

Katalysis Excea Estate Agency Website System Hosted Service

Updated 25 April 2016

Terms and Conditions

Please read these Terms and Conditions carefully. All contracts that the Provider may enter into from time to time for the provision of the Hosted Services shall be governed by these Terms and Conditions.

1. Definitions

1.1 Except to the extent expressly provided otherwise, in these Terms and Conditions:

"Account" means an account enabling a person to access and use the Hosted Services;

"Agreement" means a contract between the parties incorporating these Terms and Conditions, and any amendments to that contract from time to time;

"Business Day" means any weekday other than a bank or public holiday in England;

"Business Hours" means the hours of 09:00 to 17:00 GMT/BST on a Business Day;

"Charges" means the following amounts:

(a) the amounts specified in the Services Proposal;

"Customer" means the person or entity identified as such in the Services Proposal;

"Customer Confidential Information" means:

(a) any information disclosed by or on behalf of the Customer to the Provider (whether disclosed in writing, orally or otherwise) that at the time of disclosure:

(i) was marked as "confidential"; or

(ii) should have been reasonably understood by the Provider to be confidential;

(b) the Customer Data;

"Customer Data" means all data, works and materials: uploaded to or stored on the Platform by the Customer; transmitted by the Platform at the instigation of the Customer; supplied by the Customer to the Provider for uploading to, transmission by or storage on the Platform; or generated by the Platform as a result of the use of the Hosted Services by the Customer;

"Documentation" means the documentation for the Hosted Services produced by the Provider and delivered or made available by the Provider to the Customer;

"Effective Date" means the date upon which the Customer completes and submits the online Proposal Acceptance published by the Provider on the

Provider's website or the date upon which the Customer sends to the Provider an order confirmation;

"Force Majeure Event" means an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of the internet or any public telecommunications network, hacker attacks, denial of service attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);

"Hosted Services" means the Katalysis Excea Estate Agency Website System, as specified in the Proposal, which will be made available by the Provider to the Customer as a service via the internet in accordance with these Terms and Conditions;

"Hosted Services Defect" means a defect, error or bug in the Platform having an adverse effect on the appearance, operation, functionality or performance of the Hosted Services, but excluding any defect, error or bug caused by or arising as a result of:

- (a) any act or omission of the Customer;
- (b) any use of the Platform or Hosted Services contrary to the Documentation, whether by the Customer or by any person authorised by the Customer;
- (c) a failure of the Customer to perform or observe any of its obligations in the Agreement; and/or
- (d) an incompatibility between the Platform or Hosted Services and any other system, network, application, program, hardware or software not specified as compatible in the Hosted Services Specification;

"Hosted Services Specification" means the specification for the Platform and Hosted Services set out in the Services Proposal and in the Documentation;

"Intellectual Property Rights" means all intellectual property rights wherever in the world, whether registrable or unregistrable, registered or unregistered, including any application or right of application for such rights (and these "intellectual property rights" include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trade marks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);

"Maintenance Services" means the general maintenance of the Platform and Hosted Services, and the application of Updates and Upgrades;

"Permitted Purpose" means the provision of an estate agency website for the Customer.

"Personal Data" has the meaning given to it in the Data Protection Act 1998;

"Platform" means the platform managed by the Provider and used by the Provider to provide the Hosted Services, including the application and

database software for the Hosted Services, the system and server software used to provide the Hosted Services, and the computer hardware on which that application, database, system and server software is installed;

"Provider" means Katalysis Net Ltd of Tollgate House, 69-71 High Street, Harpenden, Herts AL5 2SL, a company incorporated in England and Wales (registration number 4038306) having its registered office at Tollgate House, 69-71 High Street, Harpenden, Herts AL5 2SL;

"Services" means any services that the Provider provides to the Customer, or has an obligation to provide to the Customer, under these Terms and Conditions;

"Services Proposal" means a proposal document published by the Provider and completed and submitted by the Customer, or a hard-copy order form signed or otherwise agreed by or on behalf of each party, in each case incorporating these Terms and Conditions by reference;

