



# Catalyst Standard Terms and Conditions

*Version 4.0, effective 29 November 2024*

## **Notes**

The Statement of Work or Service Level Agreement you sign with us tells you exactly what we'll provide to you, and other key details you should know.

These Standard Terms apply to each Statement of Work and Service Level Agreement, regardless of the Services or Deliverables we're providing.

Some of these Standard Terms only apply if you enter into an Agreement with a particular Catalyst Entity. We've done our best to make this clear.

Finally, words with capital letters have specific meanings, which you can find at the end of these Standard Terms.

**catalyst** 

expert open source solutions

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# 1 Our Responsibilities

- 1.1 **General responsibilities:** We'll provide the Services and Deliverables described in our Agreement with you:
- a) substantially according to the Requirements and Service Levels;
  - b) in compliance with all laws that apply to us; and
  - c) in accordance with Good Industry Practice.
- 1.2 **Good Industry Practice:**
- a) Good Industry Practice relates to the methods and processes we follow when performing the Services, and does not expand the scope of the Services and Deliverables we've agreed to provide to you.
  - b) We may notify you where we believe that your practices or policies do not support our Good Industry Practice obligations. Our Good Industry Practice obligation shall not apply to the extent of any conflict between Good Industry Practice and your specific requirements and directions.
- 1.3 **Cooperation with other suppliers:**
- a) While we are providing the Services, we'll co-operate with the other suppliers you've identified in this Agreement, or as we separately agree in writing from time to time.
  - b) We may adjust any time frame set out in this Agreement to reflect any delay caused by your other suppliers.
- 1.4 **Resourcing:** We'll make sure we have enough people and other resources available to deliver what we promised to you under this Agreement, and we'll tell you if we think we won't be able to meet our obligations to you.
- 1.5 **Meetings and reporting:** We'll meet with your personnel and provide any reports referred to in our Agreement with you, or as otherwise agreed with you.
- 1.6 **Time-frames:** We'll use reasonable endeavours to provide you with the Services and Deliverables on the dates in set out in this Agreement, but any dates are estimates only. We'll promptly notify you about any anticipated delay.

*This section explains the standards of service that we'll meet, regardless of the services or deliverables we're providing.*

## 2 Projects

2.1 **Iterative development:** For avoidance of doubt, our Agreement with you may explicitly replace the processes in the remainder of this clause 2. For example, if we're using an iterative development method like agile, then the Statement of Work may include:

- a) personnel commitments;
- b) communication processes and ceremonies; and
- c) processes to refine the Requirements, and to test, resolve Defects in, and Accept the Deliverables;

as needed to maintain both a sufficient cadence in delivery and a regular review/feedback cycle.

2.2 **Requirements:** If we have not agreed on any Requirements, then you are deemed to Accept the Deliverable in the state that it's in when we provide it to you ('as is, where is'). If we have agreed on any Requirements, either in this Agreement or by subsequent consultation and agreement in writing, then clauses 2.3 to 2.8 below apply to the Deliverable.

2.3 **Delivery:** We will transfer or make available the Deliverable to you, provided we have met any initial criteria for delivery set out in our Agreement with you (if any).

2.4 **Testing:** Within 10 Business Days of us providing you with a Deliverable under clause 2.3, you'll test it to check that it functions substantially according to the Requirements. If it does, you'll notify us that you Accept the Deliverable. If it doesn't:

- a) you can tell us, and you must give us a description of the fault that allows us to reproduce the behaviour; and
- b) we'll use all reasonable endeavours to fix it, which may include us installing temporary solutions, program bypasses, workarounds or problem-avoiding restrictions. We'll do this in a reasonable time, and then you'll test it again to check that it functions substantially according to the Requirements.

2.5 **Repeated failures:** If the Deliverable fails four (4) tests in a row under clause 2.4, either of us may terminate this Agreement.

2.6 **Deemed Acceptance:** The Deliverable is deemed Accepted if you use it in your production environment, or you haven't told us within 10 Business Days that either:

- a) you have Accepted the Deliverable; or
- b) it has failed testing under clause 2.4.

2.7 **Testing period:** For avoidance of doubt, our Agreement with you may change the 10 Business Day period for testing a Deliverable referred to in clauses 2.4 and 2.6.

*When we are working on a project to provide you new things, this section sets out how we'll do it and how acceptance tests will be run.*

- 2.8 **Invalid reasons for refusal:** You cannot refuse to Accept a Deliverable:
- a) for reasons that are unrelated to the Requirements;
  - b) because it has Minor Defects, provided you and we have agreed that the Minor Defect will be fixed post-Acceptance; or
  - c) because of aspects that can only be assessed subjectively, such as aesthetic aspects of the user interfaces.

