

Terms of Use

Welcome to Kayoo.com, a website and online service owned and operated by Kayoo, Inc. (“Kayoo” “we,” or “us”). This page explains the terms by which you may use our service. By accessing or using the Kayoo services, website, applications and software provided through or in connection with the service, including through a mobile device (“Service”), you signify that you have read, understood, and agree to be bound by this Terms of Use Agreement (“Agreement”), whether or not you are a registered user of our Service. The terms governing our agreement with companies or individuals that have contracted for a Business plan or an Enterprise Network (a “Corporate Network”) are set forth at « Business Terms » below or in a separate agreement (collectively, “Business Terms”), but all users of the Service (whether of the free service or a paid service) must agree to these terms as well.

We reserve the right to amend this Agreement at any time and without notice. If we do this, we will post the amended Agreement on this page and indicate at the top of the page the date the Agreement was last revised. Your continued use of the Service after any such changes constitutes your acceptance of the new Terms of Use. If you do not agree to any of these terms or any future Terms of Use, do not use or access (or continue to access) the Service. This Agreement applies to all visitors, users, and others who access the Service (“Users”).

Use of Our Service

Kayoo provides a place for people to communicate with others in their work, school or community networks (each, a “Network”) in real time.

Kayoo grants you permission to use the Service as set forth in this Agreement, provided that: (i) you will not copy, distribute, or disclose any part of the Service in any medium; (ii) you will not alter or modify any part of the Service other than as may be reasonably necessary to use the Service for its intended purpose; and (iii) you will otherwise comply with the terms and conditions of this Agreement.

You will need to register with Kayoo and create a “KU Member” account. Your account gives you access to the services and functionality that we may establish and maintain from time to time and in our sole discretion.

You may never use another Member’s account without permission. When creating your account, you must provide accurate and complete information. You are solely responsible for the activity that occurs on your account, and you must keep your account password secure. You must notify Kayoo immediately of any breach of security or unauthorized use of your account. Although Kayoo will not be liable for your losses caused by any unauthorized use of your account, you shall be liable for the losses of Kayoo or others due to such unauthorized use.

You may use your Account Settings to control your Member Profile. By providing Kayoo your email address you consent to our using the email address to send you Service-related notices, including any notices required by law, in lieu of communication by postal mail. You may use your Notifications Settings to opt out of many Service-related communications. We may also use your email address to send you other messages, including changes to features of the Service and special offers. If you do not want to receive such email messages, you may opt out by changing the preferences in your Notifications Settings. Opting out may prevent you from receiving email messages regarding updates, improvements, or offers. Certain Corporate Networks have negotiated further modifications to the emails we may send you.

You agree not to use or launch any automated system, including without limitation, “robots,” “spiders,” “offline readers,” etc., that accesses the Service in a manner that sends more request messages to the Kayoo servers than a human can reasonably produce in the same period of time by using a conventional on-line web browser. You agree not to collect or harvest any personally identifiable information, including account names, from the Service nor to use the communication systems provided by the Service for any commercial solicitation purposes. You agree not to use any portion of the Service as a destination linked from any unsolicited bulk messages or unsolicited commercial messages.

Kayoo may permanently or temporarily terminate, suspend, or otherwise refuse to permit your access to the Service without notice and liability, if, in Kayoo’s sole determination, you violate any of the Agreement,

including the following prohibited actions: (i) attempting to interfere with, compromise the system integrity or security or decipher any transmissions to or from the servers running the Service; (ii) taking any action that imposes, or may impose at our sole discretion an unreasonable or disproportionately large load on our infrastructure; (iii) uploading invalid data, viruses, worms, or other software agents through the Service; (iv) impersonating another person or otherwise misrepresenting your affiliation with a person or entity, conducting fraud, hiding or attempting to hide your identity; (v) interfering with the proper working of the Service; or, (vi) bypassing the measures we may use to prevent or restrict access to the Service, including, but not limited to, registering for the Service with a non-Network email address. Upon termination for any reason, you continue to be bound by this Agreement.

Kayoo reserves the right to offer alternative and/or additional Services to certain administrative users, including administrators of Corporate Networks, that may not be offered to general Users. You acknowledge that Kayoo may charge a fee for the use of any Services, provided that Kayoo notifies you of any such fee before you incur it. Subject to the foregoing, you agree to pay any fees incurred by you. In the event that you have elected to receive additional services for a fee, and you fail to pay such fee within thirty (30) days, then in addition to all other remedies available to Kayoo, Kayoo may immediately cease providing all such additional services. If you learn that a User is not authorized to be a Member of a Network or is otherwise violating this Agreement, we encourage you to visit such User's Member profile page and follow the "click here" link under the Admin section to notify us. You agree you will not accuse any User of being unauthorized or of violating this Agreement unless you have actual knowledge.

User Content

Some areas of the Service may allow Users to post feedback, comments, questions, data, and other information ("User Content"). You are solely responsible for your User Content that you upload, publish, display, link to or otherwise make available (hereinafter, "post") on the Service, and you agree that we are only acting as a passive conduit for your online distribution and publication of your User Content. Kayoo will not review, share, distribute, or reference any such User Content except as provided herein or in our Privacy Policy or as may be required by law. Absent a Network Administrator (as defined below), all such User Content is owned by the User who posted it to the Service, although each User acknowledges and consents that upon the introduction of a Network Administrator into that User's network, all related User Content will automatically become the property of the company to which the Network belongs without any notice to Users of that Network. If a Network has a Network Administrator, all such User Content is the property of the company to which the Network belongs (including all User Content posted to a specific Group or Groups within a Network and all User Content created prior to the existence of the Network Administrator). In either case, Kayoo does not have, nor does it claim, any ownership rights in any User Content. In addition, you should note that if you are no longer an eligible member of a network (e.g., you cease to be employed by the relevant company), your access to all User Content you uploaded may be terminated, regardless of whether the network has a Network Administrator. Once a User is removed from a Network, the content of that User remains on the Network and is the sole property of the company which administers that Network.

By utilizing the Service, you agree to have the domain portion of your email address ("@yourcorp.com") and/or the company, school, or organization name represented by such domain portion of your email address, listed on the Kayoo website in a company directory listing ("Directory"). Customers (as defined below) who do not want to be included in such published Directory may send a written request to help@Kayoo.com to remove their company, school, or organization name from the Directory. Certain Corporate Networks have negotiated further modifications to what we will put into the Directory.

You agree not to post User Content that: (i) may create a risk of harm, loss, physical or mental injury, emotional distress, death, disability, disfigurement, or physical or mental illness to you, to any other person, or to any animal; (ii) may create a risk of any other loss or damage to any person or property; (iii) may constitute or contribute to a crime or tort; (iv) contains any information or content that is unlawful, harmful, abusive, racially or ethnically offensive, defamatory, infringing, invasive of personal privacy or publicity rights, harassing, humiliating to other people (publicly or otherwise), libelous, threatening, or otherwise objectionable; (v) contains any information or content that is illegal; (vi) contains any information or content that you do not have a right to make available under any law or under contractual or fiduciary relationships; or (vii) contains any information or content that you know is not correct and current. You agree that any User Content that you post does not and will not violate third-party rights of any kind, including without limitation any Intellectual Property Rights (as defined below), rights of publicity and privacy. You understand that publishing your User Content on the Service

is not a substitute for registering it with the U.S. Copyright Office, the Writer's Guild of America, or any other rights organization.

For the purposes of this Agreement, "Intellectual Property Rights" means all patent rights, copyright rights, mask work rights, moral rights, rights of publicity, trademark, trade dress and service mark rights, goodwill, trade secret rights and other intellectual property rights as may now exist or hereafter come into existence, and all applications therefore and registrations, renewals and extensions thereof, under the laws of any state, country, territory or other jurisdiction.

Kayoo takes no responsibility and assumes no liability for any User Content that you or any other Users or third parties post or send over the Service. You understand and agree that any loss or damage of any kind that occurs as a result of the use of any User Content that you send, upload, download, stream, post, transmit, display, or otherwise make available or access through your use of the Service, is solely your responsibility. Kayoo is not responsible for any public display or misuse of your User Content. You understand and acknowledge that you may be exposed to User Content that is inaccurate, offensive, indecent, or objectionable, and you agree that Kayoo shall not be liable for any damages you allege to incur as a result of such User Content.

You are solely responsible for your interactions with other Kayoo Users. We reserve the right, but have no obligation, to monitor disputes between you and other Users.

Network Administration

General

Each Network may have one or more individuals who are responsible for overseeing the use of, and monitoring the content posted to, such Network (the "Network Administrator"). Networks may exist on the Service absent a Network Administrator; in such case Users are responsible for conducting themselves in accordance with this Agreement. Groups within a Network may also have a group administrator with certain authority that is less than that of a Network Administrator.

From time to time, Users may be asked to confirm their account on the Network via an email message containing a hyperlink to the User's Network email address. If such account is not reconfirmed, the account is removed. Once a User is removed from a Network, the content of that User remains on the Network and is the sole property of the company which administers that Network.

Users should follow their particular company's policies, guidelines, and procedures concerning the Content they post to the Service. Users may delete their own User Content from the Network, so long as they are a Member of that Network. Network Administrators may delete the User Content of one or more Users in their Network.

Topics

Individual Users may form a topic to segment the audience for certain User Content ("Topic"). Each Topic may have one or more administrators (the "Topic Administrator"). A Topic may be limited to certain Users in a Network with membership subject to the approval of the Topic Administrator. A Topic Administrator may add or remove Users to that particular Topic. User Content posted within a Topic on a Network is owned by that Network.

Groups

Individual Users may form a group to segment the audience for certain User Content ("Group"). Each Group may have one or more administrators (the "Group Administrator"). A Group may be limited to certain Users in a Network with membership subject to the approval of the Group Administrator. A Group Administrator may add or remove Users to that particular Group. User Content posted within a Private Group on a Network is owned by that Network.

Streams

Individual Users may form a Stream to segment the audience for certain User Content (“Stream”). Each Stream may have one or more administrators (the “Stream Administrator”). A Stream may be designated as open to any User in a Network (a “Public Stream”) or a Stream may be limited to certain Users in a Network with membership subject to the approval of the Stream Administrator (a “Private Stream”). A Stream Administrator may add or remove Users to that particular Stream. Though Users may establish a Private Stream, User Content posted within a Private Stream on a Network is owned by that Network.

