



**Anti-spam terms and conditions:**

This document shall serve as the agreement (“Agreement”) by which First Call Computer Solutions (hereinafter referred to as “Katharion Authorized Partner” or “Partner”) will provide the end user (henceforth “Client” or “you”) with Katharion anti-spam and/or anti-virus services for your email system, pursuant to the terms and conditions set forth below.

**1. DEFINITIONS**

For the purpose of this Agreement the following definitions shall apply:

“Email” refers to Internet SMTP-based electronic messaging or mail;

“Spam” shall mean unsolicited bulk or commercial email, also referred to commonly as junk email;

“Email virus” or “virus” means malicious or malevolent computer software code that is propagated via Internet email and that can cause unwanted or harmful computer system behavior;

“Internet domain” or “domain” shall refer to the domain name used by Client for its Internet email.

**2. DESCRIPTION OF SERVICES**

Partner shall provide services relating to Client’s incoming Internet email, specifically Katharion’s anti-spam or bundled anti-spam and anti-virus services, as detailed on the attached Fee Schedule. Partner shall implement Katharion’s services via hardware and software located outside of Client’s network, and shall establish the designated behavior for detected spam as requested by Client. Partner’s services will include the initial configuration of its servers to filter incoming email for Client, training to Client’s designated system administrator, and ongoing administration and maintenance of Katharion’s anti-spam and anti-virus systems for Client.

**3. CLIENT’S RESPONSIBILITIES**

To initiate the service, Client will adjust its DNS (MX record) settings, or authorize Partner to do so, such that all emails addressed to Client’s domain(s) will pass through Katharion’s systems for detection and handling of spam and/or viruses. If Client does not directly control its DNS, Client will be responsible for directing the person or entity that controls DNS to make such changes. Client will provide Partner with all required information and technical data necessary for the provisioning of Katharion’s services.

Client will designate a primary point of contact with/for Partner and who will provide Partner all necessary information for the activation and continued provisioning of the services. Client may also assign an alternate, secondary contact in the event the main point of contact is not available. The designated contacts will act as the Client’s sole contacts with Partner for purposes of any applicable system training and/or technical support. While Partner will use reasonable efforts to provide relevant documentation and information, it is understood that certain features of the Katharion service may require minor configuration changes within Client’s specific email servers or email clients.

In the event of the termination of Katharion’s services, either by Partner, by Client or by Katharion, Client shall be responsible for adjusting its DNS (MX record) settings such that emails addressed to Client’s domain(s) no longer pass through Katharion’s systems. It is understood that Client’s failure to do so in a timely fashion may cause inbound email to the domain(s) to be lost. Partner may assist Client with this process, based on mutual agreement between Partner and Client.

**4. ADJUSTMENT OF FEES**

It is understood that Katharion's service fees are based on the number of email users at Client's domain, and that the number of such users may change over the course of this agreement. Client warrants that the number of email users it specified to Partner is a reasonably accurate number, and agrees to inform Partner of any substantial increase in the number of email users. Partner reserves the right to audit service usage, estimate the number of active mailboxes, and to adjust its fees to Client if there is a significant (in Partner's opinion) increase in the number of email users.

It is understood that Partner may rely on Client to provide a reasonably accurate estimate of the number of email users on Client's network. In the event that Partner determines that the number of active mailboxes is in substantial excess of the number specified by Client, Partner reserves the right to immediately terminate Katharion's services to Client, and to report the possible fraud or theft of service to law enforcement agencies, and to pursue all available legal remedies.

**5. EMAIL CONTENTS AND INTERNET DOMAINS**

By this Agreement, it is understood that Katharion is merely providing Client with the technical means and equipment required to, on a best effort basis, identify and filter spam, or spam and viruses, in Client's incoming email, and Katharion has no control over the contents or use of the incoming email, nor over Client's email system(s), web site or other Internet applications. Client agrees to comply with Katharion's policies for use of its services and any and all applicable local, state, federal, or international regulations. This includes but is not limited to laws regarding copyright, intellectual property, obscenity, libel, and export. Katharion shall not assume responsibility for any claims that may arise directly or indirectly from the content of email addressed from, addressed to, or received by Client's email system(s), and Client agrees to hold Katharion and Partner harmless from any and all claims arising from such content, whether by Client, any of its employees or agents, or any third parties. The above shall apply to any email content addressed from, addressed to, or received by Client's Internet domain(s) covered by Katharion's services, as well as to any other Internet domain(s) owned, secured, or controlled in whole or in part by Client.

**6. INDEMNITIES AND LIMITATION OF LIABILITY**

Client acknowledges that the techniques and technologies used for the creation and dissemination of spam and viruses are in constant evolution, and that Partner and Katharion can not and do not guarantee nor warrant that Katharion's services will detect all spam or viruses in incoming email destined for Client's mail server. It is further understood that Katharion's services can not and do not extend to any spam or viruses that reach Client's network through means other than Katharion's systems, including but not limited to email that is sent directly to Client's mail server (thus bypassing Katharion's systems), or spam or viruses introduced within Client's network. Client also acknowledges that some incoming mail may be falsely identified as spam by Katharion's systems, and Client shall be responsible for determining the appropriate handling of messages identified as spam.