## 3 Defects Warranty

- 3.1 **Application:** Our Defects Warranty below applies if our Agreement with you expressly includes us providing Quality Assurance Services to you.
- 3.2 **Defects Warranty:** If you find a Defect within 40 Business Days after Acceptance, we'll use reasonable endeavours to fix it within a reasonable period of time after you have reported the Defect to us, in detail and in writing. We do not guarantee that all Defects can be repaired. If the cost of fixing a Defect would be disproportionate to the Charges, we may refund the Charge for that Deliverable instead of fixing the Defect. We are never obliged to recover Your Data if lost or damaged as a result of a Defect.
- 3.3 **Exclusions:** Our Defects Warranty does not apply if:
- a) the incorrect or unexpected result is caused by user error, including due to lack of adequate training;
  - b) the Requirements are inaccurate or incomplete before we start providing development or configuration Services. This includes if you refuse to allow us to discuss Requirements with representatives from all user groups or to otherwise complete the discovery and analysis work;
  - c) you want to change the desired performance, output, or design of a provided and functioning requirement;
  - d) there are conflicting Requirements;
  - e) you or a third party has made changes to the Deliverable;
  - f) the problem has been caused by Third Party Material, rather than our configuration of the Third Party Material; or
  - g) the Deliverable is operating on infrastructure other than the infrastructure specified in our Agreement with you.
- 3.4 **Change Request:** If an exclusion to our Defects Warranty applies, we may work with you on a change request to revise or reconfigure the Deliverable to address your concerns.

*If we have agreed to provide quality assurance services and you find an issue with what we've delivered to you, this section explains how we'll fix it.*

## 4 Managed Services

- 4.1 **Maintenance and support:** We'll provide you with the maintenance and support Services detailed in our Agreement with you. These Services may include regular updates, bug fixes, security patches, and technical assistance to ensure your systems and applications run smoothly and efficiently. Our support team will be available to address any issues or concerns you may have.
- 4.2 **Hosting Services:** We'll provide you with the hosting Services detailed in our Agreement with you. These Services may include the provisioning of server space, network connectivity, and data storage. We may temporarily put all or part of the hosting Service out of operation for preventive, corrective, or adaptive maintenance. We will ensure that the downtime does not last longer than necessary and, where possible, that this takes place outside Business Hours.
- 4.3 **Limits:** All use of disk space, data traffic, and other use of systems and infrastructure is restricted to the maximums set out in our Agreement with you. Data traffic not used in a given period may not be transferred to a subsequent period. If the agreed maximums are exceeded, additional Charges will apply at our standard rates.
- 4.4 **Service Levels:** We will provide the hosting, maintenance and support Services in accordance with any Service Levels documented in our Agreement with you. This may include:
- performance standards and uptime requirements for your systems and applications;
  - a process to consult with you about any planned maintenance;
  - response, update and resolution targets when you raise a support request with us; and
  - other key performance indicators.
- 4.5 **Service Level failures:** If we fail to meet any Service Levels, we will work with you to resolve any issues and take corrective actions as specified in our Service Level Agreement with you.
- 4.6 **Backing up Your Data:** Our Agreement with you may include backup, contingency and recovery Services for Your Data. We will follow the procedure set out in this Agreement to restore Your Data (from the latest back-up) if it's lost or damaged, and that will be our total liability to you for the loss or damage. We are not otherwise required to recover Your Data.
- 4.7 **Systems must have vendor support:** All third-party software, operating systems, hardware, and other components that we host, maintain or support for you, including Open Source Software, must be actively supported by the vendor or developer. Using Out of Support Material can pose security risks and compatibility issues, as it will not receive any further improvements or maintenance.

*This section covers our ongoing services, including what happens if any software we're supporting for you becomes 'out of support'.*

- 4.8 **Out of Support Material:** If third-party software, operating systems, hardware, and other components that we host, maintain or support for you is, or is likely to become, Out of Support Material, we may offer you:
- a) an update to a supported version;
  - b) a replacement solution; or
  - c) to continue to provide support for the Out of Support Material on amended terms.
- 4.9 **Agreement on changes:** If you agree with our offer, we'll work with you to make any necessary changes to the Service Level Agreement, including updating the Service description and Charges.
- 4.10 **Disagreement on changes:** If you don't agree with our offer within 90 days, or if we can't agree what changes are needed to this Agreement, we can terminate this Agreement.
- 4.11 **Risk:** Any continued use of Out of Support Material is entirely at your risk. If we agree to continue providing hosting, maintenance or support Services for Out of Support Material, we provide these Services on a reasonable endeavours basis only, and no Service Levels shall apply to the relevant system or application.

## 5 Your Responsibilities

- 5.1 **Cooperation:** You must cooperate with us in relation to our Agreement with you, including:
- a) giving us access to your information and other resources (including your people and systems) that we need to provide the Services and Deliverables;
  - b) carrying out your responsibilities under this Agreement efficiently, using your best efforts to complete your responsibilities within the time frame specified; meeting with our personnel as set out in this Agreement, or as otherwise agreed with you; and
  - c) unless otherwise specified in our Agreement, coordinating input and any deliverables from your other suppliers.
- 5.2 **Accuracy:** You vouch for the correctness and completeness of the information you provide to us.
- 5.3 **Lead contact:** For reasons of continuity, you must designate a lead contact person who acts in that capacity for the term of this Agreement. They must have the relevant experience required, specific knowledge of the subject matter and a proper understanding of the objectives that you wish to achieve.
- 5.4 **Delays:** If you're late meeting your responsibilities, we may adjust any time frame set out in this Agreement to reflect the delay, and you'll pay us any reasonable costs this causes us.