Mobile Use

General

Users may elect to receive regular short message service (“SMS”) alerts of new Kayoo content through mobile telephone device carriers that may be supported via Kayoo SMS. You may receive help for SMS content delivery by contacting Kayoo customer support at help@Kayoo.com. There is no fee charged by Kayoo for Users to receive text messages. Standard text messaging rates and other charges from a User’s carrier may apply.

Opt-in/Opt-out

To opt-in to SMS updates, you will sign up on the web at Kayoo.com, register your mobile device, and receive a PIN number to your registered mobile device. After receipt of the PIN, you will then enter the PIN on the Kayoo website to receive SMS alerts. When you register to receive the mobile alerts, you warrant that you are the legal own of the mobile device which you registered to receive mobile alerts messages and that you are authorized to incur any charges that may result from receiving mobile alert messages.

Text Message Content and Delivery

Kayoo forwards the information that you have requested in the form of text messages from our partners. Kayoo is not responsible for the contents of any information that is sent to your mobile device, since it is not the originator of this content. Kayoo can make no representations or warranties as to the accuracy or reliability of the contents and accuracy of that information.

Kayoo does not warrant that the text messaging service will be uninterrupted or error free. We shall not be liable for any delay in performing or failure to perform any obligation hereunder by circumstances beyond our reasonable control including (without limitation) any technical problems beyond the control of Kayoo such as (for example) defects, congestion or failures of capacity or otherwise in the public data or telephone or mobile carrier network or caused by atmospheric interference, your mobile device being turned off for an extended period of time so that messages are not retained, or your being unable to obtain mobile network coverage.

License Grant

Subject to the terms and conditions of this Agreement, you are hereby granted a non-exclusive, limited, personal license to use the Service. Kayoo reserves all rights not expressly granted herein in the Service and the Kayoo Content (as defined below). Unless Kayoo has agreed otherwise with respect to a Corporate Network, Kayoo may terminate this license at any time for any reason or no reason.

Our Proprietary Rights

Except for your User Content, the Service and its materials, including, without limitation, software, images, text, graphics, illustrations, logos, patents, trademarks, service marks, copyrights, photographs, audio, videos and music (the “Kayoo Content”), and all Intellectual Property Rights related thereto, are the exclusive property of Kayoo and its licensors. Except as explicitly provided herein, nothing in this Agreement shall be deemed to

create a license in or under any such Intellectual Property Rights, and you agree not to sell, license, rent, modify, distribute, copy, reproduce, transmit, publicly display, publicly perform, publish, adapt, edit or create derivative works from any materials or content accessible on the Service. Use of the Kayoo Content or materials on the Service for any purpose not expressly permitted by this Agreement is strictly prohibited.

You may choose to or we may invite you to submit comments or ideas about the Service, including without limitation about how to improve the Service or our products (“Ideas”). By submitting any Idea, you agree that your disclosure is gratuitous, unsolicited and without restriction and will not place Kayoo under any fiduciary or other obligation, that we are free to disclose the Ideas on a non-confidential basis to anyone or otherwise use the Ideas without any additional compensation to you. You acknowledge that, by acceptance of your submission, Kayoo does not waive any rights to use similar or related ideas previously known to Kayoo, or developed by its employees, or obtained from sources other than you.

Eligibility

This Service is intended solely for Users who are thirteen (13) years of age or older, and any registration, use or access to the Service by anyone under 13 is unauthorized, unlicensed, and in violation of this Agreement. Kayoo may terminate your account, delete any content or information that you have posted on the Service, and/or prohibit you from using or accessing the Service (or any portion, aspect or feature of the Service) for any reason, at any time in its sole discretion, with or without notice, including without limitation if it believes that you are under 13. If you are under 18 years of age you may use the Service only if you either are an emancipated minor, or possess legal parental or guardian consent, and are fully able and competent to enter into the terms, conditions, obligations, affirmations, representations, and warranties set forth in this Agreement, and to abide by and comply with this Agreement.

Privacy

We care about the privacy of our Users. By using the Service, you are consenting to have your personal data transferred to and processed in France.

Security

We have implemented commercially reasonable technical and organizational measures designed to secure your personal information and User Content from accidental loss and from unauthorized access, use, alteration or disclosure. However, we cannot guarantee that unauthorized third parties will never be able to defeat those measures or use your personal information and User Content for improper purposes. You acknowledge that you provide your personal information at your own risk.

Additional Representations and Warranties

You shall be solely responsible for your own User Content and the consequences of posting or publishing it. In connection with User Content, you affirm, represent and warrant, in addition to the other representations and warranties in this Agreement, the following:

A. You are at least 18 years of age, or if you are under 18 years of age you are either an emancipated minor, or possess legal parental or guardian consent, and are fully able and competent to enter into the terms, conditions, obligations, affirmations, representations, and warranties set forth in this Agreement, and to abide by and comply with this Agreement.

B. You have the written consent of each and every identifiable natural person in your Network to use such person’s name or likeness in the manner contemplated by the Service and this Agreement, and each such person has released you from any liability that may arise in relation to such use.

C. Your User Content and Kayoo’s use thereof as contemplated by this Agreement and the Service will not infringe any rights of any third party, including but not limited to any Intellectual Property Rights, privacy rights and rights of publicity.

D. You have the full power and authority to enter into this Agreement and to the extent that any entity is bound hereby, to bind such entity, this Agreement and performance of obligations under this Agreement do not and will not violate any other agreement to which you or such entity is a party; and this Agreement constitutes a legal, valid and binding obligation of you or any such entity.

Third-Party Websites, Advertisers or Services

Kayoo may contain links to third-party websites, advertisers, or services that are not owned or controlled by Kayoo.

Kayoo has no control over, and assumes no responsibility for, the content, privacy policies, or practices of any third party websites or services. If you access a third party website from Kayoo, you do so at your own risk, and you understand that this Agreement and Kayoo's Privacy Policy do not apply to your use of such sites. You expressly relieve Kayoo from any and all liability arising from your use of any third-party website or services or third party owned content. Additionally, your dealings with or participation in promotions of advertisers found on Kayoo, including payment and delivery of goods, and any other terms (such as warranties) are solely between you and such advertisers. You agree that Kayoo shall not be responsible for any loss or damage of any sort relating to your dealings with such advertisers.

We encourage you to be aware of when you leave the Service, and to read the terms and conditions and privacy policy of any third-party website or service that you visit.

Indemnity

You agree to defend, indemnify and hold harmless Kayoo and its subsidiaries, agents, managers, and other affiliated companies, and their employees, contractors, agents, officers and directors, from and against any and all claims, damages, obligations, losses, liabilities, costs or debt, and expenses (including but not limited to attorney's fees) arising from: (i) your use of and access to the Service, including any data or work transmitted or received by you; (ii) your violation of any term of this Agreement, including without limitation, your breach of any of the representations and warranties above; (iii) your violation of any third-party right, including without limitation any right of privacy, publicity rights or Intellectual Property Rights; (iv) your violation of any law, rule or regulation of the United States or any other country; (v) any claim or damages that arise as a result of any of your User Content or any that are submitted via your account; or (vi) any other party's access and use of the Service with your unique username, password or other appropriate security code.

No Warranty

THE SERVICE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. USE OF THE SERVICE IS AT YOUR OWN RISK. THE SERVICE IS PROVIDED WITHOUT WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. WITHOUT LIMITING THE FOREGOING, KAYOO, ITS SUBSIDIARIES, AND ITS LICENSORS DO NOT WARRANT THAT THE CONTENT IS ACCURATE, RELIABLE OR CORRECT; THAT THE SERVICE WILL MEET YOUR REQUIREMENTS; THAT THE SERVICE WILL BE AVAILABLE AT ANY PARTICULAR TIME OR LOCATION, UNINTERRUPTED OR SECURE; THAT ANY DEFECTS OR ERRORS WILL BE CORRECTED; OR THAT THE SERVICE IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. ANY CONTENT DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICE IS DOWNLOADED AT YOUR OWN RISK AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM SUCH DOWNLOAD.

KAYOO DOES NOT WARRANT, ENDORSE, GUARANTEE, OR ASSUME RESPONSIBILITY FOR ANY PRODUCT OR SERVICE ADVERTISED OR OFFERED BY A THIRD PARTY THROUGH THE KAYOO SERVICE OR ANY HYPERLINKED WEBSITE OR SERVICE, OR FEATURED IN ANY BANNER OR OTHER ADVERTISING, AND KAYOO WILL NOT BE A PARTY TO OR IN ANY WAY MONITOR ANY TRANSACTION BETWEEN YOU AND THIRD-PARTY PROVIDERS OF PRODUCTS OR SERVICES.

Limitation of Liability

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL KAYOO, ITS AFFILIATES, DIRECTORS, EMPLOYEES OR ITS LICENSORS BE LIABLE FOR ANY DIRECT, INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES, THAT RESULT FROM THE USE OF, OR INABILITY TO USE, THIS SERVICE. UNDER NO CIRCUMSTANCES WILL KAYOO BE RESPONSIBLE FOR ANY DAMAGE, LOSS OR INJURY RESULTING FROM HACKING, TAMPERING OR OTHER UNAUTHORIZED ACCESS OR USE OF THE SERVICE OR YOUR ACCOUNT OR THE INFORMATION CONTAINED THEREIN.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, KAYOO ASSUMES NO LIABILITY OR RESPONSIBILITY FOR ANY (I) ERRORS, MISTAKES, OR INACCURACIES OF CONTENT; (II) PERSONAL INJURY OR PROPERTY DAMAGE, OF ANY NATURE WHATSOEVER, RESULTING FROM YOUR ACCESS TO AND USE OF OUR SERVICE; (III) ANY UNAUTHORIZED ACCESS TO OR USE OF OUR SECURE SERVERS AND/OR ANY AND ALL PERSONAL INFORMATION STORED THEREIN; (IV) ANY INTERRUPTION OR CESSATION OF TRANSMISSION TO OR FROM THE SERVICE; (V) ANY BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE THAT MAY BE TRANSMITTED TO OR THROUGH OUR SERVICE BY ANY THIRD PARTY; (VI) ANY ERRORS OR OMISSIONS IN ANY CONTENT OR FOR ANY LOSS OR DAMAGE INCURRED AS A RESULT OF THE USE OF ANY CONTENT POSTED, EMAILED, TRANSMITTED, OR OTHERWISE MADE AVAILABLE THROUGH THE SERVICE; AND/OR (VII) USER CONTENT OR THE DEFAMATORY, OFFENSIVE, OR ILLEGAL CONDUCT OF ANY THIRD PARTY. IN NO EVENT SHALL KAYOO, ITS AFFILIATES, DIRECTORS, EMPLOYEES, OR LICENSORS BE LIABLE TO YOU FOR ANY CLAIMS, PROCEEDINGS, LIABILITIES, OBLIGATIONS, DAMAGES, LOSSES OR COSTS IN AN AMOUNT EXCEEDING THE AMOUNT YOU PAID TO KAYOO HEREUNDER.