"Support Services" means support in relation to the use of, and the identification and resolution of errors in, the Hosted Services, but shall not include the provision of training services;

"Supported Web Browser" means the current release from time to time of Microsoft Internet Explorer, Mozilla Firefox, Google Chrome or Apple Safari;

"Term" means the term of the Agreement, commencing in accordance with Clause 2.1 and ending in accordance with Clause 2.2;

"Terms and Conditions" means all the documentation containing the provisions of the Agreement, namely the Services Order Form, the main body of these Terms and Conditions and Schedule 1 (Acceptable Use Policy), including any amendments to that documentation from time to time;

"Update" means a hotfix, patch or minor version update to any Platform software; and

"Upgrade" means a major version upgrade of any Platform software.

2. Term

- 2.1 The Agreement shall come into force upon the Effective Date.
- 2.2 The Agreement shall continue in force indefinitely, subject to termination in accordance with Clause 17.
- 2.3 Unless the parties expressly agree otherwise in writing, each Services Order Form shall create a distinct contract under these Terms and Conditions.

3. Hosted Services

- 3.1 The Provider shall create an Account for the Customer and shall provide to the Customer login details for that Account on or promptly following the Effective Date.
- 3.2 The Provider hereby grants to the Customer a licence to use the Hosted Services for the business purposes of the Customer during the Term.
- 3.3 The licence granted by the Provider to the Customer under Clause 3.2 is subject to the following limitations:

- (a) the Hosted Services may only be used by the officers, employees, agents and subcontractors of the Customer;
- 3.4 Except to the extent expressly permitted in these Terms and Conditions or required by law on a non-excludable basis, the licence granted by the Provider to the Customer under Clause 3.2 is subject to the following prohibitions:
 - (a) the Customer must not sub-license its right to access and use the Hosted Services;
 - (b) the Customer must not permit any unauthorised person to access or use the Hosted Services;
 - (c) the Customer must not make any alteration to the Platform.
- 3.5 The Customer shall use reasonable endeavours, including reasonable security measures relating to Account access details, to ensure that no unauthorised person may gain access to the Hosted Services using an administrator Account.
- 3.6 The Provider shall use all reasonable endeavours to maintain the availability of the Hosted Services to the Customer, but does not guarantee 100% availability.
- 3.7 For the avoidance of doubt, downtime caused directly or indirectly by any of the following shall not be considered a breach of the Agreement:
 - (a) a Force Majeure Event;
 - (b) a fault or failure of the internet or any public telecommunications network;
 - (c) a fault or failure of the Customer's computer systems or networks;
 - (d) any breach by the Customer of the Agreement; or
 - (e) scheduled maintenance carried out in accordance with the Agreement.
- 3.8 The Customer must comply with Schedule 1 (Acceptable Use Policy), and must ensure that all persons using the Hosted Services with the authority of the Customer or by means of an administrator Account comply with Schedule 1 (Acceptable Use Policy).
- 3.9 The Customer must not use the Hosted Services in any way that causes, or may cause, damage to the Hosted Services or Platform or impairment of the availability or accessibility of the Hosted Services.
- 3.10 The Customer must not use the Hosted Services:
 - (a) in any way that is unlawful, illegal, fraudulent or harmful; or
 - (b) in connection with any unlawful, illegal, fraudulent or harmful purpose or activity.
- 3.11 For the avoidance of doubt, the Customer has no right to access the software code (including object code, intermediate code and source code) of the Platform, either during or after the Term.

3.12 The Provider may suspend the provision of the Hosted Services if any amount due to be paid by the Customer to the Provider under the Agreement is overdue, and the Provider has given to the Customer at least 30 days' written notice, following the amount becoming overdue, of its intention to suspend the Hosted Services on this basis.

