

CATALYST 2 GENERAL TERMS

Shared, Email and Premium Hosting and VPS Terms and Conditions of Service

1 SCOPE OF THE SERVICE

1.1 General

1.1.1 This Agreement governs our terms and conditions for the provision of website hosting services and other supplementary services delivered during the term of this Agreement ("**Service**").

1.1.2 References to the term "**Agreement**" means the service order form, this agreement and any ancillary documents in relation to the purchase of our Products and those sold through our resellers of our equipment.

1.1.3 The Order constitutes an offer by you to purchase the Products in accordance with these General Terms. You shall be responsible for ensuring that the terms of the Order are complete and accurate.

1.1.4 The Order shall only be deemed to be accepted when we formally accept the upon the earliest to occur of: (i) its usage of the Service; (ii) the completion of any Order Form; and (iii) the payment of any Fees which shall incorporate these General Terms, at which point a contract shall come into existence ("Order").

1.1.5 Any Order Form may vary these General Terms. If there is any conflict or inconsistency between the Order Form and these General Terms, these General Terms will prevail. The Order Form and these General Terms will together form the contract between us and you. In this Agreement, any reference to "Catalyst2", "our" or "us" is to Catalyst2 Services Limited, and any reference to the "Customer" or "you" is to any business or organisation who wishes to purchase our Products. All other terms are defined in these General Terms.

1.2 The Service

1.2.1 We shall ensure that the Service is made available to you and that the functionality is as specified in the Agreement.

1.2.2 We are under no obligation to provide any Service that does not form a part of your chosen package unless you upgrade your package, where available, or unless both parties enter into a separate written agreement for the provision of additional services.

1.2.3 We may, at our sole discretion, alter, improve or otherwise modify the Service provided that any such change will not alter the Service received by you to your material disadvantage (which would include, but not be limited to, the removal of features from hosting packages). You will be notified no later than 7 business days in advance of any planned changes and shall receive full details of any

action required on your part. No alterations to the Service will affect the fees payable by you.

1.2.4 This Agreement does not transfer any rights to the software included in the Services. You shall have the right to use the functions in the Services without being granted any license to the software itself.

1.3 Availability of Service

1.3.1 We will use reasonable endeavours to ensure that the Service is provided to you on a constant, uninterrupted basis throughout the duration of your Agreement.

1.3.2 We shall not be liable for hosting hardware downtime or interruptions to the Service.

1.3.3 Where Service interruption due to hosting hardware failure cannot be remedied within 30 days we will transfer your client website to alternative hosting hardware in order to restore the provision of the Service, where possible.

1.3.4 Where the provision of the Service is interrupted through the fault of any third party, we shall bear no responsibility or liability.

1.3.5 Domain registrations or renewals which are submitted through us are not guaranteed as available and registered/renewed until a separate confirmation of registration or renewal has been sent to the registrant by email (this is not an invoice). If no confirmation is received an email should be sent to support@catalyst2.com detailing the issue so it may be investigated.

1.3.6 All .uk domain registrations are subject to Nominet's own terms and conditions and you are required to read these and accept them. These can be found at <http://www.nominet.org.uk/uk-domain-names/registering-uk-domain/legal-details/terms-and-conditions-domain-name-registration> . Terms for other domain extensions are available on request.

2 MIGRATION ASSISTANCE

2.1 Upon your request, we may provide expert advice in migration of data from you to us.

3 PAYMENT AND PAYMENT CONDITIONS

3.1 Payment

3.1.1 Fees for our subscription packages ("Fees") and the variety of services are detailed at www.catalyst2.com and the Fees for your chosen options will be confirmed in your Order.

3.1.2 You shall be required to pay all Fees due to us in advance of the Service and on the frequency chosen by you when you opt for your chosen package (as outlined in the Order Form).

3.1.3 Once initial payment has been made, payment will automatically be charged in accordance with your chosen payment method and upon renewal periods which we will notify you of, or in the case of monthly payments, every 30 days.

3.1.4 Payment must be made within 14 Business Days of receipt of the renewal notice in order for provision of the Service to continue without interruption.

3.1.5 We are free, at any time, to change the price of our service plans (including, but not limited to, the packages chosen by you). You will not be subject to any additional charges during a period of Service provision for which you have already paid resulting from a price increase, nor to any refunds resulting from a price decrease. Any changes in Fees due shall be reflected in subsequent renewals only. We reserve the right to continue charging old prices for renewals.

