

Catalyst Terms and Conditions

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catalyst 

open source technologists

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1. Catalyst Terms and Conditions

- 1.1 This Agreement sets out the terms and conditions that will apply to the provision of the Services by Catalyst to the Client. The parties to these terms are the person requesting the work (“the Client”) and the Applicable Catalyst Entity as described below (“Catalyst”).
- 1.2 The Applicable Catalyst Entity is:
- a) **Catalyst.Net Limited;**
 - b) **Catalyst Cloud Limited;**
 - c) **Catalyst IT Europe Limited;**
 - d) **Catalyst IT Australia Pty Limited;**
 - e) **Catalyst IT Ireland Limited; or**
 - f) **Catalyst IT Canada Limited.**
- 1.3 Catalyst may amend these terms and conditions from time to time by publishing a new version upon its website at:
- a) www.catalyst.net.nz/terms, if the Applicable Catalyst Entity is **Catalyst.Net Limited** or **Catalyst Cloud Limited**;
 - b) www.catalyst-eu.net/contact-us/terms, if the Applicable Catalyst Entity is **Catalyst IT Europe Limited** or **Catalyst IT Ireland Limited**;
 - c) www.catalyst-au.net/contact-us/terms, if the Applicable Catalyst Entity is **Catalyst IT Australia Pty Limited**; or
 - d) www.catalyst-ca.net/terms-and-conditions, if the Applicable Catalyst Entity is **Catalyst IT Canada Limited**.
- 1.4 The Client may reject a new version of these terms and conditions, which will be deemed ineffective provided that:
- a) the Client notifies Catalyst of reasonable grounds establishing that the new version would materially disadvantage the Client; and
 - b) such notification is received by Catalyst within ten (10) Business Days of the date on which the new version is published.

2. Definitions

- 2.1 In this Agreement, unless the context otherwise requires:

“**Agreement**” means these terms and conditions and, where applicable, any document into which they are incorporated by reference.

“**Business Day**” means any day not being:

- a) a Saturday or a Sunday; or

- b) a statutory public holiday in either:
 - i. New Zealand (including any regional public holiday applicable to the Catalyst office where the Services are provided);
 - ii. Australia (including public holidays declared by the state and territory governments applicable to the Catalyst office where the Services are provided);
 - iii. England (including any regional public holiday applicable to the Catalyst office where the Services are provided);
 - iv. Ireland (including any regional public holiday applicable to the Catalyst office where the Services are provided); or
 - v. Canada (including any provincial public holiday applicable to the Catalyst Office where the Services are provided).

as the case may be, depending on the Applicable Catalyst Entity.

“**Business Hours**” refers to the hours of operation, namely 8.30am to 5.30pm:

- a) New Zealand Standard Time or New Zealand Daylight Saving Time during its occurrence, on any Business Day, where the Applicable Catalyst Entity is **Catalyst.Net Limited** or **Catalyst Cloud Limited**;
- b) Greenwich Mean Time or British Summer Time during its occurrence, on any Business Day, where the Applicable Catalyst Entity is **Catalyst IT Europe Limited**;
- c) Australian Eastern Standard Time or Australian Eastern Daylight Time, on any Business Day, applicable to the Catalyst office where the Services are provided if the Applicable Catalyst Entity is **Catalyst IT Australia Pty Limited**;
- d) Greenwich Mean Time or Irish Standard Time during its occurrence, on any Business Day, where the Applicable Catalyst Entity is **Catalyst IT Ireland Limited**; or
- e) Eastern Standard Time or Eastern Daylight Time during its occurrence, on any Business Day, where the Applicable Catalyst Entity is **Catalyst IT Canada Limited**.

“**Commencement Date**” means the date on which this Agreement comes into force between the parties. Commencement Date may be defined otherwise in any document which incorporates these terms and conditions.

“**Confidential Information**” of a party means all information which is, or may be, proprietary to that party, or commercially sensitive, and includes, but is not limited to, computer data and personal data including names, addresses, personal, medical or business affairs of persons associated with that party and information relating to the organisation, methods, administration, operation, business affairs, services provided by or to third parties, or financial or commercial arrangements of that party, or persons associated with the party and information of any nature, technical or otherwise, relating to any product or process in which the party or persons associated with the Services on behalf of the party are involved.

