Business Catalyst Additional Terms of Use

Last updated June 18, 2014. Replaces the February 17, 2012 version in its entirety.

Your use of the Business Catalyst Services is subject to these Additional Terms, which supplement and incorporate into the Adobe.com Terms of Use ("Terms") located at http://www.adobe.com/go/terms. Capitalized terms not defined here have the same meaning as defined in the Terms.

1. Description of the Services.

1.1 We provide access to certain services, features, applications, and tools related to website hosting and other web-based solutions. Depending on the plan you purchase, the Services may include, without limitation, registration functionality, purchasing functionality, email marketing campaign delivery, web analytics, customer relationship management, reporting, and domain name system services. Some Services may be subject to additional terms and conditions. In addition, certain additional optional Services may also be made available for a fee via a marketplace after the purchase of your plan.

1.2 We may: (a) refuse to provide any person with the Services; (b) determine which Services are available for resale by Partners; and (c) offer certain Services for resale only by select Partners.

2. Definitions.

2.1 "**End User**" means an individual who interacts with the Services as a result of such party's relationship with or connection to you. If you are a Site Owner (as defined below), an End User is an individual who uses your website that is hosted through the Services. If you are a Partner (as defined below), an End User means: (i) your Client (as defined below); and (ii) the individuals who use your client's website that is hosted through the Services.

2.2 "**Information**" means personally identifiable information. "End User Information" means personally identifiable information about an End User.

2.3 "**Partner**" is the term we use to refer to you if you are permitted by us to resell the Services to third parties. We refer to each such third party as your "Client."

2.4 "**Site Owner**" is the term we use to refer to you if you use the Services on your own behalf.

3. Your Compliance With This Agreement.

Each website for which we provide Services on your behalf (including, if you are a Partner, your Clients' websites) must contain a clear and conspicuous link to a terms of use and a privacy policy that comply with all applicable laws, rules, and regulations.

4. Partner Obligations.

If you are a Partner, then you agree to the following additional obligations:

4.1 If we provide notice to you that a website hosted through the Services on behalf of your Client may contain content that infringes upon the copyright of a third party, then you will work with your Client to, within 5 days of receipt of such notice, either: (a) remove the content from the website and provide us with written confirmation of such removal; or (b) provide us with a written counter-notification. We may remove the content if we do not receive the confirmation or counter-notification within the 5-day period.

4.2 You are responsible for your Clients' compliance with applicable laws in connection with their use of the Services.

4.3 You will obtain any authorizations from End Users necessary for us to provide the Services and to access and process End User Information.

4.4 Your agreement with each Client gives us the right to access, use, remove, or delete content as set forth in this Agreement. In any such agreement, you do not have to identify Adobe by name; you may refer to Adobe as your service provider.

4.5 You will promote the Services. However, we are not obligated to provide you with a non-exclusive license to use re-brandable material to support such marketing efforts.

5. Your Compliance With Applicable Law.

You must comply with all applicable local, state, federal and international law and rules in regard to the use, and, if you are a Partner, the resale, of the Services. The applicable law may include those governing the collection, use, disclosure, and retention of personal information; the advertisement of products and services; the sending of commercial email messages, text messages, and other communications; and export and import. If you are a Partner, you are further responsible for your End User clients' compliance with applicable law in connection with their use of the Services.

6. Commercial messages and Spam.

You will not directly or indirectly use the Services, or permit the Services to be used, to deliver or facilitate unsolicited commercial email or SMS messages. You are not allowed to use the services to send commercial SMS messages.

7. Purchases.

7.1 Use of the Services is subject to your payment of fees, which may vary according to the plan you have chosen. We are not liable for your inability to collect payments from your Clients. We will collect the fees for the Services at the time of purchase. Your subscription plan will renew automatically until you cancel. You may cancel your subscription before the end of your subscription period. If you do, you will have access to the Services until the end of your the subscription period. We will not provide a refund or credit for any unused portion. Price may change at the end of your subscription period.

7.2 If you believe your invoice is incorrect, you must contact us in writing within 60 days of the applicable invoice date to be eligible to receive an adjustment or credit at our discretion.

8. Delinquent Accounts.

8.1 We reserve the right to disable any web sites or other service features maintained in connection with the Services if any applicable fees are 30 days past due. Past due fees are subject to interest of 1.0% per month on any outstanding balance, or the maximum permitted by law, whichever is less, plus all collection expenses. We may charge any applicable fees (including past due fees) to your payment card.

8.2 We may impose a reconnection fee if your use of the Services is terminated or suspended and you later request reconnection. We have no obligation to retain your content and that both content and End User Information may be irretrievably deleted if any applicable fees are thirty (30) days or more past due.

