve.

### **Provision of Bespoke Software Development**

Where the quotation specifies the provision of bespoke software to the Customer the following provisions will apply :-

1. ReZolve will deliver to the Customer working software that meets the requirements of the requirement document agreed between ReZolve and the Customer at the time of acceptance of that quotation.
2. ReZolve will make available the application code to the Customer for security purposes in the event that ReZolve ceases trading or is otherwise unable to provide maintenance of the application code. The application code will be password protected with the password accessible from an agreed third party.
3. The Customer may use the software with the agreement of ReZolve provided that, as the Customer hereby acknowledges, ReZolve shall at all times retain all intellectual property and other rights in relation to the works carried out pursuant to the Contract and on all applications relating to or derived from them and reserves the right to reuse, modify or enhance the software or elements of the software and use it in any manner they so wish without the consent of the Customer or any third party Provision of Web Sites

Where the quotation specifies the provision of a Web Site to the Customer by ReZolve the following provisions will apply :-

1. Customer liability. Whilst ReZolve will endeavour to ensure that any goods or services supplied will meet all legal requirements for the use specified in the quotation, it is exclusively the Customer's responsibility to ensure that pages and images are not libellous and do not infringe copyright or other intellectual property rights. The Customer shall indemnify and keep ReZolve indemnified from all costs claims demands and liability howsoever arising from or as a result of the Customer's pages of the Site or the contents thereof. The Customer shall at its own expense meet and pay all costs claims demands and liability including without limitation all damages awards against ReZolve arising therefrom but shall forthwith provide ReZolve with notice of such claims and demands provide with full authority to defend and proceedings arising therefrom including authority to compromise or settle the same such claims demands or proceedings. The Customer shall provide ReZolve or its advisers with all assistance reasonably necessary to defend such claims demands or proceedings at the Customer's sole expense.
2. Improper Use. The information and material supplied by ReZolve as part of or pursuant to The Contract may only be used for lawful purposes. The Customer warrants to ReZolve and it is the exclusive responsibility of the Customer to ensure that the information and material supplied to ReZolve by the Customer or subsequently used by it or any third party is not in contravention of applicable legislation including without limitation pyramid selling schemes or material judged to be obscene, threatening or racially prejudiced the United Kingdom, the country in which the Customer's domain is registered the country where the web server resides and countries where the Customer's services or products are available.

3. Duration and Termination. The duration of the Contract shall where appropriate be set out in the Quotation and shall be subject to the following provisions :-
- (a) ReZolve reserves the right to remove forthwith hosted web pages and/or images on sites which ReZolve controls if it has reason to believe the pages or images may be illegal or in breach of intellectual property laws pending further investigation. No reimbursement will be made for any period when pages or images are unavailable for this reason. No charge will be made for restoring any pages or images which are found, after investigation, to be non-infringing. Replacement of infringing pages or images by non-infringing pages or images will incur further charges at our standard maintenance rates.
  - (b) ReZolve reserves the right to permanently remove forthwith, in whole or in part, any web site hosted by ReZolve which repeatedly exceeds the agreed bandwidth limitations where the Customer refuses to make changes requested by ReZolve to the site to bring the bandwidth requirements within the agreed limits or purchase more bandwidth. No reimbursement will be made in this case.
  - (c) ReZolve reserves at its sole discretion the right to forthwith temporarily suspend or permanently remove hosted web pages and images, and to terminate any other service provided, in the event that the Customer is in arrears with one or more payments.
  - (d) ReZolve reserves the right to claim a right, equivalent to a lien, over web space and/or domain names purchased on behalf of the Customer in respect of any sums from time to time due to ReZolve by the Customer.
  - (e) ReZolve reserves at its sole discretion the right to give three months' notice not to renew any contract for ongoing services. ReZolve will not be required to provide any reason or explanation for such termination.
4. Payment Unless otherwise specifically set out in the Quotation the following provisions in relation to payment shall apply in relation to Internet services: -
- (a) Internet services are provided on an ongoing basis with all payments due in advance for each consecutive period of 12 months service.
  - (b) The Customer may cancel the service may by giving notice in writing to ReZolve 3 months prior to the end of the 12 month period of service.

#### **Documentation**

ReZolve shall provide all documentation in HTML format unless otherwise specified in the Quotation. Delivery of documentation data files in other formats shall be agreed between ReZolve and the Customer and specifically defined in the Quotation.

#### **Miscellaneous**

If either party ceases to carry on business or makes any arrangement with creditors or if a receiver of its assets is appointed or if (being an individual) an order in bankruptcy is made against it or any partner, or if (being a Company) a winding-up order or resolution is made or passed (save voluntarily for the purposes of solvent amalgamation or reconstruction), then the other party may immediately by giving notice terminate the contract. Neither party shall be liable to the other party for failure or delay in the performance of any obligation under the contract (other than any obligation to pay money) caused by any circumstances outside its control, such as, but not limited to, Act of God, fire, flood, war, industrial dispute, governmental actions or regulations, or failure or delay on the part of suppliers or sub-contractors. If any term or provision of the contract shall in whole or in part be held to any extent to be illegal or unenforceable under any enactment or rule of law that term or provision or part thereof shall to that extent be deemed not to form part of this agreement and the enforceability of the remainder of this agreement shall not be affected. Any waiver of a breach of this Agreement by the Customer or any variation of this Agreement must be in writing.

#### **Notices**

Any notices given under this Agreement shall be in writing and sent

- (a) by first class pre-paid post to the last known address of the party or
- (b) by fax to their last known fax number.

The notice shall be deemed served

- (a) two working days after posting or
- (b) upon receipt of a successful transmission report.

#### **English Law**

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.