It specifically excludes information which:

- a) was rightfully in the possession of the other party prior to the commencement of negotiations leading to this Agreement;
- b) is already public knowledge or becomes so at a future date (otherwise than as a result of a breach of clause 6);
- c) is trivial or obvious;
- d) is contained within a release in the meaning of clause 18.8; or
- e) is required to be disclosed at law or by a parliamentary, governmental or judicial process or convention.

“**CPI**” means the Consumer Price Index (All Groups) published by Statistics New Zealand or other New Zealand government agency, and any revised, replacement or substituted index which reflects the change in the cost of living in New Zealand.

“**Deliverables**” means and includes all the work to be delivered by Catalyst as a result of providing the Services to the Client in accordance with Requirements, subject to clause 21.6.

“**Intellectual Property**” means the following industrial and intellectual property rights, whether registered or unregistered, and includes:

- a) trademarks, service marks, trade names, registered designs, design rights, copyright (including all copyright in any designs and computer software), source code, apps, API integrations, software data, managed and unmanaged solutions, and applications for any of the foregoing;
- b) the copyright in all drawings, plans, specifications, designs, policies, procedures or other documents relating to the Services including rights in computer software;
- c) knowledge connected with the Services including data, specifications and drawings, and technical information; and
- d) rights under any agreement or contracts granted to third parties to use any of the above; but

excludes patents registered in a jurisdiction other than the jurisdiction in which the Applicable Catalyst Entity is incorporated.

“**Maintenance Release**” means an update to an existing version of the application containing error corrections or minor functionality enhancements. A Maintenance Release is designated as a numbered service pack for the current version, with no change in the version number.

“**New Version Release**” means a new version of the application containing new features or enhancements to functionality. A New Version Release is designated by an increase in the version number (e.g. from 1.5 to 1.6 or 2.0).

“**Open Source Licence**” means any 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.

“Representative” means for the Client, the nominated representative who appears to have the authority to represent the Client, and for Catalyst, a Director or any other representative as notified from time to time.

“Requirements” means the statement of business and technical requirements for Deliverables set out in the referenced documents of the relevant Statement of Work and any other requirements referred to in this Agreement or subsequently agreed between the parties in writing.

“Services” means collectively the services to be provided by Catalyst to the Client under this Agreement.

“Statement of Work” or **“SOW”** means any document where the parties agree on Requirements to be delivered under this Agreement, for example a work request created through Catalyst's online system.

“Taxes” means any and all taxes (including GST, VAT, income tax and withholding taxes), duties and levies imposed by any competent authority in any jurisdiction.

3. Interpretation

3.1 For the purposes of interpretation and construction of this Agreement:

- a) headings are for convenience only and do not affect the interpretation of this Agreement;
- b) the word “including” shall not imply restriction;
- c) words importing the singular include the plural and vice versa;
- d) a reference to a person includes that person's successors and permitted assigns;
- e) a reference to any statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws varying, consolidating or replacing them and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
- f) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Agreement or any part of it;
- g) any provision of this Agreement which is invalid or unenforceable in any jurisdiction will, as to that jurisdiction only, be read down or severed to the extent of that invalidity or unenforceability. The remaining provisions of this Agreement which are self-sustaining and capable of separate enforcement without regard to the read down, or severed provision in that jurisdiction, are and will continue to be valid and enforceable in accordance with their terms; and
- h) an item listed under a heading “Assumptions” or similar in a Statement of Work or other document which incorporates these terms and conditions is a condition of this Agreement inserted for the sole benefit of Catalyst. Assumptions are the Client's responsibility to satisfy.

4. Obligations of the Parties

- 4.1 Each party agrees to co-operate and work with the other in good faith to enable the effective performance of the required Services by Catalyst. This includes the Client making available information, decisions and processes as may reasonably be required to facilitate Catalyst to implement and deliver the Services in accordance with this Agreement.