THIS LIMITATION OF LIABILITY SECTION APPLIES WHETHER THE ALLEGED LIABILITY IS BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER BASIS, EVEN IF KAYOO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THE FOREGOING LIMITATION OF LIABILITY SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW IN THE APPLICABLE JURISDICTION. Certain Business Terms may provide slightly different rights to the parties thereto, but any such Business Terms do not change the rules applicable to Users covered by the foregoing.

The Service is controlled and operated from its facilities in the United States. Kayoo makes no representations that the Service is appropriate or available for use in other locations. Those who access or use the Service from other jurisdictions do so at their own volition and are entirely responsible for compliance with local law, including but not limited to export and import regulations. Unless otherwise explicitly stated, all materials found on the Service are solely directed to individuals, companies, or other entities located in the U.S.

Assignment

This Agreement, and any rights and licenses granted hereunder, may not be transferred or assigned by you, but may be assigned by Kayoo without restriction.

General

1. **Governing Law.** You agree that: (i) the Service shall be deemed solely based in France; and (ii) the Service shall be deemed a passive one that does not give rise to personal jurisdiction over Kayoo, either specific or general, in jurisdictions other than France. This Agreement shall be governed by the internal substantive laws of the State of France, without respect to its conflict of laws principles. Any claim or dispute between you and Kayoo that arises in whole or in part from the Service shall be decided exclusively by a court of competent jurisdiction located in Paris, France.

2. **Notification Procedures.** Kayoo may provide notifications, whether such notifications are required by law or are for marketing or other business related purposes, to you via email notice, written or hard copy notice, or through conspicuous posting of such notice on our website, as determined by Kayoo in our sole discretion. Kayoo reserves the right to determine the form and means of providing notifications to our Users, provided that you may opt out of certain means of notification as described in this Agreement.
3. **Entire Agreement/Severability.** This Agreement, together with any other legal notices and agreements published by Kayoo via the Service, shall constitute the entire agreement between you and Kayoo concerning the Service (although the owner of the Network may also have agreed to be bound by the Business Terms). If any provision of this Agreement is deemed invalid by a court of competent jurisdiction, the invalidity of such provision shall not affect the validity of the remaining provisions of this Agreement, which shall remain in full force and effect.
4. **No waiver of any term of this Agreement shall be deemed a further or continuing waiver of such term or any other term, and Kayoo's failure to assert any right or provision under this Agreement shall not constitute a waiver of such right or provision.**

Please Contact us at help@kayoo.com with any questions regarding this Agreement.

Privacy

Privacy is fundamental to Kayoo. Each company or organization on Kayoo lives in a separate Network that assures the privacy of its Members and the User Content posted in that Network. Here's how it works:

- Your Network is defined by your company or organization's email domain. For example, all users who sign up with a "megacorp.com" email address would be part of the megacorp.com network. To join a Network, you must confirm your email address.
- Only the people in your Network can view the Member profiles and feeds.
- Users can require anyone else in their Network to re-confirm their email address at any time to prove they still belong in that Network. You can use this feature to remove former colleagues. Network administrators can also remove a user at any time.
- We don't share your private information with advertisers. This includes your email address and the email addresses of others in your Network.
- Companies can impose additional security requirements for their networks, such as secure sessions, password policies, and restricting access to the IP range of their VPN.
- Companies who claim their network own the User Content created by their employees. Until that point, Users own their own User Content. Kayoo does not own User Content. Network Administrators can request that messages posted to their Network be securely exported to a company designated destination for archival and backup purposes.
- Kayoo's administrative tools do not allow our employees to view messages in a Network. Access to our database is granted only to our technicians on a case-by-case basis to troubleshoot specific technical issues, or as may be required by law. Each such instance is logged.
- Kayoo has instituted measures to protect the security of each Network's data.

DMCA Policy

If you believe that your copyrighted work has been copied in a way that constitutes copyright infringement and is accessible via the Service, please notify Kayoo's copyright agent, as set forth in the Digital Millennium Copyright Act of 1998 ("DMCA"). For your complaint to be valid under the DMCA, you must provide the following information in writing:

1. An electronic or physical signature of a person authorized to act on behalf of the copyright owner;
2. Identification of the copyrighted work that you claim has been infringed;
3. Identification of the material that is claimed to be infringing and where it is located on the Service;
4. Information reasonably sufficient to permit Kayoo to contact you, such as your address, telephone number, and, e-mail address;
5. A statement that you have a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or law; and
6. A statement, made under penalty of perjury, that the above information is accurate, and that you are the copyright owner or are authorized to act on behalf of the owner.

UNDER FEDERAL LAW, IF YOU KNOWINGLY MISREPRESENT THAT ONLINE MATERIAL IS INFRINGING, YOU MAY BE SUBJECT TO CRIMINAL PROSECUTION FOR PERJURY AND CIVIL PENALTIES, INCLUDING MONETARY DAMAGES, COURT COSTS, AND ATTORNEYS' FEES.

Please note that this procedure is exclusively for notifying Kayoo and its affiliates that your copyrighted material has been infringed. The preceding requirements are intended to comply with Kayoo's rights and obligations under the DMCA, including 17 U.S.C. §512(c), but do not constitute legal advice. It may be advisable to contact an attorney regarding your rights and obligations under the DMCA and other applicable laws.

In accordance with the DMCA and other applicable law, Kayoo has adopted a policy of terminating, in appropriate circumstances and at Kayoo's sole discretion, members who are deemed to be repeat infringers. Kayoo may also at its sole discretion limit access to the Service and/or terminate the accounts of any Users who infringe any intellectual property rights of others, whether or not there is any repeat infringement.

MASTER SERVICES AGREEMENT

This Master Services Agreement ("**MSA**") constitutes a written contract between Kayoo, with offices located at 153 rue de Courcelles, 75017, Paris, France ("**Kayoo**" "**we**" "**us**" and "**our**"), and "**Customer**" "**you**" and "**your**"). If you are entering into this agreement on behalf of a company or entity you represent that you have the authority to bind such entity and its Affiliates, in which case the terms Company and Customer's shall refer to such entity. By signing this agreement and applicable Order Form, you have agreed to be bound by all the terms and conditions of this MSA and any other terms set forth in the Order Form, which is hereby made a part of this MSA. This MSA replaces and supersedes any prior terms and conditions or agreements between Customer and Kayoo with respect to Customer and Customer's Authorized Users' use of the Service.

1. Definitions

"**Administrator**" shall mean the individual identified on the Order Form as the Network Administrator and any other individuals designated as Administrators by an authorized customer representative.

“Affiliate” shall mean any entity which directly or indirectly controls, is controlled by, or is under common control with the subject entity. “Control,” for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

“Authorized User” shall mean any employees, affiliates, agents, independent contractors or consultants of Customer’s who have email addresses in Customer Network and are authorized or permitted by Customer to access and use the Services pursuant to the Agreement and such individuals as are invited by Company to be part of Customer’s External Network.

“Customer’s Data” means any text, images, data or other content transmitted by Customer or your Authorized Users to Kayoo in connection to Customer’s and/or Customer’s Authorized Users’ use of the Services.

“Customer Interface” means the web-based interface and APIs hosted by Kayoo by which Customer and your Authorized Users may access the Services and/or any downloadable desktop or mobile device application provided by Kayoo.

“Customer Network” shall mean Customer’s first and second level domain name(s) set forth on the Order Form and/or the “External Network” Customer set up, wherein “Authorized Users” shall be only such individuals as are invited by Customer to be part of the External Network.

“Enhancement” means any correction, modification, customization, revision, enhancement, improvement, update, upgrade, new release or other change that is released generally by Kayoo for similarly situated customers of the Services.

“Order Form” means the documents for placing orders, including addenda, that are entered into between Customer and Kayoo from time to time. By entering into an Order Form, Customer agrees to be bound by the terms of this Agreement. Order Forms shall be deemed incorporated herein by reference.

“Renewal Term” means each subsequent additional Term after the Initial Term

“Service Level Agreement” means Kayoo’s commitments for the performance and availability of the Services and applicable remedies, as set forth in the attached *Schedule 1*.

“Services” means the management of an intra-company communication system which may include an External Network using Software run on Kayoo’s hosting servers or those of Kayoo’s hosting service provider(s) intended to enable Customer and Customer’s Authorized Users to interact with the same via the worldwide web as such Services may be revised as provided herein.

“Software” means the software application(s) used by Kayoo to provide the Services and any Enhancements thereto made available by Kayoo to Customer and your Authorized Users from time to time, including any desktop or mobile device application provided to Authorized Users by Kayoo to facilitate Kayoo’s provision of the Services. Kayoo shall not be obligated to provide Enhancements that include new features or functionality for which Kayoo generally charge a separate fee.

“Term” means the Initial Term and any applicable Renewal Terms

“User Identification” means the unique user identification name and password issued or otherwise assigned by Customer to each Authorized User for access to and use of the Services through the Customer Interface.

“Kayoo Technology” means the Software and any know-how, processes, methodologies, specifications, designs, inventions, functionality, graphics, techniques, methods, applications, user manuals, online documentation, products or other technology and materials of any kind, or any Enhancement thereto, used by Kayoo in connection with the performance of the Services or made available by Kayoo to Customer, any Authorized User or any third party.

