

1. Application

These Terms and Conditions shall apply to the provision of the services detailed overleaf ("Services") by Modern Democracy Ltd a company registered in Northern Ireland (NI 623698) of Catalyst Inc., Bay Road, Derry BT48 7TG ("Supplier") to you ("Client"). No other terms and conditions shall apply to the provision of Services unless agreed upon in writing between the Supplier and the Client. In the event of a conflict between these Terms and Conditions and the Data Processing Agreement, the terms of the Data Processing Agreement shall take precedence.

2. Interpretation in these Terms and Conditions

"business day" means a day other than a Saturday, Sunday or bank holiday. Headings are for convenience only and shall not affect their interpretation. Words imparting the singular number shall include the plural and vice-versa.

"Confidential Information" means information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored and whether it is marked as confidential or not) including information which relates to the business, functions, affairs, properties, assets, trading practices, services, developments, trade secrets, intellectual property rights, know-how, personnel, customers, clients and suppliers of either party.

"Data Processor Agreement" means the data processor agreement attached at Annex 1.

"Software" has the meaning given in Clause 10.1.

3. Services

3.1 With effect from the commencement date stated in this quotation and in consideration of the Fees being paid in accordance with these Terms and Conditions, the Supplier shall provide the Services to the Client.

3.2 The Supplier shall use reasonable care and skill in its performance of the Services and shall ensure compliance with any and all relevant codes of practice.

3.3 The Supplier shall use its best endeavours to complete its performance of the Services within the time agreed as set out in this quotation; however, time will not be of the essence in the performance of these obligations. The exception to this shall be snap General Elections; should a snap General Election be called then the Supplier shall perform the Services within the timescales agreed by the Supplier in the implementation plan for such snap General Election (deemed adjusted to accommodate the new snap date) and time shall be of the essence in respect of such performance.

3.4 The Supplier agrees to deliver the equipment (as set out in the quotation) used in connection with the Services at the Client's designated site on a date as agreed between the parties provided that the delivery date shall be no later than 7 working days before a planned or snap General Election ("Delivery"). Time is of the essence in relation to the Delivery.

3.5 The Software and equipment forming part of the Services will be of satisfactory quality and will be suitable for the purpose for which it is intended. If, during the term of this Agreement, the Client notifies the Supplier of any defect or fault in the Software or equipment, and such defect does not result from the Client, or anyone acting with the authority of the Client, having modified the Software or equipment or used it outside the terms of this Agreement for a purpose or in a context other than the purpose or context for which it was designed or in combination with any other Software or equipment not provided by the Supplier, or the Software having not been loaded onto suitably configured equipment, the Supplier shall use reasonable endeavours to remedy that defect or fault as soon as practicable, provided that Client provides all the information that may be necessary to assist the Supplier in resolving the defect or fault, including a documented example of any defect or fault, or sufficient information to enable the Supplier to re-create the defect or fault.

3.6 The Supplier shall ensure that support is available by telephone and email during the hours of 9am-5pm from Monday to Thursday and 9am-3pm on Friday to provide assistance to the Client in respect of remedying any defects or providing advice on the use of Software forming part of the Services.

3.7 Subject to reasonable notice, the Supplier will provide information that the Client reasonably requests as soon as reasonably practicable in order to meet its audit requirements.

4. Client Obligations

4.1 The Client shall use its best and reasonable endeavours to provide the Supplier with access to any and all information, materials, properties and other matters which are required to enable the Supplier to provide the Services.

4.2 The Client shall use its best and reasonable endeavours to acquire any permissions, consents, licences or other matters which are reasonably required to enable the Supplier to provide the Services.

4.3 The Supplier shall not be liable for any delay or failure to provide the Services where such delay or failure is due to the Client's failure to comply with the provisions of this Clause 4.

5. Fees

5.1 The fees ("Fees") for the Services are set out in this quotation.

5.2 In addition to the Fees, the Supplier shall be entitled to recover from the Client reasonable incidental expenses for materials used and for third party goods and / or services supplied in addition to the Services, provided that the Client has given its prior written consent to such additional charges.

5.3 The Client shall pay the Supplier for any additional services provided by the Supplier that are not specified in this quotation in accordance with the Supplier's then current, applicable daily rate in effect at the time of performance or such other rate as may be agreed between the Supplier and the Client. The provisions of sub-Clause 5.2 shall also apply to such additional services.

5.4 The Fees are exclusive of any applicable VAT and other taxes or levies which are imposed or charged by any competent authority.

5.5 The Client shall be required to pay the Fees as detailed in this quotation at the time specified for payment of the Fees in this quotation.

5.6 If the Client does not pay the Fees as detailed in this quotation to the Supplier in accordance with sub-Clause 5.5 the Supplier shall have the right to withhold provision of the Services until payment of the Fees is received or may terminate in accordance with Clause 9.