5. Termination

- 5.1 This Agreement is terminated by any one or more of the following:
- a) both parties agree in writing;
 - b) once the Requirements of all Statements of Work have been completed;
 - c) for convenience by Catalyst giving 90 days' written notice to the Client;
 - d) by the Client, in accordance with clause 23.2;
 - e) if the Client has not paid an invoice within 14 days of it becoming due, and Catalyst gives the Client 14 days' notice of its intention to cancel this Agreement, upon the notice period expiring without payment of the said invoice;
 - f) if either party is in breach of this Agreement and either:
 - i. the breach is not capable of being remedied, or
 - ii. the party in breach does not remedy the breach within 40 working Business Days of receiving a notice from the other party stating the details of the breach and what is required to remedy the breach;
 - g) at the election of a party if the other party becomes insolvent, goes into liquidation or bankruptcy, has a receiver appointed in relation to its business assets, or enters into any arrangements with its creditors; and
 - h) pursuant to clause 9.3 by reason of a Force Majeure Event.
- 5.2 If this Agreement is terminated, all existing claims and remedies at law remain extant and may be pursued by either party.
- 5.3 Upon termination of this Agreement, the Client may require Catalyst to provide the Client with copies of their data, usually comprising database, site data and code base. Catalyst will charge its standard hourly rates for providing this to the Client.

6. Confidentiality

- 6.1 Both parties agree that, unless they have the prior written consent of the other, they will not use or disclose to any third party (other than for the purpose of performing their obligations under this Agreement or obtaining legal, financial or other professional advice) any information which is Confidential Information of the other party. The obligations of this clause shall survive termination or cancellation of this Agreement.

- 6.2 Catalyst undertakes to ensure that its employees, agents and sub-contractors who need to know the same are aware of and will be legally obliged to comply with the provisions of this clause in relation to the Confidential Information.
- 6.3 Catalyst shall ensure that all sub-contracts will contain confidentiality provisions consistent with this clause 6.
- 6.4 Catalyst shall, upon the termination of this Agreement or if and when otherwise requested by the Client to do so, return to the Client forthwith any Confidential Information of the Client, computer programmes, information, data, books, records, papers, Intellectual Property or any other property belonging solely to the Client, or any copies of the same in Catalyst's possession or control. Where Confidential Information, information, data, computer programmes or Intellectual Property of the Client is stored on any computer equipment belonging to Catalyst and it is not convenient to delete it, Catalyst may instead continue to maintain the confidentiality of that Confidential Information.

7. Indemnity and Liabilities

- 7.1 Neither party to this Agreement shall be liable to the other party for indirect, incidental, special or consequential loss or damages (which shall be deemed to include loss of revenue, contracts, use, business profits, business information, data, goodwill or other non-pecuniary loss; and loss caused by business interruption, wasted expenditure or diminution of value) arising out of or in connection with this Agreement or the provision of the Services, whether arising from negligence, breach of contract or otherwise.
- 7.2 The maximum liability of the Client for any claim under or in connection with this Agreement (whether arising from negligence, breach of contract or otherwise) shall be the total service costs payable by the Client to Catalyst during the calendar year in which the claim is made.
- 7.3 The maximum aggregate liability of Catalyst for all claims under or relating to this Agreement (whether arising from negligence, breach of contract or otherwise) shall be:
- a) the lesser of the annual cost of this Agreement or 500,000 New Zealand Dollars, if the Applicable Catalyst Entity is **Catalyst.Net Limited** or **Catalyst Cloud Limited**; or
 - b) the lesser of the annual cost of this Agreement or 1,000,000 British Pounds, if the Applicable Catalyst Entity is **Catalyst IT Europe Limited**;
 - c) the lesser of the annual cost of this Agreement or 500,000 Australian Dollars, if the Applicable Catalyst Entity is **Catalyst IT Australia Pty Limited**;
 - d) the lesser of the annual cost of this Agreement or 300,000 Euro, if the Applicable Catalyst Entity is **Catalyst IT Ireland Limited**; or
 - e) the lesser of the annual cost of this Agreement or 500,000 Canadian Dollars, if the Applicable Catalyst Entity is **Catalyst IT Canada Limited**.
- 7.4 Except where one of the parties is subject to the Public Finance Act 1989, each party agrees to defend, indemnify and save the other party, its affiliated and subsidiary corporations, its officers, directors, employees, agents, successors, shareholders and assigns harm from and against all

liability, loss, expense, fines, penalties, or damages (including legal costs) to the extent that such claim arises out of or is in any way connected with the non-performance or breach of any obligation imposed on the indemnifying party by this Agreement or other general laws and obligations or by reason of and to the extent of the fraud, negligence or wilful misconduct of the indemnifying party or any agent or employee of the indemnifying party.

