

1. THE MANAGEMENT SERVICE

Back-up of the Customer's data: Daily Server Backup with 7 days of data retention.

Patching on Software Updates: Yes

1.1 The Management Service comprises the following services to be provided by the Company:-

1.1.1 policing the operating system and all other software installed by the Company on the Dedicated Server with a view to ensuring that the Dedicated Server functions properly as a computer server and is kept up to date;

1.1.2 configuring the Dedicated Server in accordance with the Customer's reasonable requirements for a pre-agreed number of hours per calendar month (the number of which shall be the number specified above or as otherwise agreed between the parties in writing); and

1.1.3 otherwise carrying out all such monitoring, maintenance, repairs and administration in respect of the Dedicated Server as may be necessary to ensure that the Dedicated Server functions and continues to function within normal parameters in all material respects.

1.2 Where the Company has agreed to do so, the Company will also back-up the Customer's Content with such regularity and in such a manner as may be specified above.

1.3 The Management Service shall be subject to such limitations and restrictions as may be set out above and as the Company may notify the Customer in writing from time to time.

Restrictions and limitation concerning the Management Service

Subject to terms of the Agreement, Catalyst2 will maintain and patch the supplied server software, and make changes to the server configuration as per the Customer's requirements.

TERMS AND CONDITIONS FOR THE SUPPLY OF THE SERVICES ("THE CONDITIONS")

1. INTERPRETATION

1.1 In these Conditions and the Services Term Sheet, the following words and phrases shall have the following meanings:-

"Acceptable Use Policies" means all such rules, regulations and guidelines which concern the Services and/or the Customer's use of the Services as the Company may, from time to time, publish on the Website (the existing Acceptable Use Policy can be accessed at <http://www.catalyst2.com/aup>);

"Charges" means the charges payable by the Customer to the Company for the provision of any of the Services (or any part thereof), details of which are set out in the Services Term

Sheet above and payment of which shall be subject to Clause 16 below which may vary from time to time in accordance with Clause 16.4;

“Commencement Date” means the date of this Agreement;

“Conditions” means these terms and conditions as amended from time to time in accordance with Clause 7;

“Content” all software (including source code and object code), documents, data, models, brochures, designs, plans, drawings, sketches, databases, technical drawings, maps, blueprints, images (moving or still), photographs, exhibition stands, paintings, sounds, videos, photographic film (including negatives), fonts, typefaces, logos, banners, items, and materials whatsoever (however stored or recorded) which may be stored on or transmitted, conveyed or received by the Equipment from time to time in connection with or as a result of the Company providing the Services to the Customer;

“Contract Year” means a period of one month during the continuance of this Agreement, the first of such periods beginning on the Commencement Date and each subsequent period beginning on each subsequent month thereafter;

“Equipment” means any computer equipment (including all Dedicated Servers) owned or otherwise operated or controlled by the Company from time to time;

“Hosting Service” means the website and/or software application and/or data (as the case may be) hosting service to be provided by the Company to the Customer pursuant to this Agreement, as more particularly described in the Service Term Sheet and in Clause 4;

“Initial Contract Period” means 1 month from the Commencement Date;

“Intellectual Property Rights” or **“IPRs”** means all trade marks (registered and unregistered) patents, registered designs, and applications and the right to apply for any of the foregoing, copyright, design right, topography and mask rights, database rights, utility model rights, rights in the nature of copyright, know-how, rights in proprietary and confidential information, rights in inventions and all other industrial, commercial and intellectual property rights and all other rights or forms of protection having equivalent or similar effect to any of the foregoing arising anywhere in the world;

“Management Service” means the services to be provided by the Company to the Customer in terms of Clause 8 and the Services Term Sheet;

“Services” means the services to be provided by the Company to the Customer under this Agreement (which may include the Hosting Service, the Domain Name Service and/or the Management Service), and **“Service”** means any one of them;

“Software” means any software installed on the Dedicated Server by or on behalf of the Company for the purpose of enabling the Company to provide for that service;

“Specification” means the agreed specification for the Services as set out in the Services Term Sheet above;

“**Website**” means the Company’s website, which can be accessed at <http://www.catalyst2.com>.