*There are some things that you'll need to do so that we can provide you the services.*

- 5.5 **Compliance with laws:** You must comply with all laws that apply to you and that are relevant to this Agreement. You must not use the Services or Deliverables to store or transmit any malware, or material that is unlawful, breaches other people's rights or might harm other people.

## 6 Changes

- 6.1 **Requests:** If either of us wants to change the scope of the Services or Deliverables, or the applicable Requirements or Service Levels, we'll submit details of the change to the other, including any technical requirements, and the reason for the change.
- 6.2 **Substantial changes:** If you submit a change request, we may tell you that our review of the feasibility of that change is chargeable on a time and materials basis. In which case, we will only proceed with the review of that change request if you have agreed.
- 6.3 **Acceptance:** Any changes to the scope of the Services or Deliverables, including any related change to the Charges, must be agreed in writing by both you and us.
- 6.4 **Work Request Management System (WRMS) access:** We may provide you with access to WRMS to facilitate the change request and acceptance process.

*This section covers how either of us can request changes to the services or deliverables.*

## 7 Confidentiality

- 7.1 **Purpose and protection:** We will each use the other's Confidential Information only for the purpose of this Agreement and use reasonable measures to ensure it isn't disclosed to any third party.
- 7.2 **Permitted disclosure:** Either of us may disclose Confidential Information to our personnel so that they can perform this Agreement and to our advisers. We may also disclose Confidential Information if required by law, the rules of any stock exchange, or any government agency, but must notify the other of the disclosure unless that is not allowed by law.
- 7.3 **Destruction or return:** At any time after this Agreement ends, on written request, we'll both destroy all of the other's Confidential Information in such a way that the information can no longer be used and is rendered inaccessible (to the extent technically practicable). Neither of us is required to destroy any electronic copy of the other's Confidential Information that has been created under standard electronic backup and archival procedures (e.g., for the purposes of system recovery). We shall return your Confidential Information, including Your Data, if agreed as a disengagement Service under clause 16.5. Either of us may keep copies of Confidential Information if required by law.

*This explains how we'll keep your information confidential.*

## 8 Privacy and Processing Your Data

- 8.1 **Ownership and responsibility:** You own Your Data.
- 8.2 **Responsibilities:** You control our processing of Your Data, and you establish the purpose of that data processing. We'll only process Your Data in accordance with your written instructions. You guarantee that the content, use and processing of Your Data when making use of our Services is lawful and does not infringe any third party's rights.
- 8.3 **Privacy policy:** We'll treat any Personal Information you give us in accordance with the privacy policy on our website. If there are any inconsistencies between our privacy policy and this Agreement, the privacy policy prevails. We'll both comply with all Privacy Laws in relation to this Agreement.
- 8.4 **Subcontractors:** You acknowledge that our Services rely on systems, networks and facilities supplied by third parties, and agree that we can provide Your Data to our third party service providers as needed to enable us to perform the Services. We'll appoint such service providers on terms that meet Privacy Laws and are consistent with this Agreement, and be responsible for our service providers as if their actions were our own.
- 8.5 **Privacy rights:** We'll provide you with reasonable assistance with respect to any request related to a individual person exercising their rights under Privacy Laws. If we're contacted directly, whenever possible we will refer them directly to you.
- 8.6 **Impact assessments:** If you are obliged under Privacy Laws to carry out an impact assessment on rights guaranteed to individuals under Privacy Laws, we will provide you with assistance at your reasonable request.

*This section confirms that you own your data, and that each of us will comply with our obligations under privacy laws.*

## 9 Security

- 9.1 **Security Standard:** The Security Measures and Security Products we implement from time to time to provide the Services will provide a reasonable level of security, based on our reasonable view of: Good Industry Practice, the state of the art, the implementation costs, the standard purposes and use of our Services, and the probability and seriousness of foreseeable risks.
- 9.2 **Specific measures and products:** In addition to clause 9.1, our Services will be delivered in compliance with any specific Security Measure, and having implemented any specific Security Product, set out in our Agreement with you.
- 9.3 **Information and assessment:** In accordance with clause 10.1, at your request, we'll provide you with all information about our current Security Measures and Security Products that would be reasonably required for you to make an informed decision about whether our

*This section explains how we'll keep your data safe, and what happens if there is a security breach.*

Services offer appropriate security. You are responsible for assessing the information we provide and determining whether our Services offer appropriate security measures for the protection and processing of Your Data.

- 9.4 **Adjustments:** Staying current with the latest security tools and methods is crucial.
- a) If we have agreed to implement a specific Security Product in our Agreement with you, then we may change to a new Security Product, provided: the new Security Product, in our opinion, maintains or improves the existing level of security; and we have promptly given you written notice of the change;
  - b) You or we may follow the change process in clause 6 to request a change to any specific Security Measure we have agreed to implement in our Agreement with you.
- 9.5 **Security Breach notification:** We do not guarantee that the Security Measures or Security Products we implement are effective in all circumstances. If there is a Security Breach, we'll notify you when we become aware of the breach. We'll work together to fix the Security Breach and to prevent similar breaches happening again.
- 9.6 **Mandatory notification:** It's up to you to assess whether a Security Breach must be reported to the supervisory authority or the affected individuals under the relevant Privacy Laws. Reporting a Security Breach is your responsibility, and we'll provide you with further information and assistance as needed to support you.
- 9.7 **Our costs:** If we breach this Agreement and that causes a Security Breach, our work under clauses 9.5 and 9.6 is free of charge, as long as the work required is reasonable. If we haven't breached this Agreement and there's a Security Breach, our work under clauses 9.5 and 9.6 can be charged to you at our standard rates.