- 7.5 For the avoidance of doubt, the limitations and exclusions of liability outlined in this Agreement shall apply to the indemnity obligations of the parties (if any).
- 7.6 No action, regardless of form, arising out of any alleged breach of this Agreement or obligation hereunder may be brought by either party more than two (2) years after the cause of action has occurred.

8. Warranties and Disclaimers

- 8.1 The Client acknowledges that it is in the nature of software development that bugs occur. That is, from time to time use of the Services or Deliverables may be interrupted, or they might not fully function in accordance with their specifications. Such interruption, bugs or non-conformance does not constitute a breach of this Agreement. Instead, they are dealt with through Catalyst's software warranty set out in clause 8.2.
- 8.2 Catalyst's software warranty is that Catalyst will remedy any non-compliance of a Deliverable or Service with its Requirements, provided that the non-compliance is notified to Catalyst within sixty (60) days from the earlier of delivery to the Client or release to a production environment. However, where the cost to Catalyst of remedying such non-compliance would be excessive and disproportionate to the charge associated with the Deliverable, Catalyst may choose (at its absolute discretion) to refund the cost paid by the Client for that Deliverable instead of remedying the non-compliance.
- 8.3 The warranty set out in clause 8.2 shall not apply where any non-compliance of a Deliverable with its Requirements is attributable to the actions or omissions of the Client or any third party who is not an agent, employee or sub-contractor of Catalyst.
- 8.4 Each representation, condition, indemnification or warranty alleged to be made by Catalyst but not expressly contained in this Agreement is excluded unless it is unlawful to do so.
- 8.5 The Services provided in this Agreement are provided for the purposes of use in a business only. This means that laws designed to protect consumers acquiring goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption, including (but not limited to) the Consumer Guarantees Act 1993 in New Zealand; or the Australian Consumer Law set out in Schedule 2 of the Competition and Consumer Act 2010 (Cth) in Australia; or the Sale of Goods Act 1893 and the Sale of Goods and Supply of Services Act 1980 in Ireland; or the Sale of Goods Act 1990 and the Consumer Protection Act 2002 in Ontario, are expressly excluded from this Agreement, to the fullest extent permitted by law.
- 8.6 If the Applicable Catalyst Entity is Catalyst IT Australia Pty Limited and in the event the Services supplied in accordance with this Agreement is construed as being supplied to the Client as a

'consumer' of services within the meaning of that term in the Australian Consumer Law, Catalyst limits its liability in respect of all claims, and at its sole discretion, to:

- a) supply the Services again; or
- b) the payment of the cost of having the Services supplied again.

8.7 Catalyst makes no representations and gives no warranties, guarantees or undertakings concerning its performance of the Services, except as expressly set out in this Agreement. All other warranties, express or implied, by statute or otherwise (including but not limited to the warranties of merchantability, fitness for a particular purpose, and satisfactory quality) are excluded from this Agreement, to the fullest extent permitted by law.

9. Force Majeure

9.1 Neither party will be liable for any act, omission, or failure to fulfil its obligations under this Agreement to the extent that such act, omission or failure arises from any cause reasonably beyond its control including acts of God, strikes, lockouts, riots, acts of war, terrorism, loss of mains power or network connectivity, epidemics, localised disease outbreak, governmental action, fire, earthquake or other disasters ("**Force Majeure Event**").

9.2 The party unable to fulfil its obligations under this clause 9 will, as soon as reasonably possible :
a) notify the other party in writing of the reasons for its failure to fulfil its obligations; and
b) use all reasonable endeavours to avoid or remove the cause of its failure to perform its obligations.

9.3 If a party is unable to perform any of its obligations under this Agreement due to a Force Majeure Event for a period of at least thirty (30) days, either party may terminate this Agreement by giving thirty (30) days' written notice to the other. If the Client terminates this Agreement it shall pay Catalyst the cost for work performed by Catalyst to the date of termination. Termination of this Agreement under this clause will not prejudice the rights of either party against the other in respect of any matter or thing occurring under this Agreement before its termination.