5.7 The Fees shall be non-refundable unless the Supplier fails to provide the Services and is at fault for such failure (where the failure is not the fault of the Supplier, no refund shall be made).

5.8 The Fees will be adjusted in the second year and in each subsequent year of the agreement by: the increase in the annual rate of inflation (CPI Annual Rate 00: All Items 2015 = 100) published by the Office for National Statistics in June at the

end of the first year of the agreement and in June of each subsequent year of the agreement.

5.9 The Client acknowledges and agrees that if at any time during the term of this agreement the Client, being a Council, merges with any other Council, that is not at the time of the merger a client of the Supplier under a separate agreement for services, it shall notify the Supplier in writing immediately following the Client becoming aware of any such merger or proposed merger.

5.10 Once the Client has given notice in accordance with clause 5.9 the parties shall negotiate in good faith a further or alternative amount to be paid by way of Fees to the Supplier by the Client (the "Revised Fees"). Any Revised Fees that are agreed by the parties under this clause 5.10 shall be paid in accordance with the provisions of clause 5.5.

5.11 If the parties are unable to agree on the Revised Fees, the Supplier may terminate this agreement with immediate effect by giving written notice to the Client.

6. Quotation, Contract and Variation

6.1 This quotation constitutes written acceptance and confirmation by the Supplier of the Client's order for the Services (as agreed between the Supplier and the Client).

6.2 Having issued this quotation which is a contractual offer to provide the Services, the Supplier agrees to enter into a contract for the provision of Services upon the Client's written acceptance of this quotation and of these Terms and Conditions (the Contract).

6.3 This quotation is valid for a period of 30 days from the date shown overleaf unless expressly withdrawn by the Supplier at an earlier time.

6.4 Either the Supplier or the Client may cancel the order for any reason prior to the Client's acceptance (or rejection) of this quotation.

6.5 If the Client wishes to vary any details of the Services it must notify the Supplier in writing as soon as possible. The Supplier shall endeavour to make any required changes and additional costs shall be invoiced to the Client.

6.6 If, due to circumstances beyond its control, the Supplier is required to make any change in the Services or the arrangements relating to the provision thereof, it shall notify the Client immediately. The Supplier shall endeavour to keep any such changes to a minimum and shall seek to offer the Client arrangements as close to the original as is reasonably possible in the circumstances.

7. Payment

7.1 Following the Client's acceptance of this quotation, the Supplier shall invoice the Client for the Fees on the invoice dates set out in this quotation.

7.2 The Client shall pay the Fees due within 30 days of the date of receipt of the Supplier's invoice or otherwise in accordance with any credit terms agreed between the Supplier and the Client.

7.3 If the Client fails to make payment within the period in sub-Clause 7.2, the Supplier shall charge the Client interest at the rate of 4% per annum above the Bank of England (UK) base rate from time to time on the amount outstanding until payment is received in full.

7.4 If the Client fails to make payment within the period in sub-Clause 7.2 and fails to remedy such late payment within 14 days of receipt of a notice from the Supplier informing the Client that payment is overdue, then the Supplier shall have the right to suspend any further provision of the Services and to cancel any future services which may have been ordered by, or otherwise arranged with, the Client.

7.5 Receipts for payment will be issued by the Supplier only at the Client's request.

7.6 All payments must be made in £ sterling unless otherwise agreed in writing between the Supplier and the Client.

8. Sub-Contracting and equipment hire

8.1 The Supplier shall, subject to the terms of the Data Processing Agreement, be free to sub-contract the provision of the Services (or any part thereof).

8.2 Where the Supplier sub-contracts the provision of the Services or any part thereof it shall:

- (a) ensure that any and all sub-contractors are reasonably skilled in the relevant practices
- (b) not pass any additional charges that may be incurred through the use of such sub-contractors on to the Client; and
- (c) impose obligations on its sub-contractor in the same terms as those imposed on it under this Contract and procures that the sub-contractor complies with such terms.

8.3 Where the Supplier engages an equipment hire company to provide equipment to the Client in order to deliver the Services, the Client will be subject to the terms and conditions of the equipment hire company as if they were the customer of the equipment hire company in the place of the Supplier. The terms and conditions of the equipment hire company will be notified to the Client prior to commencement of the equipment hire.