## 10 Audit

- 10.1 **Information:** At your request, we'll provide you with all information that would be reasonably required to demonstrate compliance with the provisions related to our processing of Your Data.
- 10.2 **Audit right:** You may, on reasonable prior written notice to us, commission an audit to be conducted in accordance with this clause 10, at your expense, by an independent, qualified external expert.
- 10.3 **Frequency:** You may exercise your audit right under clause 10.2 no more than once per year unless:
- a) a Security Breach has occurred affecting Your Data;
  - b) there has been a significant change in the system we are providing Services for, such as a major upgrade or architectural restructuring; or

*This explains how you can check that we're complying with our promises under our agreement with you.*

- c) the audit is required by law.
- 10.4 **Focus:** Any audit is limited to a review of our processes, systems, and controls directly related to the Services we provide to you, including:
  - a) the Security Measures and Security Products implemented; and
  - b) verifying our compliance with any provisions related to our storage, back-up, and processing of Your Data.
- 10.5 **Confidentiality:** The expert you engage must observe confidentiality with respect to their findings, and provide both you and us with a copy of their report.
- 10.6 **Post-audit:** We'll consult with you on the findings of the expert's report as soon as possible, and comply with the improvement measures proposed in the report insofar as they relate to our obligation to you under clauses 9.1 and 9.2 and are appropriate in our opinion.
- 10.7 **Our costs:** We are entitled to charge you for the reasonable costs we incur in the context of complying with this clause 10.

## 11 Intellectual Property Rights

- 11.1 **Existing Material:** We each retain ownership of our Intellectual Property Rights in Existing Material.
- 11.2 **Enhancements or modifications:** If any Existing Material is improved or modified:
  - a) if one of us owns the Intellectual Property Rights for the Existing Material, that party will own the rights to the improvements or modifications; or
  - b) if a third party owns the Intellectual Property Rights for the Existing Material, the party that provided or arranged for the provision of that Existing Material will own the rights to the improvements or modifications (unless agreed otherwise with the third party).
- 11.3 **Developed Software:** If the Deliverable includes any Developed Software, we will own all the Intellectual Property Rights for that Developed Software.
- 11.4 **Licence to our IP:** If a Deliverable includes:
  - a) Existing Material,
  - b) improvements or modifications to Existing Material, or
  - c) Developed Software,
 and we own the Intellectual Property Rights, once you have paid all Charges under this Agreement, we grant you a non-exclusive, perpetual, irrevocable, and royalty-free licence to use those Intellectual Property Rights for your business purposes.
- 11.5 **Licence to Third Party Material:** A Deliverable may include Third Party Material, including Open Source Materials. Your use of this Third Party

*This section sets out how we can use each other's IP, and the IP of third parties.*

*In a nutshell:*

- you own your existing IP;
- we own our existing IP;
- we own any new IP in the software we develop; and
- we each grant licences to the other.

Material depends on you following the licence terms and any other conditions set by the licensor or provider. We must:

- a) ensure that you can get a licence to use the Third Party Material or its enhancements/modifications; and
- b) provide you with the necessary licences and any other terms and conditions from the licensor or provider upon your request.

- 11.6 **Licence to your IP:** You grant us a licence to use your Existing Material so that we can perform this Agreement.
- 11.7 **Warranty:** You promise that if we use Your Data, your Intellectual Property Rights, or anything else you provide us under this Agreement, our use won't infringe on any third party's rights.
- 11.8 **Indemnity:** We will each defend and cover the other for any claims or losses that come from using or possessing the other party's Confidential Information and Intellectual Property Rights in a way that breaches a third party's rights, but only if:
- a) the indemnified party promptly gives notice of any action;
  - b) the indemnified party reasonably helps with the defence; and
  - c) the indemnifying party is allowed to control the defence and settlement of the claim.
- 11.9 **Exclusion:** The indemnity in clause 11.8 doesn't apply:
- a) to you if you fall under section 65ZC of the Public Finance Act 1989 or section 163 of the Crown Entities Act 2004; or
  - b) to us if the Confidential Information or Intellectual Property Rights are Third Party Material, including Open Source Materials, that we have provided to you under this Agreement; or
  - c) to the extent that the alleged infringement is due to a modification of the Services or Deliverables made by someone other than us, or if your use of the Services or Deliverables is in breach of this Agreement or our instructions.
- 11.10 **Replacement or modification:** If we're defending a claim against you under clause 11.8, we may replace or modify the Services or Deliverables so that they are non-infringing. If we can't reasonably get you the right to use the Services or Deliverables or make them non-infringing, we may terminate this Agreement.