10. Non-Solicitation

10.1 During the Term of this Agreement and for an additional period of six months thereafter, each party agrees not to:

- a) induce any employee of the other to terminate his or her employment relationship with the other party; or
- b) offer employment to any employee of the other party who has performed any Services related to this Agreement without first obtaining the written consent of the other party,

provided that nothing in this clause 10.1 shall prevent either party from employing any person who responds to a genuine advertisement placed by that party or who initiates contact with that party.

11. Variations

- 11.1 In the event the Client requests that Catalyst carry out work in addition to that contained in the Statement of Work, Catalyst will not carry that work out until the Client has put through an additional Work Request, and further charges will apply at Catalyst's usual charge out rates for that type of work.
- 11.2 Subject to clause 15, any variation to this Agreement must be in writing and signed by each party's Representative or other duly authorised signatory, provided that:
- a) any facsimile or scanned copy of such signed document duly received from the other party through email or facsimile transmission shall, unless there is clear evidence showing otherwise, have the same effect as the original; and
 - b) any change in the technical details in a Statement of Work may be confirmed between the parties through email or through the Catalyst Work Request Management System.

12. Relationship of the Parties

- 12.1 Catalyst does not have any power, right or authority to bind the Client, or to assume or create any obligation or responsibility, expressed or implied, on behalf of the Client. Nothing contained in this Agreement shall be construed as constituting Catalyst and the Client as partners or joint venturers, or as creating the relationship of employer and employee, or principal and agent between them or otherwise create any other relationship than that of seller and a purchaser as set forth in this Agreement.

13. Disputes and Remedies

- 13.1 The parties agree to use reasonable efforts to resolve any dispute that may arise under this Agreement through good faith negotiations.
- 13.2 A party claiming that a dispute has arisen must give written notice to the other party specifying the nature of the dispute ("**Dispute Notice**"). If within ten (10) Business Days of receipt of a Dispute Notice, the parties have not resolved the dispute, the dispute must be escalated to the chief executive or equivalent of the Client and a director for Catalyst.
- 13.3 Any dispute that has not been resolved in accordance with clause 13.2 shall be submitted to mediation. Either party may initiate mediation by giving written notice to the other party. If the parties cannot agree on a mediator within five (5) Business Days of the notice, the mediator will be selected by:
- a) a Director of the Resolution Institute if the Applicable Catalyst Entity is **Catalyst.Net Limited, Catalyst Cloud Limited or Catalyst IT Australia Pty Limited**;
 - b) the president of the Society for Computers and Law, if the Applicable Catalyst Entity is **Catalyst IT Europe Limited**;
 - c) the President of the Law Society of Ireland, if the Applicable Catalyst Entity is **Catalyst IT Ireland Limited**; or

- d) the ADR Institute of Ontario, if the Applicable Catalyst Entity is **Catalyst IT Canada Limited**.

13.4 Any dispute that has not been settled by mediation within thirty (30) days of commencement of such mediation shall be referred to arbitration to be conducted in:

- a) Wellington, New Zealand, and shall be finally settled in accordance with the Arbitration Act 1996, if the Applicable Catalyst Entity is **Catalyst.Net Limited** or **Catalyst Cloud Limited**; or
- b) London, United Kingdom and shall be finally settled in accordance with the Arbitration Act 1996, if the Applicable Catalyst Entity is **Catalyst IT Europe Limited**;
- c) Sydney, Australia, and shall be finally settled in accordance with the Commercial Arbitration Act 2010, if the Applicable Catalyst Entity is **Catalyst IT Australia Pty Limited**;
- d) Dublin, Ireland, and shall be finally settled in accordance with the Arbitration Act 2010, if the Applicable Catalyst Entity is **Catalyst IT Ireland Limited**; or
- e) Toronto, Canada, and shall be finally settled in accordance with the Arbitration Act 1991, if the Applicable Catalyst Entity is **Catalyst IT Canada Limited**.

13.5 Subject to clause 24.3(a), in the event of a dispute the parties shall continue to perform their obligations under the Agreement as far as possible until the dispute is resolved.

13.6 Nothing in this clause 13 shall preclude:

- a) either party from taking immediate steps to seek urgent equitable relief before a court of competent jurisdiction;
- b) Catalyst from referring any dispute to binding commercial arbitration under clause 13.4 where Catalyst reasonably believes that the Client is not using its best efforts to resolve the dispute or is otherwise not engaging in the dispute resolution process in good faith.