2. The Services

2.1 Services. Subject to the terms and conditions of this Agreement, Kayoo will perform the Services on behalf of Customer and your Authorized Users during the Term according to the Service Level Agreement. Promptly after the Effective Date set forth on the Order Form, Kayoo will send instructions to the Administrator regarding the Administrator tools made available to Customer together with appropriate administrator credentials. The administrator tools allow the Administrator to authorize Kayoo to take a variety of actions, including, for example, to publish Customer's Logo on Customer's Interface, and all such actions using the administrator tools will be deemed approved by Customer and covered by this Agreement. Kayoo may delegate the performance of certain portions of the Services to third parties, provided Kayoo remain primarily responsible to Customer for the delivery and performance of the Services. Kayoo will provide Customer and your Authorized Users access to Customer's Interface pursuant to password protected user accounts. Kayoo may in our sole discretion modify, enhance or otherwise change the Software and/or Customer's Interface without materially decreasing the functionality of the Services. Customer agrees that its purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by Kayoo regarding future functionality of features.

2.2 Restrictions on Use of Services. Customer shall (i) be responsible for Customer's Authorized Users' compliance with this Agreement, (ii) be responsible for the accuracy, quality and legality of Customer's Data and for the means by which Customer acquired Customer's Data, and (iii) warrant Customer's Data does not and will not violate third-party rights of any kind, including without limitation any intellectual property rights or rights of publicity and privacy. Customer agrees that you will prohibit Users from uploading material to our servers in violation of the intellectual property rights of any party or entity and will maintain and enforce a policy that complies with the Digital Millennium Copyright Act ("DMCA") and will act promptly to remove any infringing material from the Network if Customer or Kayoo receive a notice qualifying under the DMCA. Customer agrees not to use or launch any automated system, including without limitation, "robots," "spiders," "offline readers," etc., that overburdens Kayoo's servers or ability to deliver the Services. Customer agrees not to collect or harvest any personally identifiable information, including account names, from the Services nor to use the communication systems provided by Kayoo for any commercial solicitation purposes.

Customer agrees not to use any portion of the Services as a destination linked from any unsolicited bulk messages or unsolicited commercial messages. In addition, Customer agrees not to engage in any of the following prohibited actions: (i) attempting to interfere with, compromise the system integrity or security or decipher any transmissions to or from the servers running the Services; (ii) taking any action that imposes, or may impose in Kayoo's sole discretion an unreasonable or disproportionately large load on Kayoo's infrastructure; (iii) uploading invalid data, viruses, worms, or other software agents through the Services; (iv) impersonating another person or otherwise misrepresenting Customer's affiliation with a person or entity, conducting fraud, hiding or attempting to hide Customer's (or an Authorized User's) identity; (v) interfering with the proper working of the Services; or (vi) bypassing the measures that Kayoo may use to prevent or restrict access to the Services.

Customer agrees to take commercially reasonable steps to ensure that Authorized Users do not post Customer's Data that: (i) may create a risk of harm, loss, physical or mental injury, emotional distress, death, disability, disfigurement, or physical or mental illness to an Authorized User, or any other person or entity; (ii) may create a risk of any other loss or damage to any person or property; (iii) may constitute or contribute to a crime or tort; (iv) contains any information or content that is unlawful, harmful, abusive, racially or ethnically offensive, defamatory, infringing, invasive of personal privacy or publicity rights, harassing, humiliating to other people (publicly or otherwise), libelous, threatening, or otherwise objectionable. Kayoo is not responsible for any public display or misuse of Customer's Data, except in the case of gross negligence or intentional misconduct by Kayoo or Kayoo's employees.

3. License; Restrictions on Use

3.1 License to Customer. Subject to the restrictions and limitations set forth in this Section 3 of this MSA and elsewhere in the Agreement, Kayoo hereby grants to Customer a nonexclusive, nontransferable, limited license, during the Term of the Agreement, to enable Authorized Users to access and use the Services through Customer's Interface, subject and according to this MSA solely for the Authorized Users' use in the regular course of Customer's business.

3.2 General Restrictions and Limitations. Section 3.1 sets forth the entirety of Customer's right to access and use the Services and to make the Services available to Authorized Users. The License does not include the right

to (a) enable any person or entity other than Authorized Users to access and use the Services or Kayoo Technology; (b) modify or create any derivative work based upon the Services or Kayoo Technology; (c) engage in, permit or suffer to continue any unauthorized copying, reselling or distribution of the Services or Kayoo Technology; (d) grant any sublicense or other rights to the Services or Kayoo Technology; (e) reverse engineer, disassemble or decompile all or any portion of, or attempt to discover or recreate the source code for, any Software; or (f) remove, obscure or alter any Intellectual Property Rights notice related to the Software, the Services or the Kayoo Technology. Customer will ensure, through proper instructions and enforcement actions, that all access to and use of the Services by Customer and your Authorized Users', or otherwise through Customer's facilities, equipment, identifiers or passwords, will be in accordance with the terms of this Agreement and will be made and used solely for proper and legal purposes, and will be conducted in a manner that does not violate any law or regulation, or the rights of any third party.

3.3 License to Kayoo. Subject to the Agreement, Customer hereby grants Kayoo a worldwide, non-exclusive, royalty-free license during the Term to use, reproduce, electronically distribute, transmit, have transmitted, perform, display, store, archive, and index Customer's Data in order to provide the Services. Kayoo shall have no right to sub-license or resell Customer's Data or any component thereof.

3.4 Reservation of Rights. Subject to the limited rights expressly granted hereunder, (a) Kayoo reserves all right, title and interest in and to the Services including all related intellectual property rights. No rights are granted to Customer hereunder other than as expressly set forth herein; and (b) Customer reserves all right, title and interest in and to the Customer Data including all related intellectual property rights. No rights are granted to Kayoo hereunder other than as expressly set forth herein.

3.5 Identification Of Other Party as Customer/Service Provider. Nothing contained herein shall be deemed to grant either party any right, title or interest in or to the other's trademarks other than the limited rights granted herein. Upon termination of this Agreement, each Party shall promptly cease to use all the other party's trademarks except as permitted pursuant to another agreement between the parties.

4. Access to the Services

4.1 Password. Customer will issue a User Identification to enable each Authorized User to access and use the Services through Customer's Interface. Customer is solely responsible for tracking the User Identifications to specific Authorized Users and for ensuring the security and confidentiality of all User Identifications. Customer acknowledges that it is fully responsible for all liabilities incurred through the use of any User Identification and that any transaction under a User Identification will be deemed to have been performed by Customer. Customer will immediately notify Kayoo of any unauthorized use of any User Identification or any other breach of security known to it. Use of any User Identification other than as provided in the Agreement will be considered a breach of the Agreement by Customer.

4.2 Hours of Operation; Scope of Services. Pursuant to the terms of the Service Level Agreement, Kayoo reserves the right at any time with reasonable advance notice to Customer to temporarily change the Service hours of operation or to limit Customer's and your Authorized Users' access to and use of the Services in order to perform repairs, make modifications, or to do so without advance notice as a result of circumstances beyond Kayoo's reasonable control. Kayoo may alter or modify all or part of the Services from time to time. Such alterations and modifications, or both, may include, without limitation, the addition or withdrawal of features, products, services, software or changes in instructions, provided that this does not result in material decrease in the functionality of the Services.

5. Engagement Resources

5.1 Resources. Subject to the terms and conditions of this Agreement and Customer's purchase of these additional services, Kayoo shall provide to Customer (i) a designated Customer Success Manager ("DCSM"), when and as provided in Schedule 2.1, (ii) a designated Solution Engineer ("SE"), when and as provided in Schedule 2.2, (iii) a designated Training Specialist ("DTS) and training services, when and as provided in Schedule 2.3 and (iv) a designated Senior Technical Support Specialist ("STSS"), when and as provided in Schedule 2.4 (collectively, the DCSM, the SE, the DTS and the STSS may be referred to as the "Engagement Resources").

5.2 Expenses. The fees for the Engagement Resources do not include reasonable travel and related expenses of the Engagement Resources. Incurring any such expenses shall require prior written approval by Customer, and shall be separately invoiced to and reimbursed by Customer.

5.3 IP Ownership. The services provided by the Engagement Resources shall not result in a transfer or assignment of intellectual property rights between the parties. Any work product of an Engagement Resource shall be owned by Kayoo and when provided to Customer, will be deemed a part of the Services or Software, which may be utilized by Customer under the terms of this Agreement.

5.4 Location of Engagement Resources. The services of the DCSM and the SE will primarily be provided at Customer's location, but in certain cases such services may be provided remotely, by mutual agreement of both parties.

5.5 Kayoo's Employees; Nonsolicitation. The Engagement Resources shall at all times remain Kayoo's employees. Customer agrees not to solicit or recruit for employment or independent contract service any of the Engagement Resources. The preceding sentence shall not (i) apply to Engagement Resources who are no longer in Kayoo's employ (i.e. have accepted employment with a third party) at least three months prior to the time Customer solicits them, or (ii) restrict Customer's right to solicit or recruit generally in the media and hiring a person who answers any advertisement or who otherwise voluntarily applies for hire without having been initially personally solicited or recruited by Customer.

5.6 Support Procedures. During periods for which Customer purchases Designated Engagement Resource Services (except STSS), the services provided by the Engagement Resources will be provided to Customer's contacts in accordance with Schedules 2.1, 2.2 and 2.3. The services provided by the STSS will be provided to Customer's contacts during the Initial Term in accordance with Schedule 2.4. Case initiation procedures, expected response times and escalation procedures for Engagement Resources are set forth in Schedule 2.5. Customer's contacts may submit cases over the Web or by phone. Customer's contacts will be asked to provide their company name and contact information, and each case will be assigned a unique case number. Kayoo will use commercially reasonable efforts to promptly respond to each case within two (2) hours and will use commercially reasonable efforts to promptly resolve each case. Actual resolution time will depend on the nature of the case and the resolution. A resolution may consist of a fix, workaround or other solution in Kayoo's reasonable determination.

6. Fees And Payments

6.1 Fees. Customer shall pay Kayoo the fees set forth on the Order Form. Except as otherwise specified herein or in an Order Form (i) fees are based on services purchased, and (ii) payment obligations are non-cancelable and fees paid are non-refundable. Kayoo will invoice Company with respect to Additional Authorized Users (in excess of the number of Authorized Users set forth in the Order Form) who register for and use the Services, payable for the number of months remaining in the Initial Term or then current Renewal Term, in advance. Fees for each additional Authorized User shall be invoiced during the month following the registration of such additional Authorized User for the Services.