8.3 If you are receiving free use of the Services, then we may suspend or terminate your use at any time and we may delete your content and End User Information associated with such use.

9. Commissions.

Certain Partners are eligible to accrue commissions at a rate and in the form defined in the terms of the plan you select. Commissions are accrued on the applicable invoiced amount at the time the invoice is paid. Cash commissions are payable on request through the Partner Portal when the accrued total exceeds US $500 or the local currency equivalent according to the plan you select. Accrued commissions totaling less than US $500 are forfeited if this Agreement is terminated for any reason except our breach. We reserve the right to modify the commission percentage and list prices at any time, however any such changes will not negatively affect your commission calculations until 60 days after notice of such changes.

10. License to Use the Services.

10.1 Site Owner. If you are a Site Owner, then we grant you a non-exclusive, non-transferable, revocable right for the individuals identified at the time of purchase to access and use the Services for your own internal business purposes, subject to your compliance with these terms.

10.2 Partner. If you are a Partner, then we grant you a non-exclusive, non-transferable, revocable right to resell the Services that you purchase, subject to your compliance with these terms.

10.3 Web Agency. If you are a Partner who own or are opening a service business dedicated to web site design, user experience design, or search engine optimization or marketing, then we will provide you with a free website for that purpose. The free website must be used exclusively for promoting yourself or your company, as well as the services you or your company provide. You are not allowed to:

(a) use the free website for any other business than your own or that of your company;

(b) sell or promote goods of any kind on the website; or

(c) give or sell the free website to any third party.

10.4 Marketplace. When you purchase Services that are made available through a marketplace, you must authorize the Services to be installed and to run on your website in order to use such Services. Upon authorization, the Services will be installed and be made available to you.

11. Service Limitations and Excess Fees.

11.1 Certain Services may have limitations, which we may change from time to time in its discretion. We may charge you excess fees if you exceed such limitations. The Service limitations may involve (but are not limited to): (a) the number of individuals associated with you who are authorized to use the Services; (b) the amount of disk storage space, CPU load, and API calls available to you; (c) the amount of incoming traffic to your or your client's website; (d) the number of e-mail marketing broadcasts you may undertake per month on behalf of yourself or a client; and (e) the number of SMS messages available to you or a client. Our failure to notify you of excess usage shall not affect your responsibility to pay for it.

11.2 We may impose and enforce limits on payment velocity (that is, the number of transactions per a certain unit of time) and any other feature of the Services. We may enforce against a website by blacklisting the website's IP address.

12. Email Broadcasts.

If a Service includes e-mail marketing broadcasts, such broadcasts will be undertaken at any time during the date specified for such broadcasts, and may take up to 24 hours to deliver starting from the commencement of such broadcasts. Further, we cannot guarantee the delivery of such broadcasts by third-party intermediaries. If a Service includes real-time alerts, such alerts will be sent as soon as possible, however we cannot guarantee their delivery by third-party providers and aggregators or other intermediaries.

13. Survival.

The following sections of these Additional Terms shall survive termination: 5, 7, 8, 15, and 16. We are not liable to you or any third party for any damages that may result or arise out of our termination of your account and/or access to the Services.

14. Filtering.

Pursuant to 47 U.S.C. Section 230(d) as amended, we hereby notify you that parental control protections (such as computer hardware, software or filtering services) are commercially available that may assist you in limiting access to material that is harmful to minors. Information identifying current providers of such protections is available on the two websites GetNetWise (http://kids.getnetwise.org) and OnGuard Online (http://onguardonline.gov). Please note that Company does not endorse any of the products or services listed at such site.

15. Notice for California Residents.

Under California Civil Code Section 1789.3, California users are entitled to the following consumer rights notice: If you have a question or complaint regarding the Site, please send an e-mail through the Adobe Customer Support Portal https://www.adobe.com/go/support_contact. You may also contact us by writing to 345 Park Avenue, San Jose, CA 95110-2704, or by calling us at 800-833-6687. California residents may reach the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs by mail at 1625 North Market Blvd., Sacramento, CA 95834, or by telephone at (916) 445-1254 or (800) 952-5210.

16. Miscellaneous.

This Agreement does not, and shall not be construed to, create any partnership (notwithstanding the use of the term "Partner" in these Additional Terms), joint venture, employer-employee, agency or franchisor-franchisee relationship between you and us. Any heading, caption or section title contained herein is inserted only as a matter of convenience, and in no way defines or explains any section or provision hereof. We will not be responsible for failures to fulfill any obligations due to causes beyond its control.

Business Catalyst TOU-en_GB-20140618_1212