

## 1. PREAMBLE

1.1 These are the terms on which Boilerhouse Media Limited (Company No. 03866041) (Boilerhouse Media) with its registered address at Hillside, Albion Street, Chipping Norton, Oxfordshire, OX7 5BH

do business. They do not affect the Client's (see 1.4 below) statutory rights. They are designed to set out clearly Boilerhouse Media's responsibilities and the Client's rights.

1.2 Boilerhouse, Boilerhouse Communications Limited, Boilerhouse Design Limited, The Information Daily Limited; Information Daily.TV Limited; Boilerhouse WebTV; The Platform; Connected Local Government; Innovative Health Care; MakingDataUseful; are all trading names of Boilerhouse Media Limited.

1.3 Boilerhouse Media Limited may from time to time and without further notice add other trading names to the list above.

1.4 These terms and conditions shall apply to all goods and services of whatever nature supplied under any or all of the names listed above to any organization, individual or company to whom such goods and services are supplied (the Client).

## 2. DEFINITIONS

2.1. In these terms and conditions (Conditions):

2.1.1. 'Acceptance Test' means the acceptance test set out in the Scope of Work.

2.1.2. 'Boilerhouse Media Content' means any content and/or materials owned by Boilerhouse Media and/or its licensor which shall exclude Client Content.

2.1.3. 'Client' means the corporate entity or individual obtaining the Services from Boilerhouse Media.

2.1.4. 'Client Content' means any text, graphics, logos, photographs, images, moving images, sound, illustrations and other material featured or displayed which are not owned by Boilerhouse Media or its licensors and which the Client provides and/or specifically requests Boilerhouse Media to incorporate into and/or upload onto the Client's Website including Client Data.

2.1.5. 'Client Data' means Client Data as defined in Clause 12.2 of these Conditions.

2.1.6. 'Client's Website' means the website written by Boilerhouse Media for the Client in HyperText Markup Language or other world wide web-compatible language with pages linked using the hypertext transfer protocol which is fully readable by world wide web users using the web browsers as part of the Services agreed in the Scope of Work; or such website specified in the Scope of Work which Boilerhouse Media is hosting for the Client on which, material including the E-mail Materials and/or Website Materials (as the case may be) would be hosted.

2.1.7. 'Commencement Date' means the Commencement Date set out in the Scope of Work or where no date is so specified, the date when Boilerhouse Media commences the preliminary scoping work set out in Clause 3.2.

2.1.8. 'Content' means all text, graphics, logos, photographs, images, moving images, sound, illustrations and other material features, displayed or used on the Client's Website. This unless otherwise stated, shall include the Client Content and Boilerhouse Media Content.

2.1.9. 'Contract' means any contract made between Boilerhouse Media and the Client for the Services including contracts entered into between the Parties arising from the Initial Scope of Work. For the avoidance of doubt, a Contract shall be governed by these Conditions.

2.1.10. 'Correction' means any and all corrections or fixes made to the Software and/or the Client's Website or any part of it as the context requires that are necessary to correct or remove any bug, malfunction or other defect in it so as to ensure that the Client's Website or any part of it substantially conforms to the functional specifications detailed in the Scope of Work.

2.1.11. 'Documentation' means the user manuals, technical documentation and training manuals in human readable form to enable a reasonably skilled computer operator to run the Client's Website.

2.1.12. 'Domain Name' means the domain name specified in the Scope of Work which the Client wishes to acquire and/or renew.

2.1.13. 'Domain Name Fees' means the fees and/or charges payable by the Client to Boilerhouse Media for the domain name acquisition and registration services and/or the domain name renewal services offered by Boilerhouse Media to the Client as set out in the Scope of Work.

2.1.14. 'Email Hosting Fees' means the e-mail hosting fees specified in the Scope of Work in respect of the E-mail Hosting Services.

2.1.15. 'E-mail Hosting Services' means the E-mail hosting services specified in the Scope of Work.

2.1.16. 'E-mail Material' means e-mails, information in the e-mails including text, pictures, messages and/or such other information attached and/or contained in any

of the e-mails which is to be hosted by Boilerhouse Media.