3.1.6 All Fees payable by you to us must be paid in full, without set off or deduction. We reserve the right to suspend the Service or terminate this Agreement if Fees are not paid on or before the due date.

3.2 Late payment

3.2.1 In the case of late payment default interest shall be charged at the interest rate prevailing from time to time and the Customer shall pay to the Supplier interest on such amounts from the due date for payment until payment is made in full at a rate equal to eight percent (8%) above the base rate of the Bank of England as at the due date. It is acknowledged between the Parties that any interest payment shall be in accordance with the Late Payment of Commercial Debts (Interest) Act 1998. Any interest accrued shall be added to the principal debt payable, and interest will be payable on the aggregate sum (interest on interest).

3.3 VAT.

3.3.1 The prices listed on our website are exclusive of any taxes, VAT and other duties which are payable by you. If there are any changes to VAT for the duration of the Agreement, we reserve the right to pass on such changes to you.

4 MONEY BACK GUARANTEE

4.1 From the date of your payment under Clause 3 we offer a 30 day money back guarantee (except domain name registry charges) during which you may cancel your Order and receive a full refund if the account is not functioning as described at the time of sale, or if you are in any way unhappy with the Service which is accepted by us.

4.2 If you choose to take advantage of the money back guarantee, you should email Us at billing@catalyst2.com using the subject line: "Refund Request", providing full details of your Account and Order.

4.3 Please note that cancelling under this clause will result in the termination of the Service and thus the removal of your Website. This means that any data you have not backed up yourself will be lost.

4.4 Any refunds offered by us will only be for base package costs, and not for account extras or add-ons less an administration fee of £10.00.

5 CHANGES

5.1 We reserve the right to change these General Terms and any and all other terms and conditions and/or policies which may affect you in order to comply with changes in the law.

5.2 You will be informed of any changes made under this Clause 5 and shall be deemed to be bound by them immediately after receipt of the notice of such changes.

6 CONFIDENTIAL INFORMATION

6.1 During the term of the Agreement and for a period of five years thereafter, each party undertakes not to disclose information to any third party regarding the other party's activities which may be deemed business or professional secrets without the other party's consent. Information which the party states to be confidential shall always be deemed to be a business or professional secret.

6.2 The confidentiality obligation does not include such information which was in the other party's lawful possession before the disclosure; is disclosed in accordance with clause 7 of this Agreement; is lawfully disclosed to the receiving party by a third party without restriction on disclosure; is independently developed by the receiving party, which independent development can be shown by written evidence; or is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.

6.3 Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party or use the other's Confidential Information for any purpose other than the implementation of this Agreement.

6.4 A party shall ensure that confidentiality as set forth above is observed by obtaining confidentiality understandings from personnel, or other appropriate measures. Each party is responsible for ensuring that engaged sub-contractors, advisors, employees and other who have a legitimate right to receive the information, treat such information in accordance with these confidentiality obligations.

6.5 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.

6.6 This clause shall survive termination of this Agreement, however arising.

7 YOUR OBLIGATIONS AND UNDERTAKINGS

7.1 You may not use the Service (including, but not limited to, our hardware) for any unlawful or otherwise inappropriate purposes. This includes, but is not limited to:

- 7.1.1 Distribution of computer viruses, malware, spyware or any other form of code designed to cause harm or nuisance to hardware or software or to obtain data without consent;
- 7.1.2 Distribution of pirated material including, but not limited to, software, videos, music and written works;
- 7.1.3 Not hosting utilities to aid the violation of a copyright licence, such as software cracks and key generators;
- 7.1.4 Material to which you do not own the copyright to, or have prior permission from the owner of the copyright to distribute. This includes the distribution of MP3 files, software, and other pirate material;
- 7.1.5 Distribution of obscene or illegal material including that which is pornographic, abusive, threatening, malicious, harassing, fraudulent, defamatory or that which encourages criminal activities;
- 7.1.6 The use of any adult material that violates any laws which are prohibited. Any user hosting material found to be in violation of any laws will immediately result in your account being terminated by us with no refund; and
- 7.1.7 Any user found to have deliberately caused a denial of service to other users immediately result in your account being terminated by us with no refund payable;

7.2 You may not use your website to link to any other websites or systems hosting any material described above and we reserve the right to terminate your Agreement and account with us, with immediate effect if you breach any aspect of this clause 7.