1.2 In these Conditions and the Specification:-

- 1.2.1 the singular includes the plural and the masculine gender shall include the feminine gender and vice versa;
- 1.2.2 references to persons shall include bodies corporate, unincorporated associations and partnerships;
- 1.2.3 references to any “**Clause**” is a reference to the relevant clause of this Agreement, reference to any “**Part**” is to the relevant part of the Schedule and reference to the “**Schedule**” is to the schedule attached to and forming part of this Agreement, all unless otherwise specified;
- 1.2.4 the headings to Clauses are for convenience of reference only and shall not affect the interpretation of this Agreement; and
- 1.2.5 reference to any party in these terms and conditions shall be deemed to include a reference to its successors, permitted transferees and permitted assignees; and
- 1.2.6 unless the context otherwise requires, any reference to “**writing**” or cognate expressions includes a reference to fax, email or comparable means of communication.

2. **THE CONTRACT**

- 2.1 This Agreement constitutes the entire agreement and understanding between the parties relating to the subject matter thereof and supersedes any previous arrangement, understanding or agreement (whether written or oral) between the parties relating to such subject matter.
- 2.2 Subject to the terms and conditions of this Agreement, no waivers, variations or modifications of this Agreement shall be binding on the Company unless and until they have been confirmed in writing by the Company.

3. **THE SERVICES**

- 3.1 In consideration of the Charges and subject to the terms of this Agreement, the Company hereby agrees to provide the Services to the Customer throughout the duration of this Agreement. The Company shall start providing the Services as soon as reasonably practicable but in any event within 30 days of the Commencement Date (inclusive) failing which the Company will, subject to Clause 5.9, refund all Charges to the Customer.

4. **THE HOSTING SERVICE**

- 4.1 The Hosting Service comprises making available for the exclusive use of the Customer (via remote access only) of a dedicated computer server with root or administration rights (hereafter, a “**Dedicated Server**”). If the subject matter of this Agreement is a **virtual server**,

the Customer shall receive memory capacity from the Company on server hardware not solely designated to the Customer. The server functions granted to the Customer by the Company are made available based on software operation. The Customer is not entitled to services utilising specified parts of the CPU or the main memory.

- 4.2 The Company agrees to provide the use of a Dedicated Server to the Customer for the exclusive use of the Customer for the term of this Agreement. The Customer represents and warrants that the Customer has or has access to the knowledge and expertise necessary to configure, maintain, monitor and secure the Dedicated Server.
- 4.3 Administrative access or "root" access to the Dedicated Server is limited to the Customer and its authorised agents. The Company reserves the right to require, at its discretion, software and/or hardware upgrades for the purposes of maintaining security and stability of services provided by the Company generally and may require the installation of such upgrades. The Customer shall pay to the Company the Charges for the Hosting Service in accordance with the Services Term Sheet and Clause 16.
- 4.4 The Customer shall procure that the Dedicated Server uses software configurations that conform with all such specifications and requirements as the Company may determine from time to time and notify the Customer either in writing or by posting details of same on the Website. Use of any particular software configuration may be declined at the sole discretion of the Company. The Customer has no right or expectation to receive a hardware or software configuration on the Dedicated Server that is more capable than that which was initially ordered from the Company. The Customer cannot expect to receive support from the Company with respect to the correction of software and/or hardware and/or technical problems caused by mistakes, faulty settings and installation errors caused by the Customer.
- 4.5 The Customer hereby acknowledges and agrees that the Customer may (at the Company's sole discretion, acting reasonably) become liable to pay additional Charges to the Company in the event that, as a result of or in connection with the provision of the Hosting Service to the Customer, the aggregate amount of data transmitted to the internet from the Dedicated Server or the aggregate amount of data received by the Dedicated Server from the Internet in any given 30 day period exceeds the data transfer limits specified in the Services Term Sheet.
- 4.6 The Company may provide the Hosting Service on Dedicated Servers which are located out with the EU or the USA.

5. **SECURITY**

- 5.1 Except with respect to issues concerning the physical security of the Company's premises or any other premises at which any Dedicated Server is located from time to time, the Customer hereby acknowledges and agrees that the security of the Dedicated Server (and of any Content stored thereon) is solely the Customer's responsibility. It is the sole responsibility of the Customer to maintain and update security software on the Dedicated Server and to take all such other steps as may be reasonably necessary (having regard to best practice in the computer industry from time to time) to secure the Dedicated Server, any Content stored thereon and otherwise protect the Dedicated Server from computer viruses and other malicious computer programs and unauthorised access by third parties. Under no circumstance will the Company be held liable for security breaches and/or any losses, damages, claims, costs (including legal costs) and/or expenses suffered or incurred by

any person arising out of or in connection with the Customer's failure to maintain or update the security software on the Dedicated Server, to maintain adequate security protocols in the administration of the Dedicated Server or any failure of the Customer to comply with its obligations under this Clause 6.1.