## 12 Charges

- 12.1 **Charges:** You'll pay us the Charges set out in this Agreement, in the currency specified.
- 12.2 **Expenses:** You'll also need to reimburse us for our expenses, but we won't incur any expenses without your consent.
- 12.3 **Maximum Charges:** If we are providing Services to you on a time and materials basis, and this Agreement includes a maximum amount of Charges, once we hit the maximum Charges we aren't required to provide any further Services, and you don't have to pay any more Charges.
- 12.4 **Tax exclusive:** All Charges exclude goods and services tax or value added taxes (**Tax**). You'll pay any applicable Tax in addition to the Charges.
- 12.5 **Deductions or withholdings:** If you're required by law to make any deductions or withholdings, you'll pay the deductions or withholdings and pay us the full amount that we would have received if no deductions or withholdings were required.
- 12.6 **Invoices:** We will issue you invoices for the Charges on the dates and frequencies set out in our Agreement with you. If this Agreement does not include an explicit payment schedule:
- for Services provided on a time and materials basis, we will invoice you the Charges monthly in arrears;
  - for managed Services with a recurring monthly fee, we will invoice you the Charges monthly in advance; and
  - for fixed price project work, 25% of the Charges will be invoiced when this Agreement is signed. The Residual amount will be invoiced as set out in the Statement of Work.
- 12.7 **Payment date:** You'll pay invoices within 14 days from the date you receive the invoice. If you don't pay by the due date:
- we don't have to keep providing any Services or Deliverables while the Charges are unpaid;
  - interest will accrue daily, at an annual rate of 24%; and
  - we can recover from you all debt recovery costs, including legal costs.
- 12.8 **Invoice disputes:** If you dispute any invoice, you'll pay all undisputed amounts to us on the due date and tell us why you think the remaining amounts are incorrect. If you don't dispute an invoice within 20 Business Days of the due date, you waive your right to dispute the invoice. Any dispute shall be resolved in accordance with clause 14.

*This section covers the charges you'll pay for the services and how we'll invoice you.*

## 13 Price Review

- 13.1 **Annual review:** The Charges are fixed for twelve months from the Start Date. After that we can change them once in any 12 month period by giving you at least 30 days' notice, provided the change is necessary to pass on:
- a) our cost to comply with laws;
  - b) any increase in our third-party costs; or
  - c) any increase in the Consumer Price Index (CPI) since we last changed the Charges.
- 13.2 **Your termination right:** If we increase the Charges by more than the increase in the CPI, you can terminate our Agreement with you by giving us notice, but you must terminate before the increase in Charges takes effect.

*If our agreement with you continues for longer than 12 months, this section explains how the pricing might change.*

## 14 Resolving Disagreements

- 14.1 **Initial resolution:** If there is a disagreement or concern about this Agreement, the impacted party will notify the other and both of us will try to resolve it together.
- 14.2 **Escalation:**
- a) If we haven't resolved the issue within 10 Business Days, it will be escalated to our respective chief executives (or equivalent).
  - b) If they can't resolve it, the issue will be submitted to mediation. Either of us may start mediation by giving notice to the other. If we can't agree on a mediator within five (5) Business Days, the mediator will be selected by the Appointing Body specified in clause 18.
  - c) If the issue has not been settled by mediation within 20 Business Days of mediation starting the dispute will be referred to arbitration, to be conducted in the location specified in clause 18.
- 14.3 **Obligations continue:** In the event of a dispute, we shall each continue to perform our respective obligations under this Agreement as far as possible until the issue is resolved.
- 14.4 **Urgent action:** Nothing in this clause prevents either of us from taking immediate steps to seek urgent equitable relief.

*If there are problems, this section explains how they will be resolved.*

## 15 Liability

- 15.1 **Limitation of liability:** If either of us breaches this Agreement, or is negligent, our liability to the other for each claim is limited to:
- two (2) times the total Charges paid in the 12 months before the claim arises; or
  - if our Agreement with you has been in place for less than 12 months, the average Charges paid per month, multiplied by 24.
- 15.2 **Exclusions:** The limit above doesn't apply to:
- your responsibility to pay the Charges;
  - the indemnity in clause 11.8 regarding breaches of third-party rights; or
  - either party's liability for a breach of clause 7 (Confidentiality), 8 (Privacy and Processing Your Data), and 9 (Security).
- 15.3 **Indirect or consequential loss:** Neither of us is liable to the other (including for negligence) for any special, indirect or consequential losses, including loss of profits, loss of business, wasted expenditure, reduction of goodwill, loss of data (except as otherwise provided for in this Agreement) or similar losses.
- 15.4 **Representations:** Neither of us has relied on any statement or representation made by the other that is not set out in this Agreement.
- 15.5 **Excluded representations and warranties:** All warranties and all other terms implied by law are, to the fullest extent allowed, excluded from this Agreement, including any guarantee that:
- our Services or Deliverables are suitable for your actual or intended use; or
  - that any software Deliverable will function without interruptions.