Katharion's services by this Agreement will be provided "as is" and Partner and Katharion cannot make any affirmation of fact or warranty with respect to the hardware and software used under this Agreement, and hereby expressly disclaim all express and implied warranties, including, without limitation, warranties of merchantability, fitness for a particular purpose, and infringement of proprietary interests. While Katharion shall make all reasonable efforts to ensure that Client's incoming email is delivered as per the services' intended functionality and options selected, that viruses and spam are detected accurately, and that all legitimate email (not spam nor virus) is delivered unhindered, due to the nature of Internet email Katharion cannot warrant that this will be the case at all times. Therefore, NEITHER PARTNER NOR KATHARION SHALL BE LIABLE FOR ANY DIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES (WHETHER SUCH LIABILITY ARISES IN CONTRACT, TORT OR OTHERWISE) OF ANY KIND WHATSOEVER ARISING OUT OF OR RELATED TO THE SERVICES OR THE CLIENT'S OR THE PUBLIC'S USE OF OR INABILITY TO USE THE CLIENT'S EMAIL SYSTEM. Client hereby agrees to defend, indemnify and hold Katharion and Partner, their successors and parents, subsidiaries and affiliates, and their employees, officers and directors, harmless from and against any claim, loss, damage, costs or expenses (including reasonable attorney's fees) arising out of or in any way connected with the performance of the services by this Agreement.

**7. FORCE MAJEURE**

Neither Partner nor Katharion shall be liable for delay or failure to perform any of its obligations under this Agreement in the event of circumstances beyond its reasonable control, including, without limitation, acts of any governmental body, war, insurrection, sabotage, embargo, fire, flood, strike or other labor disturbance, or other events outside of Katharion's and/or Partner's reasonable control. Any such delay or failure shall not constitute a breach of this Agreement and the time for performance shall be extended by a period equivalent to that during which performance is so prevented, provided that if such delay or failure persists for more than one (1) week either party may terminate this Agreement upon written notice to the other party.

**8. CONFIDENTIAL INFORMATION**

Katharion uses several automated software systems that evaluate email messages electronically to determine whether they are spam, virus-infected, or legitimate messages. Client's email is not normally processed, stored, or reviewed by Katharion staff or by Partner. However, to facilitate Katharion's ongoing efforts to improve the effectiveness of its technology and systems, with Client's or Partner's approval, Katharion may review or use any email passing through its systems, for the express goals of (a) monitoring the effectiveness of its service, (b) using messages as sample data for the training of Katharion's artificial-intelligence engine and/or improvement of the spam definition rules, or (c) providing technical support. It is understood that in all cases, Client's email shall be deemed as Confidential Information.

It is further understood that Client may have access to information pertaining to Katharion's intellectual property, systems configuration details, software, processes and trade secrets that may be revealed or inferred through the provisioning of the services. Such information shall also be deemed as Confidential Information.

All parties will not disclose any Confidential Information of the other party to any third parties, except to those employees, consultants and agents who are required to have the information in order to perform their responsibilities as outlined in this section. Each party shall take all reasonable measures to protect the secrecy of and avoid disclosure or use of Confidential Information of the other party, with the same degree of care that such party uses to protect its own most highly Confidential Information.

Notwithstanding the foregoing, the restrictions on disclosure of Confidential Information do not extend to any item of information which (a) is or becomes publicly known without breach of this Agreement, (b) is lawfully received by the receiving party from a third party not bound in a confidential relationship to the disclosing party, (c) is published or otherwise made known to the public by the disclosing party, or (d) was generated independently by the receiving party or any of its affiliates. In the event that either party or its respective directors, officers, employees, consultants or agents is required pursuant to the order or requirement of a court, administrative agency, or other governmental body to disclose any Confidential Information of the other party, the party required to do so shall disclose only that portion of the Confidential Information which such party's legal counsel advises that it is legally required to disclose.

**9. TERMINATION OF AGREEMENT**

This Agreement may be terminated by either party with written notice fifteen (15) or more calendar days prior to the start of a new billing month.

Client acknowledges that upon termination of Katharion's service, Client must adjust its DNS (MX record) settings such that emails addressed to Client's domain(s) no longer pass through Katharion's systems. It is understood that Client's failure to do so in a timely fashion may cause inbound email to the domain(s) to be lost.

**10. RELATIONSHIP OF PARTIES**

Each party to this Agreement is an independent entity, and nothing in this Agreement will create any partnership, joint venture, agency, franchise, or employment relationship between the parties. Neither party shall have the authority to make or accept any offers or representations on the other party's behalf.

**11. MISCELLANEOUS**

The parties shall try to settle any dispute arising out of or in connection with this Agreement by mutual accord. In the case of continuing disagreement, both parties agree to submit to binding arbitration according to the rules of the American Arbitration Association as the sole remedy for such dispute. In such instance, the prevailing party shall be entitled to reasonable attorney's fees.

If any provision of this Agreement is held invalid or unenforceable for any reason, the remaining provisions will continue in full force without being impaired or invalidated in any way. The waiver by either party of a breach of any provision of this Agreement will not operate or be interpreted as a waiver of any other or subsequent breach. Non-enforcement or waiver of any section of this Agreement does not constitute consent or continuing waiver.

This Agreement shall constitute the complete statement of the terms and conditions between Partner and Client regarding Katharion's anti-spam and anti-virus services, and shall supersede all prior arrangements, written or verbal, between the parties regarding this matter. The validity of this Agreement and the interpretation of all of its provisions shall be governed by the laws of the state of California, and may be amended only by written instrument signed by both parties.

**12. ACCEPTANCE**

By signing below you acknowledge that: (a) you are a representative of Client with the authority to execute this Agreement; (b) you have read and accepted all the terms and conditions in this Agreement; (c) all the information provided by Client to Partner and/or Katharion is true and complete; (d) Client accepts the responsibility to promptly inform Partner of any changes to the information provided; (e) Partner is authorized to obtain and use credit history information about Client, unless the selected payment method is with credit card, in which case Partner is authorized to make charges, as stipulated in this Agreement, to the provided credit card account.

Thank you.