4. Maintenance Services

4.1 The Provider shall provide the Maintenance Services to the Customer during the Term.

4.2 The Provider shall where practicable give to the Customer prior written notice of scheduled Maintenance Services that are likely to affect the availability of the Hosted Services or are likely to have a material negative impact upon the Hosted Services, without prejudice to the Provider's other notice obligations under this main body of these Terms and Conditions.

4.3 The Provider shall give to the Customer prior written notice of the application of an Upgrade to the Platform.

4.4 The Provider shall give to the Customer written notice of the application of any security Update to the Platform and prior written notice of the application of any non-security Update to the Platform.

4.5 The Provider shall provide the Maintenance Services with reasonable skill and care.

4.6 The Provider may suspend the provision of the Maintenance Services if any amount due to be paid by the Customer to the Provider under the Agreement is overdue, and the Provider has given to the Customer at least 30 days' written notice, following the amount becoming overdue, of its intention to suspend the Maintenance Services on this basis.

5. Support Services

5.1 The Provider shall provide the Support Services to the Customer during the Term.

5.2 The Provider shall make available to the Customer a helpdesk in accordance with the provisions of this main body of these Terms and Conditions.

5.3 The Provider shall provide the Support Services with reasonable skill and care.

5.4 The Customer may use the helpdesk for the purposes of requesting and, where applicable, receiving the Support Services; and the Customer must not use the helpdesk for any other purpose.

5.5 The Provider shall respond promptly to all requests for Support Services made by the Customer through the helpdesk.

5.6 The Provider may suspend the provision of the Support Services if any amount due to be paid by the Customer to the Provider under the Agreement is overdue, and the Provider has given to the Customer at least 30 days' written notice, following the amount becoming overdue, of its intention to suspend the Support Services on this basis.

6. Customer Data

- 6.1 The Customer hereby grants to the Provider a non-exclusive licence to copy, reproduce, store, distribute, publish, export, adapt, edit and translate the Customer Data to the extent reasonably required for the performance of the Provider's obligations and the exercise of the Provider's rights under the Agreement.
- 6.2 The Customer warrants to the Provider that the Customer Data / the use of the Customer Data by the Provider in accordance with the Agreement will not:
- (a) breach the provisions of any law, statute or regulation;
 - (b) infringe the Intellectual Property Rights or other legal rights of any person; or
 - (c) give rise to any cause of action against the Provider,
- in each case in any jurisdiction and under any applicable law.
- 6.3 The Provider shall create a back-up copy of the Customer Data at least daily, shall ensure that each such copy is sufficient to enable the Provider to restore the Hosted Services to the state they were in at the time the back-up was taken, and shall retain and securely store each such copy for a minimum period of 14 days.
- 6.4 Within the period of 1 Business Day following receipt of a written request from the Customer, the Provider shall use all reasonable endeavours to restore to the Platform the Customer Data stored in any back-up copy created and stored by the Provider in accordance with Clause 6.3. The Customer acknowledges that this process will overwrite the Customer Data stored on the Platform prior to the restoration.

7. Mobile App

- 7.1 The parties acknowledge and agree that in the use of any Mobile App that may become part of the Service in future, the parties' respective rights and obligations and any liabilities of either party arising out of the use of the Mobile App shall be subject to separate terms and conditions, and accordingly these Terms and Conditions shall not govern any such use, rights, obligations or liabilities.

8. No assignment of Intellectual Property Rights

- 8.1 Nothing in the Agreement shall operate to assign or transfer any Intellectual Property Rights from the Provider to the Customer, or from the Customer to the Provider.

9. Charges

- 9.1 The Customer shall pay the Charges to the Provider in accordance with these Terms and Conditions.
- 9.2 All amounts stated in or in relation to these Terms and Conditions are, unless the context requires otherwise, stated exclusive of any applicable value added tax, which will be added to those amounts and payable by the Customer to the Provider.