9. Termination

9.1 A party may terminate this contract immediately if the other party:

- (a) commits an irremediable material breach of its obligations under these Terms and Conditions or commits a remediable material breach which it fails to remedy following receipt of 14 days' written notice requiring it to do so; or
- (b) is or becomes the subject of a bankruptcy order or takes advantage of any other statutory provision for the relief of insolvent debtors; or
- (c) enters into a voluntary arrangement under Part 1 of the Insolvency Act 1986, or any other scheme or arrangement is made with its creditors; or (d) convenes any meeting of its creditors, enters into voluntary or compulsory liquidation, has a receiver, manager, administrator or administrative receiver appointed in respect of its assets or undertakings or any part thereof, any documents are filed with the court for the appointment of an administrator in respect of the other party, notice of intention to appoint an administrator is given by the other party or any of its directors or officers or by a qualifying floating charge holder (as defined in para. 14 of Schedule B1 of the Insolvency Act 1986), a resolution is passed or petition presented to any court for the winding up of the other party or for the granting of an administration order in respect of the other party, or any proceedings are commenced relating to the insolvency or possible insolvency of the other party or the other party is declared or determined to be insolvent for any purpose.

10. Intellectual Property and Data Protection

10.1. The copyright, title and intellectual property rights in and to any software supplied with or as part of the Services, including programs and documentation ("the Software") shall be retained by the Supplier.

10.2 The Client is granted the right to use the Software only for the term of the Contract. The Client's receipt of any equipment provided or hired as part of the

Services indicates acceptance of the terms of any licence for software supplied and the Client shall indemnify the Company against any reasonable and foreseeable liability, damage, cost or expense which it incurs in relation to any failure by the Client to observe the terms of any such licence.

10.3 The Software shall only be used as part of the equipment with which it is provided or hired and the Client undertakes not to copy, in whole or in part (other than for use on such equipment), alter, adapt, modify or translate the Software nor to communicate the Software to any third party other than those of its employees and agents who are directly engaged in the use of the Software with such equipment on the Client's behalf.

10.4 Upon the expiration of the Contract (or termination thereof for any reason) the Client shall (unless otherwise agreed by the Supplier in writing) return the Software and any copies thereof to the Supplier's premises at its own risk. The obligations in respect of Software as set out in these Clauses 10.1 to 10.4 inclusive shall survive notwithstanding any termination or expiration of the Contract.

10.5 The Supplier undertakes to defend the Client from and against any claim or action that the possession, use, development, modification or maintenance of the Software (or any part thereof) infringes the Intellectual Property Rights of a third party (**Claim**) and shall fully indemnify and hold harmless the Client from and against any losses, damages, costs (including all legal fees) and expenses incurred by or awarded against the Client as a result of, or in connection with, any such Claim.

10.6 To the extent that these Terms and Conditions conflict with the terms of any other licence agreement entered into by the parties in respect of the Software, the terms of that licence agreement shall prevail.

10.7 All personal information or data that the Supplier may use will be collected, processed, and held in accordance with the Data Processor Agreement. If there is any conflict or ambiguity between any of the provisions in this Contract and the Data Processor Agreement, the terms of the Data Processor Agreement shall prevail.

11. Liability and Indemnity

11.1 The Supplier will, not by reason of any representation, implied warranty, condition or other term, or any duty at common law or under these Terms and Conditions, be liable for any loss of profit or any indirect, special or consequential loss, loss of goodwill, damage, costs, expenses or other claims (whether caused by the Supplier's employees, agents or otherwise) in connection with its provision of the Services or the performance of any of its other obligations under these Terms and Conditions or this quotation or with the use by the Client of the Services supplied.

11.2 The Supplier shall not be liable to the Client or be deemed to be in breach of these Terms and Conditions by reason of any delay in performing, or any failure to perform, any of the Supplier's obligations if such delay or failure arises under Cause 13.1.

11.3 The Client shall indemnify the Supplier against all damages, costs, claims and expenses suffered by the Supplier arising from:

(a) any loss or damage to any equipment (including that belonging to third parties) caused by the Client or its agents or employees.
(b) any early termination of this Agreement by the Client, save where such early termination is the exercise of the termination right included at clause 18.2.

11.4 Without prejudice to Clause 11.5:

(a) neither party's total liability to the other in respect of breaches occurring within any contract year shall not exceed 125% of the Fees payable in the contract year in which the breach occurs; and
(b) neither Party's aggregate total liability to the other under this Agreement shall exceed an amount equal to the Fees payable by the Client pursuant to Clause 5. The limitation of liability in this Clause 11.4 shall not apply to the indemnity in Clause 11.3.

11.5 Nothing in these Terms and Conditions shall limit or exclude either Party's liability for death or personal injury caused by its negligence or for any other matters for which it would be unlawful to exclude or limit liability.

11.6 The Client acknowledges that procuring insurance in respect of certain types of liability at a commercially viable price is difficult. The limits and exclusions in this clause reflect the insurance cover the Supplier has been able to arrange and the Client acknowledges that it is responsible for making its own arrangements for the insurance of any excess liability.

12. Confidentiality

12.1 Each party shall keep the other party's Confidential Information confidential and shall not:

(a) use such Confidential Information except for the purpose of performing its rights and obligations under or in connection with this Agreement; or
(b) disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this Clause 12.