6.2 Invoicing and Payment Terms. Customer will provide Kayoo with valid and updated credit card information, or with a valid purchase order or alternative document reasonably acceptable to Kayoo. If Customer provides credit card information to Kayoo, Customer authorizes Kayoo to charge such credit card for all Services listed in the Order Form for the initial subscription term and any Renewal Term. If the Order Form specifies that payment will be by a method other than a credit card, Kayoo will invoice Customer in advance, in accordance with the billing frequency stated on the applicable Order Form, and unless otherwise stated on the order form you shall pay all amounts invoiced within thirty (30) days of the date of invoice. In the event of any action by Kayoo to collect any amount not paid when due, Customer will pay or reimburse Kayoo's costs of collection (including, without limitation, any attorneys' fees and court costs).

6.3 Overdue Charges. If any charges are not received from Customer by the due date, then at Kayoo's discretion, (a) such charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the day such payment was due until the date paid, and/or (b) Kayoo may condition future subscription renewals and Order Forms on payment terms shorter than those specified in Section 6.2.

6.4 Taxes. All fees are net. Customer will pay or reimburse all taxes, duties and assessments, if any due, based on or measured by amounts payable to Kayoo in any transaction between Customer and Kayoo under the Agreement (excluding taxes based on Kayoo's income) together with any interest or penalties assessed thereon, or furnish Kayoo with evidence acceptable to the taxing authority to sustain an exemption therefrom.

7. Ownership

7.1 Customer's Data. Subject only to the limited license expressly granted hereunder, as between Customer and Kayoo, Kayoo acquires no right, title or interest from Customer or your Authorized Users under this Agreement in or to Customer's Data, including any intellectual property rights therein. Customer is solely responsible for Customer's Data that Authorized Users upload, publish, display, link to or otherwise make available (hereinafter, "post") on the Service, and Customer agrees that Kayoo is only acting as a passive conduit and Data Processor for the online distribution and publication of Customer's Data which Customer controls. Kayoo will not review, share, distribute, or reference any of Customer's Data except as provided herein to provide the Services or as may be required by law.

7.2 Security. Kayoo has implemented commercially reasonable technical and organizational measures designed to secure Customer's Data from accidental loss and from unauthorized access, use, alteration or disclosure. However, Kayoo cannot guarantee that unauthorized third parties will never be able to defeat those measures or use Customer's Data for improper purposes. Customer acknowledges that all Customer's Data is provided at Customer's and its Authorized Users' own risk.

7.3 Suggestions. Customer may choose to or Kayoo may invite Customer and/or Authorized Users to submit comments or ideas about the Services, including without limitation about how to improve the Services or products. Kayoo shall have a royalty-free, worldwide, transferable, sub-licensable, irrevocable, perpetual license to use or incorporate into the Services any suggestions, enhancement requests, recommendations or other feedback provided by Company or Authorized Users relating to the operation of the Services.

7.4 Right to Monitor. Kayoo will have the right to review and monitor all use of the Services to ensure compliance with all of the terms of the Agreement and evaluate performance of the Services. Kayoo will also have the right to analyze user behavior to evaluate use of our Website and emails, both on an individual basis and in the aggregate, and otherwise to collect, create and analyze metadata about Customer's use of the Services provided that such metadata is never disclosed to any third party other than in an anonymized and aggregate format.

8. Privacy Policy

The terms and conditions of the Kayoo Privacy Policy shall apply to Customer's Data, to Customer, and its Authorized Users' use of the Services, and Customer hereby acknowledges and agrees to the terms thereof. The Kayoo Privacy Policy may be amended from time to time, which amendments shall be effective upon posting at the URL. Customer acknowledges that Kayoo's employees may contact Customer and/or certain Authorized Users to assist them in realizing the maximum benefit from the Services.

9. Term and Termination

9.1 Term. The Term of the Agreement will commence as of the Effective Date set forth in the Order Form and, unless specified otherwise in the Order Form, will end on the Contract End Date set forth in the Order Form or upon earlier termination in accordance with Sections 9.2 or 9.3, below.

9.2 Termination by Customer. The Agreement may be terminated by Customer (i) in the event of a material breach by Kayoo of any provision of the Agreement and Kayoo fails to cure such breach within thirty (30) days of written notice; or (ii) upon Kayoo's bankruptcy, reorganization or assignment for the benefit of creditors.

9.3 Termination by Kayoo. Kayoo may terminate this agreement (i) if Customer defaults in the timely payment of any amounts due Kayoo and fails to cure within ten (10) days of receipt of written notice; (ii) immediately if Customer breaches any provisions of Section 2.2 or fail upon written notice to remove content in violation of the DMCA pursuant to Section 2.2 of this agreement; (iii) in the event of a material breach by

Customer of any other provision of the Agreement and Customer fails to cure such breach within thirty (30) days of written notice; or (iv) upon Customer's bankruptcy, reorganization or assignment for the benefit of creditors.

9.4 Effect of Termination. If the Agreement is terminated pursuant to this Section 9, then, unless otherwise specifically provided for in writing by the parties, the following will apply: (a) any license rights granted to Customer with respect to the Services, the Software and/or the Kayoo Technology will terminate as of the effective date of the termination; (b) Customer will return to Kayoo any and all technical or business information of Kayoo's in Customer's possession or control; (c) unless otherwise agreed upon by the parties, Kayoo will have no obligation to provide the Services to Customer or your Authorized Users after the effective date of the termination; (d) Customer will pay Kayoo any amounts payable for Customer's and your Authorized Users' use of the Services through the effective date of the termination; and (e) Kayoo will provide Customer and its Authorized Users with access to Customer's Data until twenty (20) days following the date of termination, at which point such access shall cease. It is Customer's sole responsibility to download or delete any of Customer's Data following a termination; Kayoo has no obligation to make such data available more than twenty (20) days following the date of termination or to maintain copies of Customer's Data. No refunds of prepaid fees shall be made to Customer in connection with any termination pursuant to Section 9.3.

10. Disclaimer of Warranties

EXCEPT AS EXPRESSLY SET FORTH HEREIN, KAYOO DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE, WITH RESPECT TO ANY ERROR, DEFECT, DEFICIENCY, INFRINGEMENT OR NONCOMPLIANCE IN THE SERVICES, THE SOFTWARE, THE KAYOO TECHNOLOGY OR ANY OTHER ITEMS PROVIDED BY, THROUGH OR ON BEHALF OF KAYOO, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT AND ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE.

KAYOO DOES NOT WARRANT, ENDORSE, GUARANTEE, OR ASSUME RESPONSIBILITY FOR ANY PRODUCT OR SERVICE OFFERED BY A THIRD PARTY THROUGH THE SERVICES AND KAYOO WILL NOT BE A PARTY TO OR IN ANY WAY MONITOR ANY TRANSACTION BETWEEN CUSTOMER AND THIRD-PARTY PROVIDERS OF PRODUCTS OR SERVICES.

11. Publicity/Press

Each Party shall be allowed to refer to the other as a customer of or service provider to (as the case may be) on its website and in marketing materials, including but not limited to case studies, blog posts and webinars, provided that such reference shall not imply an affiliation, sponsorship, or endorsement of the other. Other than as provided in the foregoing sentence, neither Party shall issue any public announcement regarding the subject matter herein without the prior written approval of the other.

12. Mutual Indemnification

12.1 Indemnity by Kayoo. Kayoo shall defend, indemnify and hold Customer and your subsidiaries, agents, managers, and other affiliated companies, and their employees, contractors, agents, officers and directors, harmless from and against any and all third party claims that the Services as provided by Kayoo infringe a copyright or misappropriate a trade secret of a third party; provided, that Customer (a) promptly give Kayoo written notice of the Claim; (b) give Kayoo sole control of the defense and settlement of the Claim (provided that Kayoo may not settle any Claim without Customer's prior written consent unless the settlement unconditionally releases Customer of all liability); and (c) provide to Kayoo all reasonable assistance, at Kayoo's expense.

If the Software and/or the Services become, or, in Kayoo's opinion are likely to become, the subject of such a claim, Kayoo shall have the right to (i) obtain for Customer the right to continue using the Software and the Services, (ii) replace or modify the Software and/or the Services so that they become non-infringing, or (iii) terminate the Services and the license granted hereunder to the Software and provide a pro rated refund to Customer of the fees paid for the Services for the portion of the Term remaining at the time of such

termination. THE FOREGOING STATES KAYOO'S ENTIRE LIABILITY AND CUSTOMER'S EXCLUSIVE REMEDIES FOR INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT.

Kayoo will have no liability for any infringement claim to the extent it (i) is based on modification of the Services or Software by or at the direction of Customer or its Authorized User; (ii) results from Customer's failure to use an updated version of the Services or Software made available to Customer; (iii) is based on the combination or use of the Software or the Services with any other software, program or device not provided or specified by Kayoo if such infringement would not have arisen but for such use or combination or (iv) results from Customer's operation of the Software or the Service in a manner that is inconsistent with its intended use.

12.2 Indemnity by Customer. Customer shall defend, indemnify and hold Kayoo and our subsidiaries, agents, managers, and other affiliated companies, and their employees, contractors, agents, officers and directors, harmless from and against any and all claims, damages, obligations, losses, liabilities, costs or debt, and expenses (including but not limited to attorney's fees) arising from: (i) Customer's and your Authorized Users' use of and access to the Service, including any data or work transmitted or received by Customer or your Authorized Users; (ii) Customer's or an Authorized User's violation of any term of the Agreement; (iii) Customer's or an Authorized User's violation of any third-party right, including without limitation any right of privacy, publicity rights or Intellectual Property Rights; (iv) Customer's or an Authorized User's violation of any law, rule or regulation of the United States or any other country; (v) any claim or damages that arise as a result of the posting, transmission or storage of any of Customer's Data that is submitted via Authorized User accounts; or (vi) any other party's access and use of the Service with Customer's or an Authorized User's unique username, password or other appropriate security code; provided, that Kayoo (a) promptly give Customer written notice of the Claim; (b) give Customer sole control of the defense and settlement of the Claim (provided that Customer may not settle any claim without Kayoo's prior written consent unless the settlement unconditionally releases Kayoo of all liability); and (c) provide to Customer all reasonable assistance, at Customer's expense.