14. No Waiver

14.1 Except as provided in this Agreement:

- a) no failure, delay or indulgence by either party in exercising any power or right conferred on that party by this Agreement will operate as a waiver of that power or right; and
- b) a single exercise of any of those powers or rights will not preclude further exercises of those powers or rights or the exercise of any other powers or rights under this Agreement.

15. Notices

15.1 Any notice required to be given under this Agreement may be sent by email to the representative's email address or posted via courier (signature required) or sent by facsimile to the address in each case, set out below, for each party in this Agreement.

15.2 Notices will only be deemed to be received:

- a) in the case of personal delivery, when delivered;

- b) if sent by facsimile, upon production of a transmission report by the machine from which the facsimile was sent, which indicates the facsimile was sent in its entirety to the facsimile number of the recipient;
- c) if sent by email, upon receipt; and
- d) five (5) Business Days after they have been posted via courier (signature required) within New Zealand, the United Kingdom, Australia, Ireland or Canada, depending on the Applicable Catalyst Entity.

15.3 The contact details for each party's Representative are:

For the Client, the details as maintained by the Client in the Catalyst Work Request Management System.

For: **Catalyst.Net Limited**
Address: Catalyst.Net Limited
Catalyst House, Level 6
150 Willis Street,
Wellington
6011
Facsimile: +64 4 499 5596
Email: legal@catalyst.net.nz

For: **Catalyst Cloud Limited**
Address: Catalyst Cloud Limited
Catalyst House, Level 6
150 Willis Street,
Wellington
6011
Facsimile: +64 4 499 5596
Email: legal@catalystcloud.nz

For: **Catalyst IT Europe Limited**
Address: Catalyst IT Europe Limited
First Floor

36 Frederick Place
Brighton BN1 4EA
United Kingdom
Email: info@catalyst-eu.net

For: **Catalyst IT Australia Pty Ltd**
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

For: **Catalyst IT Ireland Limited**
Address: Catalyst IT Ireland Limited
10 Dublin Road
Drogheda,
County Louth, A92 K6FA
Ireland
Email: info@catalyst-eu.net

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

15.4 Each party may from time to time change its Representative's contact details by serving written notice on the other party pursuant to this clause.

16. Entire Agreement

16.1 There are no conditions, representations, warranties or other terms affecting the arrangements between the parties other than those referred to in this Agreement and this Agreement contains the whole of the contract between the parties and supersedes all prior agreements and understandings, if any, with respect to the transactions contemplated herein.

17. Survival

17.1 Any clause of this Agreement that contemplates performance or observance after this Agreement has been terminated, including clauses 2, 3, 5.2, 5.3, 6, 7, 8, 9, 10, 13, 17, 18, 19 and 20 shall remain in full force and effect following such termination.

18. Intellectual Property

18.1 The Client owns and retains all rights, title and interest in and to all its pre-existing Intellectual Property which shall in no event be affected by this Agreement.

- 18.2 Catalyst will not deal with the Client's Intellectual Property in a manner which is contrary to the Client's interest and in particular, shall not use, copy, disclose or dispose of any such information, data or documentation except as necessary for the performance of obligations under this Agreement or with the Client's prior written consent and shall deliver all such items into the possession of the Client upon request within a reasonable time.
- 18.3 The Client will ensure that it has all necessary rights and licences in relation to Intellectual Property subsisting in any matter, thing or process supplied by the Client pursuant to this Agreement for use by Catalyst in providing the Services to the Client under this Agreement.
- 18.4 Catalyst owns and retains all rights, title and interest in and to all Intellectual Property that may subsist in any materials, programs, documentation, data and information owned by Catalyst prior to the commencement of this Agreement.
- 18.5 Catalyst may incorporate its own or third-party Intellectual Property into a Deliverable where that Intellectual Property is Open Source and therefore the Client has a perpetual right to use the Intellectual Property provided that the Client abides by the Open Source License terms.
- 18.6 Exclusive ownership and title to all Intellectual Property Rights relating to all the Deliverables (except any pre-existing Intellectual Property owned by Catalyst as referred to clause 18.4) as and when they are created or as those Intellectual Property rights arise will be vested in:
- a) Catalyst IT Limited, to the extent that those Deliverables are software subject to an Open Source Licence; and
 - b) the Client, in all other cases, on payment of the corresponding invoice. Until payment of the corresponding invoice the Intellectual Property Rights the subject of this sub-clause vest in Catalyst IT Limited, which will grant a temporary, revocable license in relation to the Intellectual Property to allow the Client to use the Deliverables until the due date of the corresponding invoice.
- 18.7 Catalyst hereby warrants that, save and except any components which are as a matter of fact subject to the terms and conditions of an Open Source License, the Deliverables do not infringe the Intellectual Property rights of any third party.
- 18.8 In keeping with the underlying public benefit principles of Open Source, Intellectual Property created by Catalyst for the Client may be released by Catalyst back to the Open Source software development community, unless otherwise directed by the Client. Such release shall occur for the sole purpose of advancing the availability of better code, in a manner consistent with the prevailing software licenses. This clause 18.8 applies only where the release does not contain or imply trade secrets or confidential business processes.