5.2 The Customer agrees that if the security of the Dedicated Server is compromised in any way, the Customer will notify the Company in writing as soon as practicably possible following the Customer becoming aware of the relevant security compromise. The Customer hereby acknowledges and agrees that if the Company believes or suspects that any security breaches have occurred in connection with the Dedicated Server, the Company has the right to suspend access to the Dedicated Server pending an investigation and/or resolution of the breach. The Customer also agrees that the Company has the right (and, in fact, may be required by law) to cooperate in any government or legal investigation regarding any aspect of the Services, including any computer servers used by the Customer. The Company shall not be liable to the Customer for any losses, damages, costs (including legal costs), claims or expenses arising out of or in connection with the exercise by the Company of its rights under this Clause 6.2.

5.3 It shall be the responsibility of the Customer to regularly make back-up copies of the Content. The Company shall not be liable to the Customer in any way for any losses, damages, costs or expenses suffered or incurred by the Customer which results from or arising out of any loss of or damage to any Content and/or data, regardless of how such loss of or damage to such Content and/or data occurs.

6. **CHANGES TO THE SERVICES**

6.1 If either Party wishes to change the Services, it shall submit to the other in writing details of the requested change ("**Change**").

6.2 If the Customer requests such a Change, the Company shall within a reasonable time estimate the likely time required to implement the Change, and its reasonable impact on the Charges. If the Customer does not wish to proceed with the Change, the Charges will not be varied.

6.3 If the Customer wishes the Company to proceed with the Change, the Company shall do so and any relevant terms of this Agreement shall be varied to the extent reasonably necessary to take into account the nature of the Change.

6.4 If the Company requests such a Change then the Company shall, within three (3) Working Days of requesting such a Change, estimate to the Customer its reasonable impact on the Charges. If the Customer wishes the Company to proceed with the Change, the Company shall do so.

7. **THE MANAGEMENT SERVICE**

7.1 If the Company has requested the provision of the Management Service, the details of which shall be set out in the Services Term Sheet.

8. TECHNICAL SUPPORT

8.1 The Company shall provide the Customer with technical support in respect of the Dedicated Server by telephone and email only, and in accordance with the Services Term Sheet.

9. COMPANY WARRANTIES

9.1 The Company warrants to the Customer that it shall perform the Services with reasonable skill and care. Any claim by the Customer which is based on any breach of this warranty shall be notified to the Company in writing within fourteen days from the date of the provision of the Services to which such breach relates. The Company shall, unless otherwise provided by statute, not be liable to the Customer in any way if the Customer fails to notify any claim within that period. Where any valid claim is made in accordance with the provisions of this Clause 10.1 in respect of any of the Services the Company shall be entitled to re-execute the relevant part of the Services (or such part as is in question) or, at the Company's sole discretion, refund to the Customer the relevant price of such Service (or the appropriate proportion thereof), but, unless otherwise provided by statute and subject to the terms and conditions of this Agreement, the Company shall have no further liability to the Customer.

9.2 The Company warrants to the Customer that it shall only view the Customer's data insofar as it is necessary for the Company to perform the Services and such data will be kept secret and confidential by the Company.

9.3 Subject to Clause 10.1 and 10.2, all warranties (including implied warranties), statements, claims or representations in respect of the Services are hereby excluded to the fullest extent permitted by law, including (without limitation) any warranties, claims or representations:-

9.3.1 relating to satisfactory quality, fitness for a particular purpose or infringement of title;

9.3.2 arising from the course of dealing, usage or trade practice; or

9.3.3 that the Services will be uninterrupted, error free or completely secure.

9.4 The Customer hereby acknowledges and agrees that it has not been induced to enter into this Agreement in reliance upon any warranty, representation, statement, agreement or undertaking of any kind (whether negligently or innocently made) of any person other than as expressly set out in this Agreement as a warranty. Nothing in this Clause 10.4 shall, however, operate to limit or exclude any liability for fraud.

9.5 Where any event gives rise to the Customer being entitled to claim for breach of more than one of the warranties given in this Clause 10, the Customer shall only be entitled to claim under one of such warranties. The warranty in this Clause 10, the Customer shall be entitled to claim under shall be determined by the Company.

10. LIMITATIONS OF THE SERVICES

10.1 The Customer hereby acknowledges and agrees that the Company does not and cannot control the flow of data to or from the Company's own network and the internet at large. Such flow depends on the performance of computer and telecommunications networks, services and equipment provided or controlled by third parties over whom the Company has

no control and whose actions or omissions may impair or disrupt the availability and/or performance of the Services by the Company.