13. Confidentiality

13.1 Definition of Confidential Information. As used herein, "Confidential Information" means all confidential information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Customer's Confidential Information shall include Customer's Data; Kayoo's Confidential Information shall include the Services; and Confidential Information of each party shall include the terms and conditions of this Agreement and all Order Forms, as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information (other than Customer's Data) shall not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party as evidenced by contemporaneous written records.

13.2 Protection of Confidential Information. Except as otherwise permitted in writing by the Disclosing Party, (i) the Receiving Party shall use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care) not to disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (ii) the Receiving Party shall limit access to Confidential Information of the Disclosing Party to those of its employees, contractors and agents who need such access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein.

13.3 Compelled Disclosure. The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior written notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to such Confidential Information.

14. Limitation of Liability

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY, THEIR RESPECTIVE DIRECTORS, EMPLOYEES OR LICENSORS BE LIABLE FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF PROFITS, GOODWILL USE, DATA OR OTHER INTANGIBLE LOSSES, THAT RESULT FROM THE USE OF, OR INABILITY TO USE, THIS SERVICE OR ANY OTHER ASPECT OF THIS AGREEMENT. UNDER NO CIRCUMSTANCES WILL EITHER PARTY BE RESPONSIBLE FOR ANY DAMAGE, LOSS OR INJURY RESULTING FROM HACKING, TAMPERING OR OTHER UNAUTHORIZED ACCESS OR USE OF THE SERVICE OR YOUR ACCOUNT OR THE INFORMATION CONTAINED THEREIN INCLUDING BUT NOT LIMITED TO ANY BREACH OF SECTION 13.

YOUR EXCLUSIVE REMEDIES FOR ANY INTERRUPTION OR CESSATION OF ACCESS OR TRANSMISSION TO OR FROM THE SERVICE ARE SET FORTH IN THE SERVICE LEVEL AGREEMENT. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WE ASSUME NO LIABILITY OR RESPONSIBILITY FOR (I) ANY PERSONAL INJURY OR PROPERTY DAMAGE, OF ANY NATURE WHATSOEVER, RESULTING FROM YOUR OR YOUR AUTHORIZED USERS' ACCESS TO AND USE OF THE SERVICES; (II) ANY ERRORS OR OMISSIONS IN, OR ANY LOSS OR DAMAGE INCURRED AS A RESULT OF THE USE OF, ANY MATERIALS POSTED, EMAILED, TRANSMITTED, OR OTHERWISE MADE AVAILABLE THROUGH THE SERVICE; (III) DAMAGE CAUSED BY THE POSTING, TRANSMISSION OR STORAGE OF YOUR DATA SUBMITTED VIA AUTHORIZED USER ACCOUNTS, OR (IV) THE DEFAMATORY, OFFENSIVE, OR ILLEGAL CONDUCT OF ANY AUTHORIZED USER OR THIRD PARTY. IN NO EVENT SHALL KAYOO, ITS DIRECTORS, EMPLOYEES, OR LICENSORS BE LIABLE TO CUSTOMER OR YOUR AUTHORIZED USERS FOR ANY CLAIMS, PROCEEDINGS, LIABILITIES, OBLIGATIONS, DAMAGES, LOSSES OR COSTS IN AN AMOUNT EXCEEDING THE AGGREGATE AMOUNT CUSTOMER PAID OR PAYABLE TO KAYOO HEREUNDER DURING THE 12 MONTHS PRECEDING THE CLAIM.

THIS LIMITATION OF LIABILITY SECTION APPLIES WHETHER THE ALLEGED LIABILITY IS BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER BASIS, EVEN IF KAYOO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THE FOREGOING LIMITATION OF LIABILITY SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW IN THE APPLICABLE JURISDICTION.

15. Miscellaneous

15.1 Assignment. Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party, which shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, either party may assign this Agreement in its entirety, without consent, of the other party, in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets not involving a direct competitor of the other party.

15.2 Notices. Except as otherwise specified in this Agreement, all notices, permissions and approvals hereunder shall be in writing and shall be deemed to have been given upon: (i) personal delivery or (ii) written verification of receipt by established overnight courier. Notices to Customer shall be sent to the respective addresses set forth in the Order Form, Attention: Legal, or such new address as Customer specify to Kayoo by written notice. Notices to Kayoo shall be sent to:

Kayoo
153 rue de Courcelles

75017 Paris, France

15.3 Applicable Law; Binding Arbitration. With respect to any claim arising out of or related to this Agreement, the parties agree to submit any dispute to binding arbitration in accordance with its Commercial arbitration rules including optional rules for Emergency Measures of Protection, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The parties shall attempt to

agree on the selection of a single arbitrator. The place of arbitration shall be Paris, France. The Agreement will be interpreted, construed and enforced in all respects in accordance with the laws of the State of France, without reference to its choice of law principles. The United Nations Convention on contracts for the International Sales of Goods shall not apply.

15.4 Entire Agreement. The Agreement is the complete and exclusive statement of the agreement between the parties and supersedes all proposals, oral or written, and all other communications between the parties relating to the subject matter of the Agreement, including the online Kayoo Terms of Use Agreement with respect to Customer's and your Authorized Users' use of the Services, which is hereby terminated. Any terms and conditions of any purchase order or other instrument issued by Customer in connection with the Agreement which are in addition to, inconsistent with or different from the terms and conditions of the Agreement, including any confidentiality agreement to the extent it purports to cover Customer's Data or other information provided by Customer or your Authorized Users in connection with this MSA, shall be of no force or effect. The Agreement may be modified only by a written instrument duly executed by authorized representatives of the parties. Any waiver by either party of any condition, term or provision of the Agreement shall not be construed as a waiver of any other condition, term or provision. If any provision of the Agreement is held invalid or unenforceable, such provision shall be replaced with an enforceable provision with as similar import as is legally permissible and the remainder of the Agreement shall continue in full force and effect.

15.5 Counterparts. The Agreement may be executed in two or more counterparts, including execution evidenced by Customer's "clicking" on the "button" on Kayoo's website in connection with the acceptance of the Services, in which event Kayoo's execution will be deemed to occur at the same time, each of which shall be deemed to be an original and each of which together shall constitute a single instrument.

SCHEDULE 1

SERVICE LEVEL AGREEMENT

During the Term of the MSA, the Kayoo Service web interface will be operational and available to Customer at least 99.9% of the time in any calendar month (the "**Performance Commitment**"). If Kayoo does not meet the Performance Commitment, and if Customer meets your obligations under this Agreement, Customer will be eligible to receive the Service Credits described below. This Performance Commitment states Customer's sole and exclusive remedy for any failure by Kayoo in providing the Service.

1. Definitions. The following definitions shall apply to the Performance Commitment.

- a. "Downtime" means, for a domain, if there is more than a five percent user error rate. Downtime is measured based on server side error rate.
- b. "Downtime Period" means, for a domain, a period of ten consecutive minutes of Downtime. Intermittent Downtime for a period of less than ten minutes will not be counted towards any Downtime Periods.
- c. "Monthly Uptime Percentage" means total number of minutes in a calendar month minus the number of minutes of Downtime suffered from all Downtime Periods in a calendar month, divided by the total number of minutes in a calendar month.
- d. "Scheduled Downtime" means those times where Kayoo notifies Customer of periods of Downtime at least five days prior to the commencement of such Downtime. There will be no more than twelve hours of Scheduled Downtime per calendar year. Scheduled Downtime is not considered Downtime for purposes of this Performance Commitment, and will not be counted towards any Downtime Periods.
- e. "Service" means the service provided by Kayoo to Customer under the applicable Agreement.
- f. "Service Credit" means the following:

Monthly Uptime Percentage	Days of Service added to the end of the Service term, at no charge to Customer
< 99.9% – ≥ 99.0%	3
< 99.0% – ≥ 95.0%	7
< 95.0%	15

2. Customer Must Request Service Credit. In order to receive any of the Service Credits described above, Customer must notify Kayoo within thirty days from the time Customer becomes eligible to receive a Service Credit. Failure to comply with this requirement will forfeit Customer’s right to receive a Service Credit.

3. Maximum Service Credit. The aggregate maximum number of Service Credits to be issued by Kayoo to Customer for any and all Downtime Periods that occur in a single calendar month shall not exceed fifteen days of Service added to the end of Customer’s term for the Service. Service Credits may not be exchanged for, or converted to, monetary amounts.

4. Performance Commitment Exclusions. The Performance Commitment does not apply to any service(s) that expressly exclude this Performance Commitment (as stated in the documentation for such services) or any performance issues: (i) caused by factors outside of Kayoo’s reasonable control; or (ii) that resulted from Customer’s equipment or third party equipment, or both (not within Kayoo’s primary control).

Billing Terms

A Network Administrator has access to some features. Such tools are available for a monthly license fee based on the number of users in that Network per month.

If there is one Network Administrator for a Network, such person will be responsible for payment of any fees due for such Network. If there is more than one Network Administrator for a Network, the initial Network Administrator will be the billing party of record (the “Customer”) unless otherwise changed.

The Customer agrees to pay for all products ordered through the Kayoo web site using the payment method indicated, and provides Kayoo express authorization to charge said fees to the Customer’s payment provider at time of purchase. Fees owed depend on the quantity of Network Users per month. Payment of fees shall not be contingent on any events other than the quantity of Network Users per month, unless otherwise agreed in writing by both parties. Any attorney fees, court costs, or other costs incurred in collection of delinquent undisputed amounts shall be the responsibility of and paid for by Customer. If payment is not current, Kayoo may immediately cease to provide any and all services to the customer. The fees paid for monthly Network usage are non-refundable, regardless of whether the Claimed Network is terminated prior to the end of the then-current monthly billing period.

Charges will automatically renew using the Customer’s current credit card account number unless Customer cancels their Network Administration by email to help@kayoo.com three (3) days prior to the renewal date to cancel such subscription. All cancellation requests will be processed within five (5) business days. Once the cancellation is processed, a confirmation email will be sent via the customer’s email account on record with Kayoo. If Customer has a question about a cancellation, Customer should contact Kayoo at help@kayoo.com. The Company reserves the right to change its fees or billing methods at any time. The Company will provide timely notice to the affected Customers of any such changes.