7.3 You undertake to monitor and supervise any and all third party activity on your website (including, but not limited to, the submission of material by users and the use of communication systems such as forums). Any third party activity that may fall within the provisions of this clause 7 must be stopped or removed, as appropriate.

7.4 You undertake to ensure that any and all e-commerce conducted through your website complies with all relevant laws in force at the relevant time including, but not limited to, the Distance Selling Regulations 2000 and the EU E-Commerce Directive 2000.

7.5 You undertake to ensure that any and all personal information collected through your website is gathered, processed and held in accordance with the relevant Data Protection Legislation.

7.6 You shall be responsible for all activity relating to your website.

7.7 We reserve the right to invoice you for additional bandwidth at a rate of £1 per gigabyte if you should exceed the limit of your Service package. You will be informed in advance if your website is exceeding acceptable traffic levels. You should be aware that this traffic includes FTP and email usage.

7.8 From time to time it may be necessary for us to disclose information relating to the provision of services to third parties, such as providing specific details or record information to domain name suppliers for WHOIS data and you consent to us doing so where necessary.

8 FORCE MAJEURE

8.1 The Parties shall have no liability to the each other under this Agreement if they are prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes, failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of the Party or subcontractors, provided that the other party is notified of such an event and its expected duration. Each party may in such case terminate this Agreement with one month's written notice served on the other, if the force majeure situation makes it substantially more difficult for that party to perform its obligations under the terms of this Agreement.

9 INTELLECTUAL PROPERTY RIGHTS

9.1 Proprietorship

9.1.1 You shall not acquire any rights in or over any Intellectual Property Rights subsisting in any materials and/or property owned by us or by any third parties (where, for example, we are using materials under licence). Any materials owned by us used by you in the normal course of the Service are used under a non-exclusive licence only to the extent required in order for us to provide the Service to you.

9.1.2 We shall not acquire any rights in or over any Intellectual Property Rights subsisting in any materials and/or property owned by you or by any third parties (where, for example, you are using materials under licence) including, but not limited to, your website. Any such rights are used under a non-exclusive licence only to the extent required in order for us to provide the Service to you.

9.2 Infringement on your part

9.2.1 If a claim is made by any third party against us based on infringement of a third party's rights as a direct result of your actions and your failure to obtain the necessary rights and permissions from third parties with respect to any materials used by you as hosted by us under this Agreement, you agree to and shall therefore indemnify and hold us harmless from against all costs, expenses, liabilities, losses, damages, claims and judgments that we may incur or be subject to as a result of the infringement.

9.3 Your Use of the Hosting Software and Licence

9.3.1 Your use of any and all software that we may from time to time provide under the Services, is under a non-exclusive licence and may be used only in accordance with these General Terms and only for the duration of the Service. You shall not gain any form of ownership rights over software or the Intellectual Property Rights therein.

9.3.2 You may not under any circumstances:

- 9.3.2.1 attempt to copy any hosting software or any software provided in the Service;
- 9.3.2.2 attempt to reverse-engineer, decompile, disassemble or in any other manner derive source code from software;
- 9.3.2.3 write or otherwise create any derivative software that is based in whole or in part on any software provided in the Service; or
- 9.3.2.4 sell, lease, transfer, sub-licence, or in any other way treat any software as your property.

10 TERM AND TERMINATION

10.1 Term

10.1.1 The initial period of Service provision shall commence on the date that your Order is submitted and all Fees due are paid. This period shall last for the duration specified in your chosen package, subject to any provisions in these General Terms to the contrary including, but not limited to, this Clause.

10.1.2 Subsequent periods of Service provision shall last for the duration specified in your chosen package and shall follow on from a previous period, without interruption, subject to your fulfilment of the payment obligations in this Agreement. All subsequent periods of Service provision shall remain subject to these General Terms unless expressly stated otherwise.