- 10.2 The Customer hereby acknowledges and agrees that the Company shall not be required to monitor or exercise control over any Content, including (without limitation) for the purposes of assessing whether such Content infringes the rights of third parties or violates any applicable laws or regulations. The Customer hereby acknowledges and agrees that such matters are the sole responsibility of the Customer and that use of the Services is entirely at the Customer's own risk.
- 10.3 The Customer hereby acknowledges and agrees that the use of the Services requires a certain level of knowledge about computer and communications technologies, programming languages, protocols, and software; that this level of knowledge varies depending on the Customer's anticipated use of the Services; and that the Customer must have the necessary knowledge to create, use and maintain a website and computer server; and that the Company does not provide this knowledge or offer training in this knowledge out with the scope of the Services.
- 10.4 The Customer hereby acknowledges and agrees that it is the Customer's sole responsibility to scan Content for viruses in accordance with Clause 13.1.3 and that the Company shall not be required to scan any data on the Equipment for viruses and other "malware" (i.e. malicious computer programs).

11. DURATION

- 11.1 This Agreement shall commence on the Commencement Date and shall continue thereafter (subject to Clauses 15.1.3 and 22) for the Initial Contract Period. Subject to Clauses 15.1.3 and 22 below, this Agreement shall automatically renew for one month at the end of the Initial Contract Period, and shall continue to automatically renew every subsequent month thereafter for the Contract Period.

12. CUSTOMER'S OBLIGATIONS

- 12.1 At all times throughout the duration of this Agreement, the Customer shall:-
- 12.1.1 where the Customer is a company or organisation, appoint one person to act as a contact for the Customer in the Customer's dealings with the Company which relate to this Agreement and the Customer shall ensure that such person is authorised to negotiate on behalf of the Customer and shall notify the Company in writing in the event that the Customer wishes to appoint another person in such person's place;
- 12.1.2 only use the Services for lawful purposes and in accordance with this Agreement;
- 12.1.3 as soon as practicably possible before any Content is uploaded to the Dedicated Server, scan such Content for computer viruses and other "malware" (i.e. malicious computer programs) in accordance with best computing practice from time to time;
- 12.1.4 on demand, promptly provide the Company with all such information, data and documents, and promptly do all such acts and things, as may be reasonably necessary to enable the Company to assess whether the Customer is complying with the terms of this Agreement;

- 12.1.5 keep private and confidential all login details, passwords and other security information received from the Company in connection with the Services (“**Security Details**”) and notify the Company as soon as practicably possible following the Company becoming aware that any of such Security Details have been disclosed to and/or been used by an unauthorised third party;
 - 12.1.6 comply with the Acceptable Use Policies and all other reasonable instructions and directions of the Company from time as to the Customer’s use of the Services and/or the Dedicated Server;
 - 12.1.7 back-up all data (including computer programs and databases) which the Customer may have stored from time to time on the Dedicated Server on a daily basis or more frequently if required by best computing practice from time to time;
 - 12.1.8 ensure that the Customer complies with all relevant laws and obligations (including, without limitation, those of any territory in which (i) the Customer has a place of business or trades and/or (ii) the Content and/or the Customer’s website is accessed or made available);
 - 12.1.9 ensure that all data uploaded to the Equipment is “server ready”, which is in a form requiring no additional manipulation or alteration by the Company. The Company will make no effort to validate any of this data for correctness, usability or otherwise;
 - 12.1.10 promptly provide the Company with all such information and assistance as the Company may reasonably request from time to time to enable it to fulfil its obligations under this Agreement; and
 - 12.1.11 take all such reasonable measures and precautions in accordance with best computing practice and guidance from time to time to secure and protect the Customer’s own equipment from damage, interference, unauthorised access and malicious computer programs (such as computer viruses).
- 12.2 At all times throughout the duration of this Agreement, the Customer shall not:-
- 12.2.1 (except to the extent permitted by this Agreement) modify or alter the Equipment or Software without the prior written consent of the Company;
 - 12.2.2 do any acts or things which cause, or are likely to cause, the Company to breach any agreements between the Company and third parties, or to unreasonably interfere with the Company’s other customers’ use of the Services;
 - 12.2.3 use the Services in a manner which infringes a third party’s Intellectual Property Rights; or
 - 12.2.4 use the Equipment to operate an open mail relay.
13. **CUSTOMER WARRANTIES**
- 13.1 The Customer warrants to the Company that:-
- 13.1.1 where the Customer is an individual, he or she is at least 18 years of age; and

13.1.2 any person signing this Agreement on behalf of the Customer has the necessary authority to do so and to enter into this Agreement on behalf of the Customer.