It is the Customer’s responsibility to promptly provide the Company with any contact or billing information changes or updates (including phone number, email address, credit card numbers, etc.). Account updates should be made online via the “My Account” tab within the “Administrator” section, once Customer has logged into

www.Kayoo.com. Kayoo does not validate all credit card information required by the Customer's payment provider to secure payment.

The Customer must notify Kayoo about any billing problems or discrepancies within 90 days after charges first appear on their Account statement. If it is not brought to Kayoo's attention within 90 days, Customer agrees to waive their right to dispute such problems or discrepancies.

Kayoo API Terms

Thank you for using the Kayoo application programming interface (together with any updates, revisions, substitutions, and any copies made by or for you, referred to in this agreement as the "Kayoo API"). This is an agreement between you and Kayoo ("Kayoo"). Sometimes Kayoo is referred to as "we," "us" or "our". By using the Kayoo API, you agree to these terms of service (the "API Terms") and the Kayoo Terms of Use ("TOU"). In the event of any inconsistency between these API Terms and the TOU, these API Terms control.

Kayoo reserves the right to update and change, from time to time, these API Terms or any documents incorporated by reference. Kayoo may change these API Terms by posting a new version. Use of the Kayoo API after such change constitutes acceptance of such changes.

Please note that we do not provide warranties for the Kayoo API or the service. The contract also limits our liability. These terms are in sections 10 and 11 and we ask you to read them carefully.

1. Access to the Kayoo API.

In order to use the Kayoo API, you must have a Kayoo Account. After supplying Kayoo with your account information, the URL of your service, and agreeing to the Kayoo API Terms, you will be issued an alphanumeric key assigned to you by Kayoo that is uniquely associated with your Kayoo Account and the URL of your service. Your service must provide this key, as described in the Kayoo API documentation, and Kayoo will block requests with an invalid key or invalid URL. Kayoo shall have sole and complete control over the Kayoo data and format.

Kayoo shall have the right, in its sole discretion, to reject any request to use the Kayoo API at any time and for any reason. Kayoo shall not be liable to you for damages of any sort resulting from its decision to reject such a request.

2. Licensed Uses and Restrictions.

The Kayoo API is owned by Kayoo and is licensed to you on a worldwide (except as limited below), non-exclusive, non-sublicenseable basis on the terms and conditions set forth herein. These Terms of Service define legal use of the Kayoo API, all updates, revisions, substitutions, and any copies of the Kayoo API made by or for you. All rights not expressly granted to you are reserved by Kayoo.

- a. *License*. Subject to the terms and restrictions set forth in these API Terms, Kayoo grants you a non-exclusive, non-sublicenseable, right to use the Kayoo API to develop, test, distribute and support your application.
- b. *Branding*. If your product or service uses or is based upon the Kayoo API, and you wish to include Kayoo branding or logos, please contact us at help@kayoo.com. Absent express written permission from us, you may not use Kayoo branding, except as outlined in section 3(b) below.
- c. *Rate Limits and Data Fields Restrictions*. You understand that there is a rate limit and a restriction to the data fields displayed per application or service utilizing the Kayoo API and you agree that you shall comply with that rate limit and restriction to the data fields at all times. The rate limits and restrictions are described in the Kayoo API Documentation. These rate limits and restrictions are subject to change from time to time at Kayoo's sole discretion, effective immediately upon posting. Kayoo may, in its sole discretion, limit the: (i) rate at which the service, or any subset of it, may be called, (ii) the amount of storage made available to each service account, or (iii) the length of individual content segments that may be uploaded to, or served from, the service (all of the foregoing being forms of "Throttling").

Kayoo may perform this Throttling globally across the entire Kayoo API, per end user, or on any other basis. You will not take steps to circumvent any technical measures we may put in place to enforce Throttling, and you understand and agree that programmatic methods intended to subvert rate limiting (including maintaining a cache of the data) are considered a violation of these API Terms.

- d. *Modifications*. Kayoo reserves the right to release subsequent versions of the Kayoo API and to require you to obtain and use the most recent version. If a modification is unacceptable to you, you may cancel the Service by removing the Kayoo API code from your Site. If you continue to use the Service, you will be deemed to have accepted the modifications.
- e. *Limitations and Conditions of the service*. We may use technology or other means to protect the Kayoo API, protect our customers, or stop you from breaching this Agreement. These means may include, for example, filtering to stop spam or increase security. These means may hinder or break your use of the Kayoo API, and you may not work around or attempt to thwart or disable any of these technical or other means.

3. Proprietary Rights

- a. *Kayoo Rights*. For purposes of the API Terms, “Intellectual Property Rights” shall mean any and all rights existing from time to time under patent law, copyright law, semiconductor chip protection law, moral rights law, trade secret law, trademark law, unfair competition law, publicity rights law, privacy rights law, and any and all other proprietary rights, and any and all applications, renewals, extensions and restorations thereof, now or hereafter in force and effect worldwide. As between you and Kayoo, you acknowledge that Kayoo or its licensors own all right, title and interest, including without limitation all Intellectual Property Rights, in and to the Kayoo API and all output and executables of the Kayoo API (excluding any software components developed by you which do not themselves incorporate the Kayoo API or any output or executables of the Kayoo API) and that you shall not acquire any right, title, or interest in or to the Kayoo API, except as expressly set forth in the API Terms.
- b. *Attribution; Legal Notices*. The images provided to you through the Kayoo API may contain the trade names, trademarks, service marks, logos, domain names, and other distinctive brand features of Kayoo and its partners. You may not delete or in any manner alter these trade names, trademarks, service marks, logos, domain names, and other distinctive brand features. You agree to maintain, and not to remove, modify, obscure or alter, any link or notices appearing on any image provided through the Service. You acknowledge and agree that these Legal Notices supplement the API Terms for the Kayoo API.
- c. *Digital Millennium Copyright Act*. It is Kayoo’s policy to respond to notices of alleged infringement that comply with the Digital Millennium Copyright Act (“DMCA”). For directions and more information, please see the DMCA Notice section of the TOU.

4. Code of Conduct

You agree that you are responsible for your own conduct and content while using the Kayoo API and for any consequences thereof. You agree to use the Kayoo API only for purposes that are legal, proper and in accordance with these API Terms and any applicable policies or guidelines.

a. *Appropriate conduct*. In using the Kayoo API and developing applications, you must:

1. Obey the law;
2. Obey any codes of conduct or other notices we provide;
3. Keep any service account password secret;
4. Promptly notify us if you learn of a security breach related to the service.

b. *Prohibited uses*. In using the Kayoo API and developing applications, you will not:

1. defame, abuse, harass, stalk, threaten or otherwise violate the legal rights (such as rights of privacy and publicity) of others;
2. upload, post, email or transmit or otherwise make available any inappropriate, defamatory, infringing, obscene, or unlawful content;

3. upload, post, email or transmit or otherwise make available any content that infringes any patent, trademark, copyright, trade secret or other proprietary right of any party, unless you are the owner of the rights or have the permission of the owner to post such content;
4. upload, post, email or transmit or otherwise make available messages that promote pyramid schemes, chain letters or disruptive commercial messages or advertisements, or anything else prohibited by law, these API Terms or any applicable policies or guidelines;
5. use the Kayoo API in connection with or to promote any products, services, or materials that constitute, promote or are used primarily for the purpose of dealing in: spyware, adware, or other malicious programs or code;
6. download any file posted by another that you know, or reasonably should know, that cannot be legally distributed in such manner;
7. impersonate another person or entity, or falsify or delete any author attributions, legal or other proper notices or proprietary designations or labels of the origin or source of software or other material;
8. restrict or inhibit any other user from using and enjoying Kayoo services;
9. use Kayoo services for any illegal or unauthorized purpose;
10. remove any copyright, trademark or other proprietary rights notices contained in or on Kayoo services;
11. interfere with or disrupt Kayoo services or servers or networks connected to Kayoo services, or disobey any requirements, procedures, policies or regulations of networks connected to Kayoo services;
12. use any robot, spider, site search/retrieval application, or other device to retrieve or index any portion of Kayoo services or collect information about users for any unauthorized purpose;
13. submit content that falsely expresses or implies that such content is sponsored or endorsed by Kayoo;
14. create user accounts by automated means or under false or fraudulent pretenses, or obtain or attempt to obtain multiple keys for the Kayoo API;
15. promote or provide instructional information about illegal activities or promote physical harm or injury against any group or individual; or
16. transmit any viruses, worms, defects, Trojan horses, or any items of a destructive nature.
17. sell, lease, share, transfer, or sublicense the Kayoo API or access or access codes thereto, whether for direct commercial or monetary gain or otherwise, without Kayoo's prior, express, written permission; or
18. use the Kayoo API in a manner that exceeds reasonable request volume, constitutes excessive or abusive usage, or otherwise fails to comply or is inconsistent with any part of the Kayoo API documentation as determined by Kayoo in its sole discretion;
19. request data on behalf of one user in order to show, display, transmit, or deliver such data to other users.

The immediately preceding prohibited uses are by way of example, and not as a limitation. Kayoo reserves the right, in its sole discretion, to determine whether your use of the Kayoo API is in accordance with the terms of this agreement.

5. Privacy.

All access to and use of the Kayoo services is subject to the Kayoo Privacy Policy (which may be updated from time to time). Nothing in these API Terms or the service provide for the collection or transfer of any personally identifiable information of internet users between the parties. You must maintain a prominent online privacy policy for your websites and applications that access the service. This privacy policy, at a minimum, must include a full, accurate, and clear disclosure regarding the placement, use, and reading of cookies and related technologies, and your collection and use of data in relation to activity by users of your websites and applications.