2.1.17. 'Fees' means the fees set out in the Scope of Work relating to the Services which may include the Domain Name Fees, Email Hosting Fees, Remote Backup Fee, Support and Maintenance Fees, Web Development Fees and/or Web Hosting Fees (as the case may be).

2.1.18. 'Initial Scope of Work' means the initial scope of work as defined in Clause 3.2.

2.1.19. 'Intellectual Property' means all intellectual property rights wherever in the world arising, whether registered or unregistered (and including any application), including copyright, know-how, confidential information, trade secrets, business names and domain names, trade marks, service marks, trade names, patents, petty patents, utility models, design rights, semi-conductor topography rights, database rights and all rights in the nature of unfair competition rights or rights to sue for passing off.

2.1.20. 'Registry Administrator' means the relevant organisation which deals with registering of domain names e.g. Nominet for .UK domain names; Network Solutions Inc for .com; .mobi .org and .net domain names; and EURID for .EU domain names.

2.1.21. 'Remote Backup Services' means the backing up of the Client Data further detailed in the Scope of Work and Clause 12 of these Conditions.

2.1.22. 'Remote Backup Fee' means the remote backup fees specified in the Scope of Work in respect of the Remote Backup Services.

2.1.23. 'Search Engine Marketing Services' means the website optimisation services defined in Clause 7.1

2.1.24. 'Seller' means the seller of the Domain Name which the Client wishes to acquire.

2.1.25. 'Services' means the domain name purchase and/or acquisition; domain name renewal; Search Engine Marketing Services; Web Development Services Support and Maintenance Services; E-mail Hosting Services; Remote Backup Services; and/or Web Hosting Services (as the case may be) provided by Boilerhouse Media to the Client as set out in the Scope of Work.

2.1.26. 'Scope of Work' means the scope of work as defined in Clause 3.3.

2.1.27. 'Software' means all software provided to the Client by Boilerhouse Media and/or its licensors in order for the Client's Website to operate properly, efficiently and effectively on the server and on web browsers including without limitation to those specified in the Scope of Work.

2.1.28. 'Support and Maintenance Services' means the support and maintenance services defined in Clause 10.1 of these Conditions (excluding Corrections during the Warranty Period).

2.1.29. 'Support and Maintenance Fees' means the fees payable in respect of the Support and Maintenance Services as specified in the Scope of Work.

2.1.30. 'User Training' means the training specified in the Scope of Work to be provided by Boilerhouse Media to the Client to enable a reasonably skilled employee of the Client to operate and use the Client's Website and the Software.

2.1.31. 'Warranty Period' means the warranty period defined in Clause 8.5.

2.1.32. 'Web Development Fees' means the fees payable in respect of Web Development Services detailed in the Scope of Work.

2.1.33. 'Web Development Services' means the website development services performed by Boilerhouse Media to create and develop the Client's Website as specified in the Scope of Work.

2.1.34. 'Website Hosting Fees' means the website hosting fees specified in the Scope of Work in respect of the Website Hosting Services.

2.1.35. 'Website Material' means any materials, content, software, information and content of the website which is to be hosted by Boilerhouse Media for the Client.

2.1.36. 'Website Hosting Services' means the website hosting services specified in the Scope of Work.

2.2. References to any statute or statutory provision shall in these Conditions, unless the context otherwise requires, be construed as a reference to that statute or statutory provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced.

2.3. In these Conditions, reference to the masculine include the feminine and the neuter and reference to the singular include the plural and vice versa as the context admits or requires.

2.4. The headings and paragraph numbering used herein are for convenience only and shall not affect the meaning or construction of these Conditions.

2.5. The Client agrees that these Conditions and Scope of Work shall be the exclusive basis on which any Contracts made between the Client and Boilerhouse Media are transacted and processed unless

otherwise agreed in writing by a director of Boilerhouse Media.

2.6. These Conditions shall not create any agency or partnership between the Parties or any third party.

2.7. The Client agrees that the Contracts (Rights of Third Parties) Act 1999 shall not apply to any contracts entered into between the Client and Boilerhouse Media unless otherwise stated in these Conditions.

2.8. The Client where it is a natural person confirms that he is at least 18 years of age and possesses legal capacity to contract under English Law.