10. Payments

- 10.1 The Provider shall issue invoices for the Charges to the Customer in advance of the period to which they relate.
- 10.2 The Customer must pay the Charges to the Provider within the period of 30 days following the issue of an invoice in accordance with this Clause.
- 10.3 The Customer must pay the Charges using such payment details as are notified by the Provider to the Customer from time to time.
- 10.4 If the Customer does not pay any amount properly due to the Provider under these Terms and Conditions, the Provider may:
 - (a) charge the Customer interest on the overdue amount at the rate of 8% per annum above the Bank of England base rate from time to time (which interest will accrue daily until the date of actual payment and be compounded at the end of each calendar month); or
 - (b) claim interest and statutory compensation from the Customer pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.

11. Provider's confidentiality obligations

- 11.1 The Provider must:
 - (a) keep the Customer Confidential Information strictly confidential;
 - (b) not disclose the Customer Confidential Information to any person without the Customer's prior written consent;
 - (c) use the same degree of care to protect the confidentiality of the Customer Confidential Information as the Provider uses to protect the Provider's own confidential information of a similar nature, being at least a reasonable degree of care;
- 11.2 This Clause 11 imposes no obligations upon the Provider with respect to Customer Confidential Information that:
 - (a) is known to the Provider before disclosure under these Terms and Conditions and is not subject to any other obligation of confidentiality;
 - (b) is or becomes publicly known through no act or default of the Provider; or
- 11.3 The restrictions in this Clause 11 do not apply to the extent that any Customer Confidential Information is required to be disclosed by any law or regulation, by any judicial or governmental order or request, or pursuant to disclosure requirements relating to the listing of the stock of the Provider on any recognised stock exchange.
- 11.4 The provisions of this Clause 11 shall continue in force indefinitely following the termination of the Agreement.

12. Data protection

- 12.1 The Customer warrants to the Provider that it has the legal right to disclose all Personal Data that it does in fact disclose to the Provider under or in connection with these Terms and Conditions.

- 12.2 To the extent that the Provider processes Personal Data disclosed by the Customer, the Provider warrants that:
- (a) it will act only on instructions from the Customer in relation to the processing of that Personal Data;
 - (b) it has in place appropriate security measures (both technical and organisational) against unlawful or unauthorised processing of that Personal Data and against loss or corruption of that Personal Data; and

13. Warranties

- 13.1 The Provider warrants to the Customer that:
- (a) the Provider has the legal right and authority to enter into the Agreement and to perform its obligations under these Terms and Conditions;
 - (b) the Provider will comply with all applicable legal and regulatory requirements applying to the exercise of the Provider's rights and the fulfilment of the Provider's obligations under these Terms and Conditions; and
 - (c) the Provider has or has access to all necessary know-how, expertise and experience to perform its obligations under these Terms and Conditions.
- 13.2 The Provider warrants to the Customer that:
- (a) the Platform and Hosted Services will conform in all material respects with the Hosted Services Specification;
 - (b) the Hosted Services will be free from Hosted Services Defects;
 - (c) the application of Updates and Upgrades to the Platform by the Provider will not introduce any Hosted Services Defects into the Hosted Services;
 - (d) the Platform will be free from viruses, worms, Trojan horses, ransomware, spyware, adware and other malicious software programs; and
 - (e) the Platform will incorporate security features reflecting the requirements of good industry practice.
- 13.3 The Provider warrants to the Customer that the Hosted Services, when used by the Customer in accordance with these Terms and Conditions, will not breach any laws, statutes or regulations applicable under English law.
- 13.4 The Provider warrants to the Customer that the Hosted Services, when used by the Customer in accordance with these Terms and Conditions, will not infringe the Intellectual Property Rights of any person in any jurisdiction and under any applicable law.
- 13.5 The Customer warrants to the Provider that it has the legal right and authority to enter into the Agreement and to perform its obligations under the Agreement.

13.6 All of the parties' warranties and representations in respect of the subject matter of the Agreement are expressly set out in these Terms and Conditions. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of the Agreement will be implied into the Agreement or any related contract.

14. Acknowledgements and warranty limitations

14.1 The Customer acknowledges that complex software is never wholly free from defects, errors and bugs; and subject to the other provisions of these Terms and Conditions, the Provider gives no warranty or representation that the Hosted Services will be wholly free from defects, errors and bugs.