12.2 The obligation to maintain confidentiality of Confidential Information does not apply to any Confidential information:

(a) which the other party confirms in writing is not required to be treated as Confidential Information.
(b) which is obtained from a third party who is lawfully authorised to disclose such information without any obligation of confidentiality.
(c) which a party is required to disclose by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable Law, including the freedom of information act 2000 or the environmental information regulations 2004.
(d) which is in or enters the public domain other than through any disclosure prohibited by this Contract.
(e) which a party can demonstrate was lawfully in its possession prior to receipt from the other party; or
(f) which is required to be disclosed by the Client on a confidential basis to any central government or regulatory body.

12.3 A party may disclose the other party's Confidential information to those of its Representatives who need to know such Confidential Information for the purposes of performing or advising on the party's obligations under this Agreement, provided that:

(a) it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and

(b) it procures that its Representatives shall, in relation to any Confidential Information disclosed to them, comply with the obligations set out in this Clause as if they were a party to this Agreement.

(c) and at all times, it is liable for the failure of any Representatives to comply with the obligations set out in this Clause 12.3.

The provisions of this Clause 12 shall survive for a period of six years from the termination of this Agreement

13. Force Majeure

13.1 Neither party shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that party. Such causes include, but are not limited to: power failure, Internet Service Provider failure, interruption or failure of utility or service (including without limitation WiFi or 4G/5G services), interruption or failure of telecommunication or digital transmission links, Internet slow-downs or failures, cyberattack, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war or any other event that is beyond the control of the party in question.

13.2 Neither party shall be permitted to rely on this Clause 13 in respect of any obligation to pay a sum of money under this Agreement.

14. Communications

14.1 All notices under these Terms and Conditions shall be in writing and signed by, or on behalf of, the party giving notice (or a duly authorised officer of that party).

14.2 Notices shall be deemed to have been duly given:

(a) when delivered, if delivered by courier or other messenger (including registered mail) during the normal business hours of the recipient;
(b) when sent, if transmitted by email and a successful transmission report or return receipt is generated.
(c) on the fifth business day following mailing, if mailed by national ordinary mail; or
(d) on the tenth business day following mailing, if mailed by airmail.

14.3 All notices under these Terms and Conditions shall be addressed to the most recent address, email address notified to the other party for such purposes.

15. No Waiver

15.1 No waiver by the Supplier of any breach of these Terms and Conditions by the Client shall be considered as a waiver of any subsequent breach of the same or any other provision.

15.2 No failure or delay on the part of either the Supplier or the Client to exercise any right, power or privilege under these Terms and Conditions shall operate as a waiver of, nor shall any single or partial exercise of any such right, power or privilege preclude, any other or further exercise of any other right, power or privilege.

16. Severance

In the event that one or more of these Terms and Conditions is found to be unlawful, invalid or otherwise unenforceable, that provision or those provisions (as applicable) shall be deemed severed from the remainder of these Terms and Conditions (which shall remain valid and enforceable).

17. Third Party Rights

A person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement, but this does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

18. Variation

18.1 The Supplier may change and update these Terms and Conditions from time to time. To the extent that the Supplier does so, the Supplier shall notify the Client in writing of any changes as soon as reasonably practicable. The Client acknowledges and agrees that the use of the Services and/or the Software, including any continued use after an update in accordance with this Clause 18.1, shall constitute acceptance of the updated Terms and Conditions.

18.2 If the Client does not wish to accept these Terms and Conditions following an update in accordance with Clause 18.1, the Client may terminate this contract immediately by giving written notice to the Supplier.

19. Dispute Resolution

19.1 All disputes between the parties arising out of or in connection with this Contract shall, in the first instance, be referred to the parties' respective contract managers for resolution.

19.2 If the dispute is not resolved within a maximum of fourteen (14) days, the dispute may then be referred to the parties' directors or similar senior management position for resolution.

19.3 If the dispute is not resolved within a maximum of fourteen (14) days, such dispute may be referred, by agreement between the parties, to a mediator. The mediator shall be selected by mutual agreement or, failing such agreement within fourteen (14) days, shall be selected by the Centre for Effective Dispute Resolution or such other similar body as may be agreed. Decisions of the mediator shall be final and binding. The fees of the mediator shall be borne by the parties in such proportions as may be determined by the mediator.

If either party does not agree with any dispute being referred for resolution in accordance with Clause 19.1, then the dispute shall be determined by the courts in accordance with Clause 20.

20. Law and Jurisdiction

20.1 These Terms and Conditions (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of England.

20.2 Any dispute, controversy, proceedings or claim between the Seller and the Buyer relating to these Terms and Conditions (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the non-exclusive jurisdiction of the courts of England.