*Your and our liability is subject to specified caps, subject to some market standard carve-outs.*

## 16 Ending This Agreement

- 16.1 **Termination rights:** We may each terminate this Agreement immediately by notifying the other if:
- the other materially breaches this Agreement and, if the breach can be fixed, fails to fix the breach within 40 Business Days of being notified;
  - the other materially breaches this Agreement and the breach is not capable of being fixed; or
  - the other suffers an Insolvency Event.
- 16.2 **Termination for convenience:** We may each terminate this Agreement at any time by giving the other at least 60 Business Days' written notice.
- 16.3 **Consequences:** When this Agreement ends:
- you'll pay us any Charges due up to the date of termination; and

*This section contains mutual termination rights.*

- b) we will each return and make no further use of any equipment, materials and other items we hold belonging to the other.
- 16.4 **Survival:** Termination of our Agreement with you will not affect the provisions of this Agreement which expressly, or by their nature, survive termination.
- 16.5 **Disengagement Services:** If you need disengagement Services, together we may agree in writing:
- a) the scope of the disengagement Services to assist you for transition or decommissioning, which may include continuing to provide the current Services or additional Services; and
  - b) how long we'll be required to provide the disengagement Services after this Agreement ends; and
  - c) the Charges for the disengagement Services, based on our standard rates.

## 17 Other Important Things

- 17.1 **Priority:** If there is an inconsistency between these Standard Terms and the Statement of Work or Service Level Agreement, the terms of the Statement of Work or Service Level Agreement prevail to the extent of the inconsistency.
- 17.2 **Variations to these terms:** We can change these terms by notifying you and publishing a new version on the website of the Catalyst Entity that your Agreement is with. Changes take effect 20 Business Days after publication unless we make that period longer. If we change these terms, you can terminate your Agreement with us by notifying us before the change takes effect.
- 17.3 **Assignment:** Neither of us can assign this Agreement to someone else without the other's consent.
- 17.4 **Non-solicitation:** While this Agreement is in place, and for six (6) months after it ends, neither of us will employ or engage any of the other's personnel unless the other agrees in writing or the employment or engagement follows a publicly advertised vacancy.
- 17.5 **Events we cannot control:** Neither of us will be in breach of this Agreement or liable for delay if the breach or delay is caused by events beyond our reasonable control. We'll each use reasonable efforts to minimise the impact, and to start performing our obligations under this Agreement again as soon as we can. If the non-performance or delay continues for 20 Business Days or more, the party not affected may terminate this Agreement by giving 20 Business Days' notice.
- 17.6 **Notices:** Any notice given under this Agreement must be in writing and delivered by hand, post or email. Any notice to us must be delivered to the addresses in clause 18. Any notice to you must be delivered to your addresses in this Agreement.

*The terms we both agree on in our SOW or SLA with you can replace the position in these standard terms.*

- 17.7 **Notice delivery:** Any notice under this Agreement is received:
- a) if delivered by hand, at the time the notice is left at the right address;
  - b) if posted, five (5) Business Days after posting; or
  - c) if emailed, at the time the email is sent in Business Hours or when Business Hours resume.

## 18 Terms For Different Catalyst Entities

18.1 In addition to the general terms, the following apply between you and the relevant Catalyst Entity:

**a) Catalyst.Net Limited:**

**Business Day** means a day that is not Saturday or Sunday, or a public holiday in New Zealand (including regional public holidays applicable to our office that's providing the Services to you).

**Business Hours** means 8.30am to 5.30pm New Zealand Standard Time or New Zealand Daylight Time, on Business Days.

**CPI** means the Consumer Price Index (all groups) published by Statistics New Zealand, and any replacement index (**NZ CPI**).

**Address for notices:**

Address: Catalyst.Net Limited Catalyst House, Level 6 150 Willis Street, Wellington 6011

Email: [legal@catalyst.net.nz](mailto:legal@catalyst.net.nz)

**Governing law and jurisdiction:** This Agreement is governed by the law of New Zealand, and the courts of New Zealand have non-exclusive jurisdiction.

**Consumer law exclusion:** The Services are provided only for use in a business. This means that laws to protect consumers acquiring goods or services ordinarily acquired for personal, domestic or household use, including the Consumer Guarantees Act 1993, are excluded from this Agreement to the fullest extent allowed.

**Mediation – Appointing Body:** Director of the Resolution Institute.

**Arbitration:** Wellington, New Zealand in accordance with the Arbitration Act 1996.

*These terms only apply if you enter into an agreement with the particular Catalyst group company.*

**b) Catalyst IT Europe Limited:**

**Business Day** means a day that is not Saturday or Sunday, or a statutory public holiday in England (including regional public holidays applicable to our office that's providing the Services to you).

**Business Hours** means 8.30am to 5.30pm Greenwich Mean Time or British Summer Time, on Business Days.

**CPI** means the Consumer Prices Index (all items) published by the UK Office for National Statistics, and any replacement index.

**Address for notices:**

Address: Catalyst IT Europe Limited 3rd Floor, 15 West Street, Brighton, BN1 2RL United Kingdom

Email: [info@catalyst-eu.net](mailto:info@catalyst-eu.net)

**Governing law and jurisdiction:** This Agreement is governed by the law of England and Wales, and the courts of England and Wales have non-exclusive jurisdiction.

**Consumer law exclusion:** The Services are provided only for use in a business. This means that laws to protect consumers acquiring goods or services ordinarily acquired for personal, domestic or household use, including the Sale of Goods Act 1893 are excluded from this Agreement to the fullest extent allowed.