2.9. These Conditions and the Scope of Work contain the entire agreement between the Parties with regard to the Contract and both Parties acknowledge that they have not relied upon any oral or written representation made to them by the other.

2.10. Each Party irrevocably and unconditionally waives any right it may have to claim damages for any misrepresentation or to rescind the relevant Contract (whether or not contained in these Conditions) or for breach of any warranty not contained in these Conditions unless such misrepresentation or warranty was made fraudulently.

2.11. No waiver by Boilerhouse Media of any breach of contract by the Client shall be considered as a waiver of any subsequent breach of the same or any other provision.

2.12. If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.

2.13. Both Parties shall be released from their respective obligations in the event of national emergency, war, floods, fire disaster, civil riots, prohibitive governmental regulation or for any other cause beyond the reasonable control of the Parties except for the payment of the Fees.

2.14 For the purposes of these terms and conditions the words The Company shall be taken to mean Boilerhouse Media Limited and any or all of its trading identities.

2.15 These conditions supersede any previous terms and conditions.

### 3. APPOINTMENT OF BOILERHOUSE MEDIA, THE INITIAL SCOPE OF WORK AND AGREED SCOPE OF WORK

3.1. The Client appoints Boilerhouse Media to carry out the Services and Boilerhouse Media accepts such appointment.

3.2. Upon receipt of a request by Boilerhouse Media to provide the Client with the Services, Boilerhouse Media will carry out some preliminary scoping work to ascertain the Client's requirements and needs. This initial scoping work (Initial Scope of Work) will be carried out free of charge for the Client. Where the Initial Scope of Work provides sufficient information and no additional work is required to prepare a Scope of Work, the Parties shall agree and confirm in writing that the Initial Scope of Work will constitute the Scope of Work.

3.3. Based on the Initial Scope of Work, the Parties will mutually agree the next course of action necessary to produce a Scope of Work setting out information including the Services, the statement of work, functional specifications and technical specifications (where applicable), the fees payable by the Client, the estimated delivery dates and/or project milestones, the acceptance testing criteria (where applicable), the intended uses of the work described in the scope of work and such other relevant information which the Parties deems as relevant (Scope of Work). For the avoidance of doubt, unless otherwise agreed, work expended to prepare the Scope of Work will be charged by Boilerhouse Media at Boilerhouse Media's then applicable hourly rates.

3.3.1 All work supplied including but not restricted to all design, creative work, programming or coding carried out in accordance with the commission described in the scope of work shall not be used for any purpose or in any other media other than that for which it was commissioned without The Company's prior written agreement. In no circumstances may any work in rough or uncompleted form be used or published as finished work without the prior written approval of The Company.

3.3.1 The Company shall at all times be entitled to use for purposes of promotion any of the commissioned work or any description or illustration of the commissioned work even if the intellectual property rights have been assigned to the Client.

3.4. Boilerhouse Media undertakes to prepare the Initial Scope of Work and Scope of Work using reasonable care and skill.

### 4. APPOINTMENT OF BOILERHOUSE MEDIA AS AGENT

### TO ACT FOR CLIENT

4.1. Where the Client is acquiring, or renewing a domain name, the Client appoints Boilerhouse Media as its agent to:

4.1.1. acquire the Domain Name from the Seller;

4.1.2. to deal with the relevant registrars of the Domain Name and the Registry Administrators in order to register the Domain Name on behalf of the Client either under the name of the Client (as agreed in the Scope of Work) with the relevant Registry Administrator; and/or

4.1.3. renewal of the Domain Name registration.

4.2. The Client appoints Boilerhouse Media to carry out Search Engine Marketing Services for the Client and Boilerhouse Media accepts such appointment.

4.3. By instructing Boilerhouse Media to carry out the services set out in Clause 4.1 of these Conditions, the Client shall be deemed to have read and agreed to any terms and conditions by the relevant Registrar Administrator and/or registrars which would apply to the services set out in Clause 4.1 of these Conditions.