14.2 The Customer acknowledges that complex software is never entirely free from security vulnerabilities; and subject to the other provisions of these Terms and Conditions, the Provider gives no warranty or representation that the Hosted Services will be entirely secure.

14.3 The Customer acknowledges that the Hosted Services are designed to be compatible only with that software and those systems specified as compatible in the Hosted Services Specification; and the Provider does not warrant or represent that the Hosted Services will be compatible with any other software or systems.

14.4 The Customer acknowledges that the Provider will not provide any legal, financial, accountancy or taxation advice under these Terms and Conditions or in relation to the Hosted Services; and, except to the extent expressly provided otherwise in these Terms and Conditions, the Provider does not warrant or represent that the Hosted Services or the use of the Hosted Services by the Customer will not give rise to any legal liability on the part of the Customer or any other person.

15. Limitations and exclusions of liability

15.1 Nothing in the Agreement will:

- (a) limit or exclude any liability for death or personal injury resulting from negligence;
- (b) limit or exclude any liability for fraud or fraudulent misrepresentation;
- (c) limit any liabilities in any way that is not permitted under applicable law; or
- (d) exclude any liabilities that may not be excluded under applicable law.

15.2 The limitations and exclusions of liability set out in this Clause 15 and elsewhere in the Agreement:

- (a) are subject to Clause 15.1; and
- (b) govern all liabilities arising under the Agreement or relating to the subject matter of the Agreement, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty, except to the extent expressly provided otherwise in the Agreement.

- 15.3 Neither party shall be liable to the other party in respect of any losses arising out of a Force Majeure Event.
- 15.4 Neither party shall be liable to the other party in respect of any loss of profits or anticipated savings.
- 15.5 Neither party shall be liable to the other party in respect of any loss of revenue or income.
- 15.6 Neither party shall be liable to the other party in respect of any loss of use or production.
- 15.7 Neither party shall be liable to the other party in respect of any loss of business, contracts or opportunities.
- 15.8 Neither party shall be liable to the other party in respect of any loss or corruption of any data, database or software.
- 15.9 Neither party shall be liable to the other party in respect of any special, indirect or consequential loss or damage.
- 15.10 The liability of each party to the other party under the Agreement in respect of any event or series of related events shall not exceed the greater of:
- (a) £1,000; and
 - (b) the total amount paid and payable by the Customer to the Provider under the Agreement in the 12 month period preceding the commencement of the event or events.
- 15.11 The aggregate liability of each party to the other party under the Agreement shall not exceed the greater of:
- (a) £1000; and
 - (b) the total amount paid and payable by the Customer to the Provider under the Agreement.

16. Force Majeure Event

- 16.1 If a Force Majeure Event gives rise to a failure or delay in either party performing any obligation under the Agreement that obligation will be suspended for the duration of the Force Majeure Event.
- 16.2 A party that becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in that party performing any obligation under the Agreement, must:
- (a) promptly notify the other; and
 - (b) inform the other of the period for which it is estimated that such failure or delay will continue.
- 16.3 A party whose performance of its obligations under the Agreement is affected by a Force Majeure Event must take reasonable steps to mitigate the effects of the Force Majeure Event.

17. Termination

- 17.1 Either party may terminate the Agreement by giving to the other party at least 30 days' written notice of termination.

- 17.2 Either party may terminate the Agreement immediately by giving written notice of termination to the other party if the other party commits a material breach of these Terms and Conditions.
- 17.3 Either party may terminate the Agreement immediately by giving written notice of termination to the other party if:
- (a) the other party:
 - (i) is dissolved;
 - (ii) ceases to conduct all (or substantially all) of its business;
 - (iii) is or becomes unable to pay its debts as they fall due;
 - (iv) is or becomes insolvent or is declared insolvent; or
 - (v) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;
 - (b) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;
 - (c) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up;
 - (d) if that other party is an individual:
 - (i) that other party dies;
 - (ii) as a result of illness or incapacity, that other party becomes incapable of managing his or her own affairs; or
 - (iii) that other party is the subject of a bankruptcy petition or order.