14. RIGHTS OF THE COMPANY

14.1 Notwithstanding Clause 11.2, the Company shall nevertheless be entitled to monitor and inspect the Content and the content of the information stored or otherwise present on the Equipment from time to time and (without any liability whatsoever to the Customer) do all such acts and things and take all such steps as the Company (in its sole discretion, acting reasonably) considers necessary or appropriate to protect or promote the legitimate interests of the Company and/or its customers, agents, employees, officers and representatives which include (without limitation) the proper functioning of the Equipment, the ability of the Company to provide the Services and to enable the Company to comply with all applicable laws and regulations. Without limitation, the Company may:-

14.1.1 issue warnings to the Customer;

14.1.2 limit, terminate or suspend the Customer's access to any of the Services and/or the Customer's ability to use and/or access the Equipment;

14.1.3 suspend performance of the Services;

14.1.4 limit the bandwidth or quantity of data applicable to the Customer's account;

14.1.5 disclose data and information to third parties about the Customer and/or the Customer's use of the Services (including, without limitation, the Customer's name and contract details, IP addressing and traffic information, usage history and content residing on the Equipment) insofar as required by applicable law or regulations; and/or

14.1.6 report any activity that it suspects violates any law or regulation to appropriate law enforcement agencies, industry regulators or other appropriate third parties.

14.2 The Acceptable Use Policies govern the general policies and procedures for use of the Services. The Acceptable Use Policies are posted on the Website (or such other location as the Company may specify from time to time) and may be varied from time to time by the Company.

15. TERMS OF PAYMENT

15.1 In consideration for the Company providing the Services, the Customer shall pay the Charges (together with any applicable Value Added Tax, and without any set-off or other deduction).

15.2 The Services Terms Sheet sets out the time and manner in which the Charges are to be paid to the Company by the Customer. To the extent that the Services Term Sheet does not provide otherwise:

15.2.1 the Customer shall pay Charges to the Company within 7 days of the Company's invoice therefor; and

15.2.2 the Company shall be entitled to invoice the Customer in respect of Charges at any time before the calendar month in which they are incurred.

- 15.3 All Charges are quoted exclusive of VAT and other applicable sales taxes, which the Customer shall also be liable to pay to the Company.
- 15.4 The Company reserves the right to increase any of the Charges from time to time by giving at least 30 days notice to the Customer in writing.
- 15.5 If the Customer fails to pay any of the Charges on the due date for payment thereof, the Company shall be entitled, without limiting any other rights it may have, to charge interest on the outstanding amount (both before and after any judgement) at the rate of 4% above the base rate from time to time of The Royal Bank of Scotland plc from the due date until the outstanding amount is paid in full.
- 15.6 Where the Customer pays any amounts due to the Company under this Agreement by credit card or debit card, the Company reserves the right to charge the Customer an additional charge equal to 1.5% of such amount for any bank charges incurred by the Company.

16. **INTELLECTUAL PROPERTY**

- 16.1 The Customer hereby grants to the Company (insofar as it is able to do so) a non-exclusive, worldwide, transferable, licence in respect of all Content to do all such acts and things as may be necessary to enable the Company to provide the Services and/or exercise its rights under this Agreement. To the extent that is not able to grant such a licence in respect of any Content, the Customer shall procure that such a licence is granted to the Company by any third party who may hold any Intellectual Property Rights in respect of any such Content.
- 16.2 The Customer shall save, indemnify, defend and hold harmless the Company on demand from and against all claims, losses, damages, costs (including legal costs), expenses and liabilities of every kind and nature for, or arising out of, any infringement or alleged infringement of any Intellectual Property Rights of any third party subsisting in any Content or which is otherwise related in any way to the Customer's use of the Services or any part thereof. For the avoidance of doubt, the Company shall not be required to investigate the ownership of any Intellectual Property Rights in any Content.
- 16.3 All IPR created or developed by, or on behalf of, the Company in performing of the Services shall belong to the Company and upon their creation vest in the Company.
- 16.4 Except to the extent expressly provided by this Agreement, nothing in this Agreement shall grant, assign or otherwise transfer to the Customer any right or interest in any Intellectual Property Rights in respect of the Software or Equipment.