### 5. ACQUISITION AND REGISTRATION OF DOMAIN NAME

5.1. Without prejudice to Clause 3.3, where the Services in the Scope of Work include the Client acquiring or registering a domain name, Boilerhouse Media and the Client will discuss the various options of domain names which are available to the Client. Usually, such options will be set out in the initial Scope of Work. The Client will then provide Boilerhouse Media with a few of its choices and prioritising such choices in a manner which Boilerhouse Media may request and this information will be recorded and agreed in the Scope of Work.

5.2. The Client will also provide all such information and assistance, and execute such documents as may be reasonably requested by Boilerhouse Media as soon as it is reasonably practicable. For the avoidance of doubt, the Client is solely responsible for the information which it provides to Boilerhouse Media.

5.3. Boilerhouse Media will upon receipt of the information required of the Client, submit the information to the appropriate registrar and/or Registry Administrator for approval and processing.

5.4. Boilerhouse Media will undertake the acquisition and registration of the Domain Name using reasonable skill and care.

5.5. Notwithstanding Clauses 5.3 and 5.4 of these Conditions, the Client acknowledges that such registration of the Domain Name is subject to the rules stipulated by the Registry Administrators and registrars of domain names. Boilerhouse Media makes no representation that the Domain Name the Client wishes to register is capable of being registered by or for the Client, or that it will be registered in the Client's name. The Client should therefore not assume registration of a requested Domain Name until the Client has been notified that it has been duly registered.

5.6. The Client shall have no right to bring any claim against Boilerhouse Media where the Registry Administrators and/or the relevant domain name registrar refuse to register the Domain Name. Unless refunded by the Registry Administrators or domain name registrar (as the case may be), any fees paid to the Registry Administrators or domain name registrar (as the case may be) by the Client whether through Boilerhouse Media or otherwise are not refundable notwithstanding refusal by the relevant Registry Administrators and/or domain name registrars to register the Domain Name.

### 6. RENEWAL OF DOMAIN NAMES

6.1. Where the Services in the Scope of Work include the renewal of Domain Names, the Client may request Boilerhouse Media to renew the Domain Name on behalf of the Client and Boilerhouse Media will undertake such renewal of the Domain Name for the Client using reasonable care and skill.

6.2. Notwithstanding any other provisions in these Conditions and/or reminders which Boilerhouse Media may subsequently send to the Client, the Client is solely responsible to notify Boilerhouse Media in writing and to ensure that Boilerhouse Media receives such notice with regard to the date of renewal of the Domain Name 30 days before such renewal date and Boilerhouse Media will not in any event be liable for any losses and/or damages suffered by the Client if the Domain Name was not renewed

on time due to the failure of the Client to remind Boilerhouse Media of the date of renewal.

### 7. SEARCH ENGINE OPTIMISATION SERVICES

7.1. Where the Services in the Scope of Work include website optimisation services (Search Engine Marketing Services), Boilerhouse Media will perform the Search

Engine Marketing Services for the Client in accordance with the Scope of Work using reasonable skill and care.

7.2. The Client warrants that it owns and/or is duly licensed to use any Intellectual Property in the trade marks, trade names and any descriptions and/or information of its product and/or services which it provides its customers and agrees to indemnify Boilerhouse Media for any losses and/or damages suffered by Boilerhouse Media if the use of the aforesaid by Boilerhouse Media as part of the Search Engine Marketing Services infringes the Intellectual Property rights of any third parties.

7.3. While Boilerhouse Media will use reasonable care and skill in providing the Search Engine Marketing Services, Boilerhouse Media does not warrant that any descriptions, meta tags or content used by Boilerhouse Media ('Marketing Descriptions') in order to optimise the Client's website do not infringe the Intellectual Property rights of third parties. In this regard, the Client is solely responsible to verify that the Marketing Descriptions do not infringe the Intellectual Property rights of any third parties and where appropriate, obtain legal advice on the same. Where the Marketing Descriptions infringe the

Intellectual Property rights of any third parties, the Client shall inform Boilerhouse Media of such infringement forthwith and Boilerhouse Media will remove such Marketing Descriptions as soon as possible. The Client agrees that this will be the Client's sole remedy in respect of intellectual property rights infringement with regard to the Marketing Descriptions.