18. Effects of termination

- 18.1 Upon the termination of the Agreement, all of the provisions of these Terms and Conditions shall cease to have effect, save that the following provisions of these Terms and Conditions shall survive and continue to have effect (in accordance with their express terms or otherwise indefinitely): Clauses 1, 3.11, 7, 10.2, 10.4, 11, 15, 18, 21 and 22.
- 18.2 The termination of the Agreement shall not affect the accrued rights of either party.
- 18.3 Within 30 days following the termination of the Agreement for any reason:
- (a) the Customer must pay to the Provider any Charges in respect of Services provided to the Customer before the termination of the Agreement; and
 - (b) the Provider must refund to the Customer any Charges paid by the Customer to the Provider in respect of Services that were to be provided to the Customer after the termination of the Agreement,
- without prejudice to the parties' other legal rights.

19. Notices

19.1 Any notice from one party to the other party under these Terms and Conditions must be given by one of the following methods (using the relevant contact details set out in the Services Proposal and Clause 19.2):

- (a) delivered personally or sent by courier, in which case the notice shall be deemed to be received upon delivery;
- (b) sent by recorded signed-for post, in which case the notice shall be deemed to be received 2 Business Days following posting;

providing that if the stated time of deemed receipt is not within Business Hours, then the time of deemed receipt shall be when Business Hours next begin after the stated time.

19.2 The Provider's contact details for notices under this Clause 19 are as follows: Katalysis Net Ltd, Tollgate House, 69-71 High Street, Harpenden, Herts AL5 2SL;

19.3 The addressee and contact details set out in Section 4 of the Services Order Form and Clause 19.2 may be updated from time to time by a party giving written notice of the update to the other party in accordance with this Clause 19.

20. Subcontracting

20.1 The Provider may subcontract any of its obligations under the Agreement.

20.2 The Provider shall remain responsible to the Customer for the performance of any subcontracted obligations.

20.3 Notwithstanding any other provision of these Terms and Conditions, the Customer acknowledges and agrees that the Provider may subcontract to any reputable third party hosting business the hosting of the Platform and the provision of services in relation to the support and maintenance of elements of the Platform.

21. General

21.1 No breach of any provision of the Agreement shall be waived except with the express written consent of the party not in breach.

21.2 If any provision of the Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions of the Agreement will continue in effect. If any unlawful and/or unenforceable provision would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant provision will be deemed to be deleted).

21.3 The Agreement may not be varied except by a written document signed by or on behalf of each of the parties.

21.4 The Customer hereby agrees that the Provider may assign the Provider's contractual rights and obligations under the Agreement to any third party. The Customer must not without the prior written consent of the Provider assign, transfer or otherwise deal with any of the Customer's contractual rights or obligations under the Agreement.

- 21.5 The Agreement is made for the benefit of the parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to the Agreement are not subject to the consent of any third party.
- 21.6 Subject to Clause 15.1, a Services Order Form, together with these Terms and Conditions and any Schedules, shall constitute the entire agreement between the parties in relation to the subject matter of that Services Order Form, and shall supersede all previous agreements, arrangements and understandings between the parties in respect of that subject matter.
- 21.7 The Agreement shall be governed by and construed in accordance with English law.
- 21.8 The courts of England shall have exclusive jurisdiction to adjudicate any dispute arising under or in connection with the Agreement.

22. Interpretation

- 22.1 In these Terms and Conditions, a reference to a statute or statutory provision includes a reference to:
- (a) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and
 - (b) any subordinate legislation made under that statute or statutory provision.
- 22.2 The Clause headings do not affect the interpretation of these Terms and Conditions.
- 22.3 In these Terms and Conditions, general words shall not be given a restrictive interpretation by reason of being preceded or followed by words indicating a particular class of acts, matters or things.