17. **THE EQUIPMENT**

- 17.1 Ownership of the Equipment shall remain with the Company and the Customer shall have no right thereto.
- 17.2 For the avoidance of doubt, the Customer shall not be entitled to have physical access to any Equipment or to any premises at which any of the Equipment resides from time to time. The Company shall not be required to disclose the location of any of the Equipment to the Customer.

17.3 The Customer shall indemnify the Company forthwith on demand from and against any losses, damages, costs and expenses suffered or incurred by the Company as a result of or arising out of damage to the Equipment arising out of any breach by the Customer of its obligations under this Agreement and/or the fault or negligence of the Customer.

18. **THE SOFTWARE**

18.1 The Company hereby grants to the Customer a revocable, non-exclusive, non-transferable, non-sublicenseable, sub-licence to (subject to the terms and conditions of this Agreement) use the Software on the Dedicated Server throughout the continuance of this Agreement.

19. **LIABILITY**

19.1 Subject to the terms and conditions of this Agreement, the Company hereby excludes all liability to the Customer, to the fullest extent permitted by law, in respect of any claims, losses, damages, costs (including legal costs), expenses and liabilities of every kind and nature suffered or incurred by the Customer in connection with or arising out of:-

19.1.1 any corruption, theft or loss of, or damage, alteration or destruction to, data, programs, files, information or materials held on the Equipment or on the Customer's equipment or hardware;

19.1.2 any root/administration access to the Customer's Content or data by the Company which results in the Customer opening security holes, damaging their Content or which impacts negatively on the provision of the Services;

19.1.3 any unauthorised access by a third party (regardless of the manner or means by which such third party gains such unauthorised access);

19.1.4 any temporary delay, outages or interruptions of the Services, howsoever caused;

19.1.5 the selection use and suitability of the Services by the Customer;

19.1.6 any breach by the Customer of its obligations under this Agreement; and

19.1.7 the Content breaching any applicable laws or regulations or the infringement by the Content of any third party Intellectual Property Rights;

19.1.8 any exercise by the Company of its rights under this Agreement and/or under law.

19.2 The Company shall not be liable to the Customer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of this Agreement, in contract, delict (including negligence), tort or otherwise arising out of or in connection with this Agreement including by way of indemnity for any:

19.2.1 indirect, incidental, special or consequential loss or damage (whether or not such loss or damage is of the type specified in Clauses 20.2.2 to 20.2.8 below);

19.2.2 loss of goodwill or reputation;

19.2.3 loss of actual or anticipated profits;

- 19.2.4 loss of business;
- 19.2.5 loss of revenue or of the use of money;
- 19.2.6 loss of contracts;
- 19.2.7 loss of anticipated savings; and
- 19.2.8 damage relating to the procurement by the Customer of any substitute services.

in any case, whether or not such losses or damage were foreseen, foreseeable, known or otherwise or whether caused by the negligence of the Company or its officers, employees, consultants, sub-contractors, agents or otherwise) which arise out of or in connection with the provision of the Services, except as expressly provided in this Agreement.

- 19.3 Nothing in this Agreement will exclude or limit the liability of either Party: (i) for death or personal injury caused by negligence (as such term is defined by the Unfair Contract Terms Act 1977); (ii) for fraud; (iii) for misrepresentation as to a fundamental matter; or (iv) for any liability which cannot be excluded or limited under applicable laws.
- 19.4 Subject to Clause 20.3 above, the entire liability of the Company under or in connection with this Agreement shall not exceed three thousand pounds sterling (£3,000).

20. **SUSPENSION**

- 20.1 The Company shall have the right to suspend performance of the Services (or any of them) by notice to the Customer in the event that the Customer makes default in or commits any breach of its obligations to the Company under this Agreement, including but not limited to:
 - 20.1.1 any breach of the Customer's obligations to pay the Charges in accordance with Clause 16 and the Services Term Sheet;
 - 20.1.2 if the Company receives a notice which claims that the Content is infringing a third party's IPR ("**Infringement Notice**");
 - 20.1.3 in the event that the Company experiences a distributed denial of service attack; or
 - 20.1.4 in the event that the Customer carries out an act which has a material negative impact to the provision of the Services.
- 20.2 Following suspension of the Services:
 - 20.2.1 the suspension shall last until the Customer has remedied the event causing the suspension to the reasonable satisfaction of the Company or until this agreement is terminated;
 - 20.2.2 the Agreement will continue after the suspension ends (unless it ends by the termination of this agreement) for the Contract Period plus the length of time of the suspension;
 - 20.2.3 all the Customer's warranties and obligations under this Agreement shall continue during the suspension (to the extent that they are able to be fulfilled); and

- 20.2.4 the Company will remain entitled to all rights granted and assigned to it under this agreement.
- 20.3 If any Services are suspended pursuant to clause 21.1.2, the Customer shall have 14 days from the date of the Infringement Notice to take down or amend the infringing Content, failing which, the Company shall be entitled to terminate the Agreement immediately.
- 20.4 If any Services are suspended pursuant to this Clause 21, any additional costs reasonably incurred by the Company as a direct result shall be recoverable by the Company from the Customer.