7.4. The Client acknowledges that the effectiveness of the Search Engine Marketing Services is dependant on various factors which are outside of Boilerhouse Media's control such as the state of the Client's competitors' website, the specifications of the Client's website and the marketing strategy of the Client and choice of meta tags and descriptions used and the Client's budget in respect of search engine fees e.g. adword fees charged by Google. As such, the Client acknowledges that the due performance of the Search Engine Marketing Services does not guarantee that the Client's Website will enjoy a better position when searches are carried out on website search engines.

## 8. WEB DEVELOPMENT SERVICES

8.1. Where the Services in the Scope of Work include web development services, Boilerhouse Media undertakes with effect from the Commencement Date:

8.1.1. to design, write and/or supply the Software and (subject to Clause 8.2) the Content to enable the Client's Website to perform functionally and conform substantially with the functional specifications set out in the Scope of Work.

8.1.2. where agreed in the Scope of Work, to provide the User Training to employees of the Client so that they acquire the skill, experience and knowledge required by suitably qualified persons in order to operate the Client's Website;

8.1.3. where agreed in the Scope of Work, to provide the Client with the Documentations; and

8.1.4. to perform the Web Development Services with reasonable care and skill in order to develop and design the Client's Website to substantially meet the specifications and performance criteria set out in the Scope of Work.

8.2. The Client shall deliver to Boilerhouse Media such relevant Client Content in such format as may be agreed by the Parties. The Client shall ensure that the Client Content is accurate, not defamatory, not unlawful or illegal and does not infringe the intellectual property rights of any third parties and to this end, the Client will indemnify and hold harmless Boilerhouse Media for any loss, damages and/or claims brought against Boilerhouse Media.

8.3. Boilerhouse Media grants the Client a non-exclusive licence to use the Software (and any customisation to the Software) solely on the Client's Website and for such purposes set out in the Scope of Work.

8.4. Boilerhouse Media grants the Client a non-exclusive licence the use any Boilerhouse Media Content on the Client's Website (excluding Client Content).

8.5. Upon passing the Acceptance Test and acceptance by the Client of the Client's Website in accordance with Clause 14 of these Conditions, Boilerhouse Media warrants that the Software and Client's Website will substantially comply with the functional specifications and performance criteria specified in the Scope of Work for a period of 6 months or such other periods as may be specified in the Scope of Work (Warranty Period). To this end, Boilerhouse Media will carry out such Correction without any additional charges to the Client during the Warranty Period. For the avoidance of doubt, any unauthorised modifications, use or improper installation of the Client's Website and/or Software by the Client shall render all Boilerhouse Media's warranties and support obligations null and void.

8.6. Notwithstanding Clause 8.5 of these Conditions, Boilerhouse Media denies any implied or express representation that the Software and/or the Client's Website will be fit:

8.6.1. to operate in conjunction with any hardware items or software products other than with those hardware items and software products that are identified in the

Scope of Work as being compatible with the Software and/or the Client's Website;

8.6.2. to operate uninterrupted or error-free; or

8.6.3. to have all program defects corrected.

8.7. If the Software and/or Boilerhouse Media Content (as the case may be) becomes or, in the opinion of qualified legal counsel (selected by Boilerhouse Media), is likely to become the subject of any Intellectual Property rights claim by third parties, the Client will permit Boilerhouse Media :

8.7.1. to replace all or part of the Software and/or Boilerhouse Media Content (as the case may be) with something functionally equivalent without any charge to the Client;

8.7.2. to modify the Software and/or Boilerhouse Media Content (as the case may be) as necessary to avoid such claim, provided that the Software and/or Boilerhouse Media Content (as the case may be) (as amended) functions in substantially the same way as the Software and/or Boilerhouse Media Content (as the case may be) before modification; and/or

8.7.3. to procure for the Client a licence from the relevant complainant to continue using the Software and/or Boilerhouse Media Content (as the case may be).

8.8. Subject to Clause 18 of these Conditions, if the Software and/or Boilerhouse Media Content (as the case may be) is determined in a court of law to be infringing and Boilerhouse Media is unable after commercially reasonable efforts to procure for the Client the right to continue using the Software and/ or Boilerhouse Media Content (as the case may be), or to provide the Client with functionally equivalent non-infringing software and/or content (as the case may be), the relevant Contract and any licence to use the Software and/or Boilerhouse Media Content (as the case may be) shall be terminated and Boilerhouse Media will refund the Client the Web Development Fees. This will be the Client's exclusive remedy in relation to Intellectual Property rights infringement in regard to the Software and/or Boilerhouse Media Content.