10.2 Termination

10.2.1 Without limiting its other rights or remedies, either party may terminate this Agreement with immediate effect by giving written notice to the other if:

- a) That party commits a material breach of any term of the Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing to do so;
- b) That party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business; or
- c) That party suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;

10.2.2 Without limiting its other rights or remedies, we may suspend provision of the Service under this Agreement if you become subject to any of the events listed in clause 10.2.1, or we reasonably believe that you are about to become subject to any of them.

10.2.3 Termination of this Agreement for any reason will not affect any rights, duties or liabilities of either party accrued prior to the termination.

10.2.4 Without limiting its other rights or remedies, we may terminate the Agreement with immediate effect by giving written notice to the you if you fail to pay any amount due on the due date for payment.

10.3 Consequences of Termination

10.3.1 On termination of the Agreement for any reason you agree that you shall immediately pay us all outstanding unpaid invoices together with interest (if any).

10.3.2 On termination of this Agreement for any reason, you will be restricted from using the Service and you therefore agree that you will return any equipment, materials and Confidential Information (if any) held by you, and permanently delete the software allowing you access to the Service and shall not seek to retain or recover this in any way. All licences provided by us under this Agreement will automatically cease.

10.3.3 Any provision of the Agreement that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

11 LIMITATION OF LIABILITY

11.1 Nothing in this Agreement shall be construed as restricting or excluding the liability of either Party for death or personal injury resulting from its negligence or for fraud or fraudulent misrepresentation.

11.2 Subject to the above, we shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, interruptions or downtime to the Service, any damage, loss or corruption of data (including, but not limited to, your website or any part thereof), any incompatibility, whether of our software, hardware or your website with any of your own equipment (or that of any third party), any inability, on your part, to use the Service (including, but not limited to, failure to follow reasonable instructions provided by us), the loss of confidentiality caused by the storage of information on the internet (this does not refer to the mutual confidentiality obligations under Clause 6), depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this agreement.

11.3 Subject to clause 11.1, the Parties total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to the amount paid by you hereunder in the 3 months preceding the incident except for any infringement by you or a third party as a result of your actions, of our intellectual property rights in which case the total liability for such damage, loss shall be unlimited.

11.4 The limitations of liability above shall not apply if the party in question has acted wilfully or with gross negligence.

11.5 No other compensation claim than specifically stated in this paragraph can be raised between the Parties, except when such claim is a specific consequence of other paragraphs in this Agreement.

11.6 Reconstruction of data

11.6.1 In case of errors and defects in your data which are caused by us, we shall use our reasonable efforts and at no further cost to you recover data from the most recent backup.

11.6.2 We shall not be held liable for errors or defects in data or economic loss due to errors or defects in data or loss of data, if this is caused by circumstances for which you are liable.

12 WARRANTY

12.1 Subject to the provisions of these General Terms, we give no further warranty, express or implied, in connection with the Service as to fitness for purpose, quality, non-infringement or merchantability.

13 YOUR INDEMNITY

13.1 You shall fully indemnify us against all costs, expenses, liabilities, losses, damages and judgments that we may incur or be subject to as a result of any of the following:

- 13.1.1 Your misuse of the Service;
- 13.1.2 Your breach of these General Terms;
- 13.1.3 Your negligence or other act of default; and
- 13.1.4 The activities of third parties conducted on or through your website.

14 DATA PROTECTION

14.1 For the purpose of this Agreement, **Data Protection Legislation** shall mean: (i) unless and until the GDPR is no longer directly applicable in the UK, the General Data Protection Regulation ((EU) 2016/679) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 1998.

14.2 In so far as required, both parties confirm that they will comply with all applicable requirements of the Data Protection Legislation. This clause 14 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

14.3 The parties acknowledge that for the purposes of the Data Protection Legislation, you are the data controller and we are the data processor (where **Data Controller** and **Data Processor** have the meanings as defined in the Data Protection Legislation).

14.4 Without prejudice to the generality of this clause, you shall ensure that you have all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to us for the duration and purposes of this Agreement.