21. TERMINATION OF THE CONTRACT

21.1 In the event that:-

- 21.1.1 the Customer makes default in or commits any breach of its obligations to the Company under this Agreement, including but not limited to any breach of the Customer's obligations in relation to the Charges in accordance with Clause 16 and the Services Term Sheet; or
- 21.1.2 the Customer commits an act of bankruptcy, becomes apparently insolvent, makes an arrangement or composition with creditors or (being a company) has a receiver, administrator or liquidator appointed or any proceedings have commenced relating to the insolvency or possible insolvency of the Customer; or
- 21.1.3 the Customer ceases to trade, threatens to cease to trade or if serious doubt arises as to the Customer's solvency; or
- 21.1.4 any diligence, distress, execution or other process shall be levied or enforced against any property of the Customer,

then in such case the Company shall be entitled (without prejudice to its other claims and rights under this Agreement and without liability to the Customer whatsoever) to do one or more of the following without giving notice to the Customer:-

- 21.1.5 terminate this Agreement immediately; and/or
- 21.1.6 deny the Customer use of and/or access to any of the Equipment;
- 21.1.7 terminate or suspend performance of any one or more of the Services.
- 21.2 Without prejudice to Clause 22.1, the Company may terminate this Agreement or any of the Services for any reason whatsoever upon giving 30 days notice in writing to the Customer.
- 21.3 The Customer may terminate this Agreement immediately upon giving written notice to the Company if the Company breaches any of its obligations to the Customer under this Agreement and (if capable of remedy) fails to remedy such breach within 14 days after being required by written notice from the Customer to do so.

22. EFFECT OF TERMINATION OF THIS AGREEMENT

- 22.1 In the event of termination of this Agreement pursuant to Clause 22, all sums due or which may become due to the Company by the Customer under this Agreement shall become immediately due and payable.
- 22.2 In the event of termination of this Agreement by the Customer, the Customer shall remain liable to the Company in respect of all Charges which have accrued up to and including the date of termination.
- 22.3 Without prejudice to Clause 23.1, all licences granted by the Company to the Customer pursuant to this Agreement shall be immediately revoked without notice being required for the purpose upon termination of this Agreement for any reason.
- 22.4 For the avoidance of doubt, upon termination of this Agreement or the Hosting Service, all computer servers (including all Dedicated Servers) shall remain the property of the Company and all rights which the Customer may have in respect of such computer servers (and any data or other content stored on such computer servers) shall immediately cease.

23. DATA PROTECTION

- 23.1 In this Clause 24, the phrases “**data controller**”, “**data processor**”, “**processing**” “**personal data**” and “**data subject**” shall all have the meanings given to them in the Data Protection Act 1998 and, except where the context otherwise requires, similar words and phrases shall be interpreted accordingly.
- 23.2 The Customer hereby acknowledges and agrees that the Customer is the data controller, and the Company is merely a data processor, in respect of any personal data that may be processed by the Company in the course of providing the Services to the Customer. The Customer agrees to comply at all times with the Data Protection Act 1998 and to save, indemnify, defend and hold harmless the Company on demand from and against all claims, losses, damages, costs (including legal costs), expenses and liabilities of every kind and nature for, or arising out of any infringement or alleged infringement of the Data Protection Act 1998 by the Customer or the Company in connection with the Services.
- 23.3 The Customer accepts that the register of the Naming Organisation will include the Customer’s name and address, administrative partner and technical partner and other details relating to them. This information (if it relates to individuals) is personal data for the purposes of the Data Protection Act 1998. The Customer accepts that the Naming Organisation may allow other organisations and members of the public to access the data for the purpose of obtaining information about the registration of domain names or any other related purpose.

24. RELATIONSHIP OF THE PARTIES

- 24.1 Each party to this Agreement is an independent contractor, and this Agreement does not create a partnership, agency, joint venture or employment relationship between the Company and the Customer.