**Mediation – Appointing Body:** President of the Society for Computers and Law.

**Arbitration:** London, United Kingdom in accordance with the Arbitration Act 1996.

**c) Catalyst IT Australia PTY Limited:**

**Business Day** means a day that is not Saturday or Sunday, or a statutory public holiday in Australia (including public holidays declared by the state and territory governments applicable to our office that's providing the Services to you).

**Business Hours** means 8.30am to 5.30pm Australian Eastern Standard Time or Australian Eastern Daylight Time, on Business Days.

**CPI** means the Consumer Price Index (all groups) published by the Australian Bureau of Statistics, and any replacement index.

**Address for notices:**

Address: Catalyst IT Australia Pty Ltd Level 9, Suite 903, Tower B, The Zenith 821 Pacific Highway Chatswood, NSW 2067

Email: [legal@catalyst-au.net](mailto:legal@catalyst-au.net)

**Governing law and jurisdiction:** This Agreement is governed by the law of the State of New South Wales in the Commonwealth of Australia, and the courts of New South Wales have non-exclusive jurisdiction.

**Consumer law exclusion:** The Services are provided only for use in a business. This means that laws to protect consumers acquiring goods or services ordinarily acquired for personal, domestic or household use, including the Australian Consumer Law set out in Schedule 2 of the Competition and Consumer Act 2010 (Cth) are excluded from this Agreement to the fullest extent allowed.

**Supply to a consumer:** If Services supplied under this Agreement are taken as being supplied to you as a consumer of services as defined in the Australian Consumer Law, we limit our liability in respect of all claims, and at our sole discretion, to:

- (i) supply the Services again; or
- (ii) the payment of the cost of having the Services supplied again.

**Mediation – Appointing Body:** Director of the Resolution Institute.

**Arbitration:** Sydney, Australia in accordance with the Commercial Arbitration Act 2010.

d) **Catalyst IT Ireland Limited:**

**Business Day** means a day that is not Saturday or Sunday, or a statutory public holiday in Ireland (including any regional public holiday applicable to our office that's providing the Services to you).

**Business Hours** means 8.30am to 5.30pm Greenwich Mean Time or Irish Standard Time, on Business Days.

**CPI** means the Consumer Price Index (all items) published by the Central Statistics Office of Ireland, and any replacement index.

**Address for notices:**

Address: Catalyst IT Ireland Limited The Haymarket, Dyer Street, Drogheda, A92 YD28 Ireland

Email: [info@catalyst-eu.net](mailto:info@catalyst-eu.net)

**Governing law and jurisdiction:** This Agreement is governed by the law of Ireland, and the courts of Ireland have non-exclusive jurisdiction.

**Consumer law exclusion:** The Services are provided only for use in a business. This means that laws to protect consumers acquiring goods or services ordinarily acquired for personal, domestic or household use, including the Sale of Goods and Supply of Services Act 1980 are excluded from this Agreement to the fullest extent allowed.

**Mediation – Appointing Body:** President of the Law Society of Ireland.

**Arbitration:** Dublin, Ireland in accordance with the Arbitration Act 2010.

**e) Catalyst IT Canada Limited:**

**Business Day** means a day that is not Saturday or Sunday, or a statutory public holiday in Canada (including any provincial public holiday applicable to our office that's providing the Services to you).

**Business Hours** means 8.30am to 5.30pm Eastern Standard Time or Eastern Daylight Time, on Business Days.

**CPI** means the Consumer Price Index (all items) published by Statistics Canada, and any replacement index.

**Address for notices:**

Address: Catalyst IT Canada Limited 11th Floor, 20 Bay Street, WaterPark Place, Toronto, Ontario, M5J 2N8, Canada  
Email: [enquiries@catalyst-ca.net](mailto:enquiries@catalyst-ca.net)

**Governing law and jurisdiction:** This Agreement is governed by the law of the province of Ontario and the applicable federal laws of Canada, the courts of Ontario have non-exclusive jurisdiction.

**Consumer law exclusion:** The Services are provided only for use in a business. This means that laws to protect consumers acquiring goods or services ordinarily acquired for personal, domestic or household use, including the Sale of Goods Act 1990 and the Consumer Protection Act 2002 in Ontario are excluded from this Agreement to the fullest extent allowed.

**Mediation – Appointing Body:** ADR Institute of Ontario.

**Arbitration:** Toronto, Canada in accordance with the Arbitration Act 1991.

## 19 Definitions

**Accept** means the written confirmation given, or deemed given, by you that the Deliverable has been reviewed and meets the Requirements. Acceptance confirms that the Deliverable is satisfactory and complete, subject to our Defects Warranty.

**Agreement** means these Standard Terms together with the signed document that incorporates these Standard Terms, such as a Statement of Work or Service Level Agreement.

*Here's what the capitalised words mean.*

**Business Day** has a different meaning for each Catalyst Entity, as stated in clause 18.

**Business Hours** has a different meaning for each Catalyst Entity, as stated in clause 18.

**Catalyst Entity, our, we or us** may not be capitalised throughout this Agreement, but means the Catalyst group company that you've signed this Agreement with.

**Charges** means the fees and charges payable by you to us, as described in our Agreement with you.

**Client, you, your** may not be capitalised through this Agreement, but means the party that signed this Agreement with us.

**Confidential Information** means information gained under this Agreement, and which is marked or stated to be confidential or which by its nature is reasonably intended to be confidential. Your Data is your Confidential Information.