14.5 Without prejudice to the generality of this clause, we warrant and undertake that we shall, in relation to any Personal Data processed in connection with the performance by us of our obligations under this Agreement:

- (a) ensure that we have in place appropriate technical and organisational measures, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
 - (b) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
 - (c) not transfer any Personal Data outside of the European Economic Area unless your prior written consent has been obtained and the following conditions are fulfilled:
 - (i) you and us have provided appropriate safeguards in relation to the transfer;
 - (ii) the data subject has enforceable rights and effective legal remedies;
 - (iii) you and us complies with the respective obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - (iv) we comply with reasonable instructions notified to it in advance by you with respect to the processing of the Personal Data;
 - (d) assist you at your cost, in responding to any request from a Data Subject and in ensuring compliance with our obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - (e) notify you without undue delay on becoming aware of a Personal Data breach;
 - (f) at your written direction, delete or return Personal Data and copies thereof to you on termination of the Agreement unless required by Applicable Law to store the Personal Data; and
 - (g) maintain complete and accurate records and information process that Personal Data only on your written instructions unless required by the laws of any member of the European Union or by the laws of the European Union applicable to us in the processing of Personal Data (**Applicable Laws**). Where we are relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, we shall promptly notify you of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit us from so notifying you;
 - (b) to demonstrate its compliance with this clause 14.
- 14.6 You agree that you shall:
- 14.6.1 have at all times during the term of this Agreement appropriate technical and organisational measures to ensure a level of security appropriate to the risk to protect any Personal Data;
 - 14.6.2 provide clear and comprehensible written instructions to us for the processing of Personal Data to be carried out under this Agreement;
 - 14.6.3 ensure that we have all the necessary licences, permissions and consents from Data Subjects;
 - 14.6.4 ensure that adequate privacy notices describing the Data processing are provided to Data Subjects;
 - 14.6.5 ensure that you have an applicable legal basis, for the transfer of Personal Data to us and to the processing of that Personal Data by us; and
- 14.7 You consent to us appointing Third Party Processors out outlined in our Privacy Policy at www.catalyst2.com/privacy as a third-party processor of Personal Data under this Agreement. We confirm that we have entered or (as the case may be) will enter with the third-party processor into a written agreement [substantially on that third party's standard terms of business].
- 14.8 Either party may, at any time on not less than 30 days' notice, revise this clause 14 by replacing it with any applicable controller to processor standard clauses or similar terms forming party of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).
- 14.9 Each party agrees to indemnify and keep indemnified and defend at its own expense the other party against all costs, claims, damages or expenses incurred by the other party or for which the other party may become liable due to any failure by the first party or

its employees or agents to comply with any of its obligations under this clause 14.

14.10 As part of our security monitoring activities we log activity at an IP Address level, which helps us identify unusual activity that may require investigation as part of bug fixing, configuration management, incident investigation or suspected malicious activity. This information is required to help us fulfil our contractual obligations to you. Our Logs are securely maintained with limited, authorised access and are retained for up to twelve months after which they are permanently erased.

15 ASSIGNMENT

15.1 You may, not without our prior written consent, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under this Agreement.

15.2 We may assign this Agreement to a third party under any circumstances.

16 ENTIRE AGREEMENT

16.1 This Agreement, and any documents referred to in it, constitutes the whole agreement between the Parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.

16.2 Each of the Parties acknowledges and agrees that in entering into this Agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this Agreement or not) relating to the subject matter of this Agreement, other than as expressly set out in this Agreement.

17 WAIVER

17.1 No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

18 RIGHTS AND REMEDIES

18.1 Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

19 SEVERANCE

19.1 In the event that one or more of the provisions of these General Terms are found to be unlawful, invalid or otherwise unenforceable, that / those provision(s) shall be deemed severed from the remainder of these General Terms. The remainder of these General Terms shall be valid and enforceable.

20 INVALIDITY & SEVERABILITY

20.1 If any provision of this Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable the invalidity or unenforceability of such provision shall not affect the other provisions of this Agreement and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect. The Parties hereby agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision that achieves to the greatest extent possible the economic legal and commercial objectives of the invalid or unenforceable provision.

21 GENERAL

21.1 Nothing in this agreement is intended to or shall operate to create a partnership between the Parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

21.2 This Agreement does not confer any rights on any person or party (other than the parties to this Agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

21.3 The Supplier may amend the terms and conditions in this Agreement as required. Any changes to the fees will be notified to the Customer by email by the Supplier providing at least 60 days' notice

22 GOVERNING LAW AND JURISDICTION

22.1 This Agreement shall be governed by and construed in accordance with English law and the Parties hereto agree to submit to the exclusive jurisdiction of the English courts.