19. Restriction on Use of Data

19.1 Catalyst and any of its agents, employees, or sub-contractors shall not use any Confidential Information or opportunities gained in connection with the Services provided to the Client under this Agreement for any reason other than the provision of the Services to the Client, including, without limitation, to gain an advantage for commercial benefit where other persons or entities do not and could not have the same advantage without such Confidential Information or opportunities.

20. Governing Law

20.1 If the Applicable Catalyst Entity is:

- a) **Catalyst.Net Limited** or **Catalyst Cloud Limited**, then this Agreement shall be governed by the laws of New Zealand, and the courts of New Zealand shall have exclusive jurisdiction to hear and determine all issues that may arise under or in relation to this Agreement;
- b) **Catalyst IT Europe Limited**, then this Agreement shall be governed by the laws of England, and the courts of England and Wales shall have exclusive jurisdiction to hear and determine all issues that may arise under or in relation to this Agreement;
- c) **Catalyst IT Australia Pty Limited**, then this Agreement shall be governed by the laws of the State of New South Wales in the Commonwealth of Australia, and the courts of New South Wales shall have exclusive jurisdiction to hear and determine all issues that may arise under or in relation to this Agreement;
- d) **Catalyst IT Ireland Limited**, then this Agreement shall be governed by the laws of Ireland, and the courts of Ireland shall have exclusive jurisdiction to hear and determine all issues that may arise under or in relation to this Agreement; or
- e) **Catalyst IT Canada Limited**, then this Agreement shall be governed by the laws of Ontario and the courts of Ontario shall have the exclusive jurisdiction to hear and determine all issues that may arise under or in relation to this Agreement.

20.2 Clause 20.1 does not limit Catalyst's right to seek orders in overseas courts for recovery of debts owed by the Client.

21. Service Rates and Approvals

21.1 Where Catalyst agrees to provide Services within Business Hours, Catalyst's standard hourly rates will apply. Unless otherwise specified or when the context requires otherwise, requests for Services made during Business Hours will be treated as requests for Services to be performed within Business Hours.

21.2 Where Catalyst is requested to provide Services outside Business Hours, unless otherwise specified in a Statement of Work or a Service Level Agreement, Catalyst's standard after-hours rate of three times the standard rate will apply.

- 21.3 A minimum charge of one hour applies to all requests, including those for which an estimate or quote is requested.
- 21.4 Each request by the Client to provide Services provides implied approval to expend four hours of effort.
- 21.5 Where Catalyst expects work to take more than four hours, Catalyst will seek approval from the Client, unless in the circumstances that is impractical.
- 21.6 Services involving the creation of software based on formally stated Requirements will normally result in a Deliverable. Systems administration Services, including Services contemplated by clause 22, will not result in a Deliverable.

22. Ongoing Services

- 22.1 This section 22 only applies where Catalyst provides ongoing services, such as hosting, under this Agreement.
- 22.2 Where a monthly rate applies to ongoing services and the ongoing services include applying software updates, the rate includes the application of Maintenance Releases of software, but not of New Version Releases.
- 22.3 Where alerted by monitoring, or when necessary for security reasons, Catalyst may perform mandatory services at the Client's expense without prior approval by the Client, such as system hardening, software reconfiguration, installation of New Version Releases, or modification of third party or Client software, for example to seek to address security vulnerabilities. The Client will be advised as soon as is reasonably practicable. Such circumstances shall be deemed to be a request by the Client under clause 21.
- 22.4 Catalyst will use reasonable efforts to minimise costs to the Client under clause 22.3, including performing the services within Business Hours where that is reasonably practicable and any such delay does not compromise either security or the functionality of Catalyst or Catalyst Client systems.
- 22.5 Where Catalyst has invoked mandatory services under clause 22.3, the Client may opt to terminate the ongoing services on one (1) Business Day's notice. Any time reasonably expended by Catalyst in decommissioning the ongoing services will be chargeable to the Client.