**CPI** has a different meaning for each Catalyst Entity, as stated in clause 18. If clause 18 does not specify a CPI for the Catalyst Entity, then the CPI for the Catalyst Entity is NZ CPI.

**Defect** means a documented and reproducible result from the operation of a Deliverable that causes the Deliverable to fail to perform in accordance with a Requirement.

**Defects Warranty** means our obligation under clause 3.2 to fix a Defect reported to us.

**Deliverable** means an output from the Services that we have agreed in writing to provide to you under the Agreement, which may include documentation, software, applications and other materials.

**Developed Software** means software developed, created or commissioned by you, under or in connection with our Agreement with you.

**Early Termination Fee** is the fee we may charge if you're on a Fixed Term Contract and you terminate the Service, or our Services to you are ended part way through the term.

**End Date** means the date when our Agreement with you expires, as specified in this Agreement.

**Existing Material** means all software, applications, documentation and other material (including any data or dataset

accompanying or included in any such material) that existed prior to the Start Date or was developed or acquired outside of our Agreement with you.

**Fixed Term Contract** means the contract you have when you agree to purchase Services for a minimum length of time, such as 12 or 24 months.

**Good Industry Practice** means, in relation to our performance of the Services, the exercise of the skill, diligence, prudence, foresight and judgement that would be expected from a highly skilled and experienced person engaged in the same type of undertaking under the same or similar circumstances.

**Insolvency Event** means where a party ceases or threatens to cease to carry on business; is subject to any form of insolvency proceedings that are not removed within 10 Business Days; has any of its assets seized by a creditor; enters into any compromise with a creditor; has a receiver, liquidator, administrator, statutory manager or similar official appointed; becomes insolvent or is deemed by law to be so; or suffers any similar event.

**Intellectual Property Rights** means all industrial and intellectual property rights, whether under statute, common law, or equity, and includes copyright, patents, trade marks, designs, domain names, rights in databases, and all other proprietary rights, whether registered or unregistered.

**Minor Defect** means, subject to any replacement definition in our Statement of Work with you, a Defect that does not prevent the reasonable productive or operational use of the Deliverable.

**NZ CPI** has the meaning given to it in clause 18.

**Open Source Material** means any any Existing Material subject to a software licence identified by the Open Source Initiative as an open source licence by virtue of meeting its open source definition; and "Open Source" shall have a corresponding meaning.

**Out of Support Material** means software, operating systems, hardware, or any other components that are no longer supported by their original vendor or developer. This means the vendor or developer has ceased to provide updates, patches, security fixes, or technical support for the material.

**Personal Information** has the meaning in the Privacy Act 2020.

**Privacy Laws** means the Privacy Act 2020, and any other legislation, rules, codes, directives or other instruments in New Zealand or any other jurisdiction, affecting privacy or Personal Information.

**Quality Assurance Services** means, if expressly to be provided under our Agreement with you, our activities and processes designed to ensure that the Deliverables meet their Requirements. This includes activities like testing, inspections, audits, and reviews.

**Requirements** means the technical specifications, functionality and performance requirements for a Deliverable, expressly set out in our Agreement with you.

**Security Breach** means any:

- a. unauthorised or accidental access to or use of, or disclosure, alteration, loss, or destruction of Confidential Information; or
- b. any action that prevents a party accessing its Confidential Information stored by the other party on either a temporary or permanent basis.

**Security Measures** means the technical and organisational security measures we follow to manage security risks and protect data and systems from a Security Breach. For example, we may agree to:

- a. implement technical hardware and software solutions, such as encryption, firewalls, anti-virus software, and intrusion detection systems; and
- b. follow particular organisational policies, protocols, and administrative actions.

**Security Products** means the tangible hardware, software, or service tools that we use to implement and enforce the Security Measures, and respond to a Security Breach. For example, specific anti-virus programs, firewalls, encryption tools, physical intrusion detection systems, secure routers, and threat intelligence platforms.

**Services** means the services to be provided by us to you under this Agreement.

**Service Levels** means the specific performance standards and metrics expressed in our Service Level Agreement with you.

**Service Level Agreement** means the detailed document that we both sign that outlines the terms, conditions, and scope of ongoing hosting, maintenance or support services, and incorporates these Standard Terms.

**Standard Terms** means the terms and conditions you're reading right now, as updated from time to time. These apply to everyone receiving our Services and they cover key things everyone should know about.

**Statement of Work** means the detailed document that we both sign that outlines the specific tasks, Deliverables, and timeline for a project, and incorporates these Standard Terms.

**Start Date** means the date when our Agreement with you begins to take effect, as specified in this Agreement. If no date is specified, then it's the date the last party signed this Agreement.

**Third Party Material** means any Existing Material, the Intellectual Property Rights in which are owned by a third party.

**Your Data** means your data including all text, sound, video, or image files that you provide to us in relation to the Services or Deliverables.

## 20 Interpretation

- 20.1 Headings and explanatory notes aren't part of this Agreement and won't be used for interpretation.
- 20.2 A reference to a statute includes all subordinate legislation made under that statute and all amendments, replacements or other changes.
- 20.3 The word "including" and other similar words don't imply any limitation.