6. User Authentication.

Kayoo takes end user security and privacy very seriously, and you agree to give us all necessary assistance for the operation of your Application in compliance with these API Terms and any applicable laws.

a. **Securing User Consent.** You are solely responsible for securing clear, express consent from the user, granting you permission to access such user's Kayoo account, including if applicable, retrieving user-specific information, or writing information to such user's account. You will strictly comply with the scope of express consent they granted you when accessing such user's Kayoo account.

b. Contact and Cooperation. You (or the name of the contact you gave to Kayoo when you applied for your application key if it's not you) must be reachable at all times for security questions or concerns. You can change this name or contact and providing the correct contact information and using the new application key instead.

c. Virus Precautions. All materials, including software and documents, that you provide to Kayoo, must be checked with Internet industry standard up-to-date antivirus and anti-worm software, and determined to be virus-free and worm-free. Any data provided to Kayoo must not contain harmful scripts or code.

d. Industry Standards. Your networks, operating system and software of its web server(s), routers, databases, and computer systems ("Systems") must be properly configured to Internet industry standards, as required to securely operate your Application. If you do not completely control any aspect of the System, you will use all control or influence that you have over such Systems and/or selection of Systems, and you will not architect or select Systems in a manner to avoid the foregoing obligation. An example of an unacceptable server is one that operates as open proxy. An example of architecting in an unacceptable manner would be if you select a server operated by a vendor with substandard security practices, so that you could contend that you do not control such server, in order to avoid having to select an acceptable server.

e. Reporting. You must promptly report any security deficiencies in or intrusions to your Systems that you discover to Kayoo in writing via email to help@kayoo.com. You will work with Kayoo to immediately correct any security deficiency, and will disconnect immediately any intrusions or intruder. In the event of any such security deficiency or intrusion, you will make no public statements (i.e. press, blogs, bulletin boards, etc.) without prior written and express permission from Kayoo in each instance.

f. Control Access to Systems. To the extent you have control or influence over the Systems, you will log (in a time and date-stamped fashion) all instances of access to the Systems. You will encrypt the password and username files for the Systems that store or process any Kayoo user data that you are permitted by Kayoo to access. Passwords must be unique, unintuitive, and changed often. You will minimize access to and use of the passwords. Wherever possible, commands which require additional privileges should be securely logged (with time and date) to enable a complete audit trail of activities. When an individual terminates his or her employment with you, his or her passwords and access password facilities must be terminated immediately.

g. Security Reviews. Kayoo will have the right but is not obligated to, at its own expense, or to have an independent third party, to inspect and review your compliance with these security provisions. You will (at your own expense) correct any security flaws detected by such a review as soon as possible. You will then promptly certify to Kayoo in writing that the security flaw has been corrected, along with a description of the corrective action(s) taken. Kayoo will give you 48 hours' notice before conducting such a review, and may conduct no more than four reviews annually. Any such review will be conducted during regular business hours in such a manner as not to interfere with normal business activities. If a review reveals a material breach of any of these security provisions, you will reimburse Kayoo for the reasonable costs of the review.

7. Security Documentation.

In additions to compliance with Sections 5 and 6 of this API Terms, you are also required to comply with the requirements and documentation described in the Security Requirements and Documentation attached as Exhibit A to the API Terms.

8. Support.

Kayoo may elect to provide you with support or modifications for the Kayoo API (collectively, "Support"), in its sole discretion, and may terminate such Support at any time without notice to you. Kayoo may change, suspend, or discontinue any aspect of the Kayoo API at any time, including the availability of the Kayoo API. Kayoo may also impose limits on certain features and services or restrict your access to parts or all of the Kayoo API or the Kayoo Web site without notice or liability.

9. Fees and Payments.

Kayoo reserves the right to charge fees for future use of or access to the Kayoo API or the Kayoo services and Web sites (collectively, “Kayoo API Services”) in Kayoo’s sole discretion. If Kayoo decides to charge for the Kayoo API Services, such charges will be disclosed to you by prior written notice.

10. Disclaimer of Any Warranty.

THE KAYOO API IS PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS WITH NO WARRANTY, EXPRESS OR IMPLIED, OF ANY KIND. KAYOO EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES AND CONDITIONS, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AVAILABILITY, SECURITY, TITLE AND NON-INFRINGEMENT.

KAYOO DOES NOT REPRESENT OR WARRANT THAT THE KAYOO API IS FREE OF INACCURACIES, ERRORS, BUGS, OR INTERRUPTIONS, OR IS RELIABLE, ACCURATE, COMPLETE, OR OTHERWISE VALID. KAYOO MAKES NO WARRANTY THAT (i) THE KAYOO API WILL MEET YOUR REQUIREMENTS, (ii) THE KAYOO API SERVICE WILL BE UNINTERRUPTED, (iii) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE KAYOO API SERVICE WILL BE ACCURATE OR RELIABLE, (iv) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL OBTAINED BY YOU THROUGH THE KAYOO API WILL MEET YOUR EXPECTATIONS, AND (v) ANY ERRORS IN THE KAYOO API WILL BE CORRECTED.

YOUR USE OF THE KAYOO API IS AT YOUR OWN DISCRETION AND RISK, AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE THAT RESULTS FROM THE USE OF ANY KAYOO API INCLUDING, BUT NOT LIMITED TO, ANY DAMAGE TO YOUR COMPUTER SYSTEM OR LOSS OF DATA.

11. Limitation of Liability.

KAYOO SHALL NOT, UNDER ANY CIRCUMSTANCES, BE LIABLE TO YOU FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, LOST PROFITS, SPECIAL OR EXEMPLARY DAMAGES ARISING OUT OF OR IN CONNECTION WITH USE OF THE KAYOO API, WHETHER BASED ON BREACH OF CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE, PRODUCT LIABILITY OR OTHERWISE), OR ANY OTHER PECUNIARY LOSS, WHETHER OR NOT KAYOO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. UNDER NO CIRCUMSTANCES SHALL KAYOO BE LIABLE TO YOU FOR ANY AMOUNT.

Some jurisdictions do not allow the exclusion or limitation of liability for incidental or consequential damage, so the above limitations or exclusions may not apply to you.

12. Release and Waiver.

To the maximum extent permitted by applicable law, you hereby release and waive all claims against Kayoo, and its subsidiaries, affiliates, officers, agents, licensors, co-branders or other partners, and employees from any and all liability for claims, damages (actual and/or consequential), costs and expenses (including litigation costs and attorneys’ fees) of every kind and nature, arising from or in any way related to your use of Kayoo API.

13. Indemnification.

You will indemnify and hold Kayoo (and its directors, officers, affiliates, and agents) harmless from and against any and all loss, liability, and expense (including reasonable attorneys’ fees and costs) suffered or incurred by reason of any claims, proceedings, or suits based on or arising out of any breach (or alleged breach) by you of this contract, or any part of it, or that otherwise relates to your website(s), your application(s), or your use of the Kayoo API Services. You will be solely responsible for defending any claim using mutually-agreed counsel, subject to Kayoo’s right to participate with counsel it selects, and you will not publicize any claim or agree to any settlement that imposes any obligation or liability on Kayoo (or its directors, officers, affiliates, and agents) without Kayoo’s prior written consent, such consent provided by Kayoo in its sole discretion.

14. Term/Termination.

These API Terms will become effective upon your first use of the Kayoo API and continue until terminated by either party. You may terminate these API Terms by discontinuing use of all or any of the Kayoo API. Kayoo may terminate these API Terms at any time for any reason. These API Terms terminate automatically if (i) you violate any term of these API Terms or the TOU, (ii) Kayoo publicly posts a written notice of termination on Kayoo's web site, (iii) Kayoo sends a written notice of termination to you, or (iv) Kayoo ceases providing access to the Kayoo API to you. The parties' obligations under Sections 3, 10, 11, 12, 13, 14, 18, 19, 20, 21, 22 and 23 shall survive termination or expiration of these API Terms for any reason.

15. Assignment.

We may assign this contract, in whole or in part, at any time with or without notice to you. You may not assign this contract, or any part of it, to any other person or party without our prior written consent, which will not be unreasonably withheld. Any attempt by you to do so is void. You may not transfer to anyone else, either temporarily or permanently, any rights to use the Kayoo API Services or any part of the Kayoo API Services.

16. No Third Party Beneficiaries.

This Agreement is solely for the benefit of you and Kayoo. It is not for the benefit of any other party, except for permitted successors and assigns under this contract.

17. Relationship of the Parties.

Notwithstanding any provision hereof, for all purposes of the Terms of Service, you and Kayoo shall be and act independently and not as partner, joint venturer, agent, employee or employer of the other. You shall not have any authority to assume or create any obligation for or on behalf of Kayoo, express or implied, and you shall not attempt to bind Kayoo to any contract.

18. Contract Interpretation.

All parts of the API Terms apply to the maximum extent permitted by law. If any provision of the API Terms is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision and the other provisions of such documents remain in full force and effect. The section headings and subheadings contained in this agreement are included for convenience only, and shall not limit or otherwise affect the terms of the API Terms. Any construction or interpretation to be made of the API Terms shall not be construed against the drafter.

19. Notices; Consent Regarding Electronic Information

This contract is in electronic form. We have promised to send you certain information in connection with the Kayoo API Services and have the right to send you certain additional information. There may be other information regarding the Kayoo API Services that the law requires us to send you. We may send you this information in electronic form. You have the right to withdraw this consent, but if you do, we may cancel your service. We may provide required information to you: (i) by email at the email address you specified when you signed up for the service; (ii) by posting to a Kayoo web site that will be designated in an email notice sent to you at the time the information is available; or (iii) by posting on any portion of another Kayoo web site that will be designated for this purpose.

Notices provided to you via email will be deemed given and received on the transmission date of the email. As long as you can access and use the Kayoo API Service, you have the necessary software and hardware to receive these notices. If you do not consent to receive any notices electronically, you must stop using the Kayoo API Service.

Any notice from you will be sent electronically to: help@kayoo.com

20. No Waiver of Rights by Kayoo.

Kayoo's failure to exercise or enforce any right or provision of the API Terms shall not constitute a waiver of such right or provision.

21. Choice of Law; Location for Resolving Disputes.

France state law governs the interpretation of this contract and applies to claims for breach of it, regardless of conflict of laws principles. All other claims, including claims regarding consumer protection laws, unfair competition laws, and in tort, will be subject to the laws of your state of residence or the laws of the country to which we direct the services. You and we irrevocably consent to the exclusive jurisdiction and venue of the state courts in Paris, France for all disputes arising out of or relating to this contract.

22. Claim must be Filed within one Year.

Any claim related to this contract or the Kayoo API Services may not be brought unless brought within one year. The one-year period begins on the date when the claim first could be filed. If it is not filed, then that claim is permanently barred. This applies to you and your successors. It also applies to us and our successors and assigns.

23. Entire Agreement

The API Terms constitute the entire agreement between Kayoo and you with respect to the subject matter hereof.