23. Price Review

- 23.1 The charges in this Agreement will be fixed for a period of twelve months from the start of the Agreement. After that they may be amended by Catalyst, provided that all amendments:
 - a) are limited to once in any 12-month period;
 - b) are notified in writing at least 30 days in advance; and
 - c) are reasonably necessary to pass on;

- i. any increased cost of compliance with regulation;
 - ii. any increase in third party costs; and
 - iii. any increase in CPI since the last price review under this clause 23.1.
- 23.2 If the Client receives notice under clause 23.1(b) that the charges are increasing by an amount greater than the CPI increase since the last price review, the Client may terminate this Agreement by giving 20 days' written notice to Catalyst. The Client's termination right under this clause 23.2 expires on the effective date of the price increase.
- 23.3 Notwithstanding clause 23.1, where Catalyst is required under this Agreement to comply with any new or updated policy, standard or other requirement, Catalyst will be entitled to increase the charges to reflect the reasonable additional costs of compliance with the new or updated policy, requirement or standard.

24. Payment for Services

- 24.1 The Statement of Work will state whether Catalyst will charge on a time and materials basis at its usual hourly rates, or whether a set price will apply for the project. In either case, Catalyst will invoice either fortnightly, or at the completion of services if this occurs before the end of the fortnight. If the Statement of Work is silent about the amount to be paid each fortnight:
 - a) twenty five per cent (25%) of the total value of the Statement of Work will be invoiced upon its execution; and
 - b) the balance will be paid by apportionments made by Catalyst based on the amount of the project completed and the anticipated time for completion of the project, and an apportioned invoice will be rendered each fortnight.
- 24.2 Invoices must be paid within fourteen (14) days from the date on which they are rendered, unless otherwise specified on the invoices.
- 24.3 In the event an invoice remains unpaid after the due date then:
 - a) Catalyst will be entitled to stop any work being carried out for the Client; and
 - b) interest will become payable on the outstanding fees and any disbursements at the rate of 2% per month; and
 - c) Catalyst will be entitled to recover from the Client all debt recovery costs, including any legal costs at the full solicitor-client rate and any disbursements including all costs incurred by Catalyst using a debt recovery agency; and
 - d) Catalyst will not be required to transfer any work or any Intellectual Property rights in work to the Client until the full sum owing is paid.
- 24.4 If the Client reasonably disputes the validity of any amount invoiced, the Client will immediately:
 - a) pay such portion as is not in dispute; and
 - b) provide written notice to Catalyst setting out the reasons why the disputed amount is disputed, which shall constitute a Dispute Notice in accordance with clause 13.2 of this

Agreement.

Failure of the Client to invoke this clause 24.4 within thirty (30) days of the due date of any invoice shall constitute an irrevocable waiver of any rights on the part of the Client to dispute that invoice.

- 24.5 Any quote or estimate provided by Catalyst will lapse 30 days from the date it is issued unless the quote or estimate states otherwise.
- 24.6 Where any fees or charges for Services include work that involves Catalyst interacting with or depending on a Client-supplied or third-party component, any variance from the estimated or quoted effort required is at the Client's risk and is chargeable at Catalyst's standard hourly rates.
- 24.7 Unless otherwise specified, all prices, quotes and estimates are exclusive of Taxes. The Client will pay Taxes in respect of all fees and charges payable by the Client under this Agreement.
- 24.8 If the Client is required by law to make any deductions or withholdings, the Client must pay the required amount to the relevant authority, provide Catalyst with documentation evidencing the payment, and pay Catalyst any additional amounts necessary to ensure that the net amount Catalyst actually receives equals the full amount that Catalyst would have received, had no deduction or withholding been required.

25. Publicity

- 25.1 The Client agrees that when making public announcements concerning the Services or Deliverables or their application, it will acknowledge that they were provided by Catalyst.