25. **SEVERABILITY**

25.1 Every term of this Agreement shall be separate and severable to the extent that if one clause or part thereof shall be unenforceable for any reason the other clauses and other parts of the clause and this Agreement respectively shall remain effective.

26. **SURVIVAL**

26.1 In the event that any term or condition of this Agreement is held to be invalid by any court having jurisdiction over this Agreement, that term or condition may be deleted from this Agreement and the remaining terms and conditions shall continue to be, to the extent that they are unaffected by the deletion and to the fullest extent permitted by law, valid and binding on the parties hereto.

26.2 Any term or condition of this Agreement which is of the kind or nature which could reasonably be expected to survive termination of this Agreement shall so survive.

27. **COMPLAINTS**

27.1 The Company wishes the Customer to know that it takes any complaints the Customer might have seriously. Any complaints which the Customer might have regarding the Services, this Agreement or any matter related thereto should be sent to the postal address, fax number or email address set out at Clause 32 below, or such other address, fax number or email as the Company may notify to the Customer from time to time.

28. **NO WAIVER**

28.1 No waiver by the Company of any breach of this Agreement by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.

29. **FORCE MAJEURE**

29.1 The Company shall not be deemed to have breached this Agreement or otherwise be liable to the Customer for any refund or otherwise for any delay in performance or non-performance of any of its obligations under this Agreement to the extent that such delay or non-performance is due to Force Majeure or any other cause beyond the Company's reasonable control. For the purposes of this Clause 30.1, "**Force Majeure**" means any Act of God, explosion, flood, tempest, lightning strike, fire, accident, war or threat of war, sabotage, terrorist act, insurrection, civil disturbance or requisition, acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority, import or export regulations or embargos, strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Company or of a third party), difficulties in obtaining raw materials, labour, fuel, parts, machinery, power failure or breakdown in machinery.

29.2 Without prejudice to Clause 30.1 above, the Company shall have no liability to the Customer whatsoever (for breach of contract or otherwise):-

29.2.1 in the event that the Equipment is disabled, removed from the Company's premises or otherwise compromised as a result of or in connection with the actions of any law enforcement agency; or

29.2.2 in the event that the Company is prevented from providing any of the Services in accordance with this Agreement as a result of any judgement of any legal authority or order of any court of competent jurisdiction.

30. ASSIGNATION AND SUB-CONTRACTING

30.1 The Company may assign or license any or all of its rights and/or obligations under this Agreement, or sub-contract the whole, or any part thereof to any person (legal or otherwise) or entity. Unless otherwise agreed in writing with the Company, the Customer may not assign or license or sub-licence any or all of its rights and/or obligations under this Agreement, or sub-contract the whole, or any part thereof to any person (legal or otherwise) or entity.

31. NOTICES

31.1 Any notice or other information required or authorised by this Agreement to be given by either party to the other may be given by hand or sent (by first class pre-paid post, facsimile transmission, email or comparable means of communication) to the other party at, in the case of the Customer, to the address, fax number or email address specified in Part 1 of the Schedule and, in the case of the Company, to:

address: Catalyst 2 Services Limited
 Centre House
 79 Chichester Street
 Belfast
 BT1 4JE

fax number: +44 (0) 845 280 4993

email: billing@catalyst2.com

or, in the case of either party, to such other address, fax number or email address as either party may notify to the other for the purposes of this Clause 32.1.

31.2 Any notice or other information given by post pursuant to Clause 32.1 which is not returned to the sender as undelivered shall be deemed to have been given on the day after the envelope containing the same was so posted and proof that the envelope containing any such notice or information was properly addressed, prepaid, registered and posted, and that it has not been so returned to the sender, shall be sufficient evidence that such notice or information has been duly given.

31.3 Any notice or other information sent by facsimile transmission, email or comparable means of communication shall be deemed to have been duly sent on the date of transmission, provided that the sender is able to provide evidence that the transmission was sent to the correct fax number, email address or other address (as the case may be) and that there are no circumstances of which the sender subsequently became aware which would lead a reasonable person to conclude or suspect that such transmission was not in fact received.

31.4 Service of any legal proceedings concerning or arising out of this Agreement shall be effected by causing the same to be delivered to the party to be served at its registered office or to such other address as may from time to time be notified in writing by the party concerned.

32. **GOVERNING LAW AND JURISDICTION**

This Agreement is governed by the laws of England and Wales. The parties hereby submit themselves to the exclusive jurisdiction of the English courts.