8.9. Without prejudice to Clause 18 of these Conditions, Boilerhouse Media shall have no liability for any claim of intellectual property infringement:

8.9.1. caused by the Client's use of the Software and/or Boilerhouse Media Content (as the case may be) in combination with software and/or other content (excluding Client Content) (as the case may be) not supplied or approved in writing by Boilerhouse Media (other than the operating system of any of the Client's hardware specified in the Scope of Work);

8.9.2. resulting from any unauthorised modification of the Software and/or Boilerhouse Media Content (as the case may be); and/or

8.9.3. where the claim for infringement arises in respect of a feature of the Software and/or Boilerhouse Media Content (as the case may be) which was specifically requested by the Client as specified in the Scope of Work.

8.10. Where the Client requires changes to Web Development Services and/or the functional specifications specified in the Scope of Work, such changes shall be agreed pursuant to the procedure specified in Clause 13.

## 9. CLIENT'S WEBSITE CONTENT, E-MAIL MATERIAL, WEBSITE MATERIAL, CLIENT DATA AND PROJECT MANAGEMENT

9.1. Boilerhouse Media shall provide the Client with the facility to update and/or upload new Client Content onto the Client's Website. Without prejudice to the foregoing, the Client will be entitled to request Boilerhouse Media to assist the Client with such updating and/or uploading of new Client Content onto Client's Website and the Parties will mutually agree such fees payable by the Client to Boilerhouse Media for such assistance.

9.2. The Client shall ensure that the Client Content, Website Materials and/or E-mail Materials do not infringe any applicable laws, regulations or third party rights (including material which is obscene, indecent, pornographic, seditious, offensive, defamatory, threatening, liable to incite racial hatred, menacing, blasphemous or in breach of any third party Intellectual Property Rights) (Inappropriate Content).

9.3. The Company asserts the right to be identified as author of any work which has been created as a result of the commission and any publication of that work or reproduction thereof on any finished product shall bear a clear and distinctive credit to The Company in a form approved by The Company.

9.3.1 Boilerhouse Media shall have the right to include the statement "Designed by Boilerhouse Media Limited" on the home page of the Client's Website in a form to be agreed.

9.3.2 The name, signature or trading style of The Company shall not be registered in any way or used upon or in relation to any of the commissioned work unless asserted as above or approved in advance by The Company in writing.

9.4. Each Party shall appoint a project manager who shall:

9.4.1. provide professional and prompt liaison with the other Party; and

9.4.2. have the necessary expertise and authority to commit the relevant Party.

9.5. The Client undertakes to comply and shall contractually procure that its users comply with generally accepted principles of internet usage (whether governed by the laws of any jurisdiction or not) including refraining from:

9.5.1. sending unsolicited mass communications ("Spam");

9.5.2. sending mail bombs; Trojan horses; viruses or other disruptive programs or devices;

9.5.3. pirating or otherwise illegally copying software or other proprietary material; and

9.5.4. violating the security of any website or engaging in unauthorised decryption of protected material.

9.6. The Client acknowledges that Boilerhouse Media has no control over any content placed on the Client's Website by visitors and does not purport to monitor the content of the Client's Website.

9.7. Boilerhouse Media reserves the right at any time and without notice and without liability, to suspend availability and/or remove any content and/or material from the Client's Website (including the Website Material and/or E-mail Material) where it reasonably suspects such content and/or Material is Inappropriate Content. Boilerhouse Media shall as soon as it is practicable, notify the Client if it becomes aware of any allegation that content and/or material on the Client's Website may be Inappropriate Content.

9.8. The Client acknowledges and agrees that Boilerhouse Media may be required by law enforcement agencies to monitor the Client's Website content and traffic and if necessary, give evidence of the same to support or defend any dispute or actionable cause or matter which arises in relation to the same.

9.9. The Client shall indemnify Boilerhouse Media, its successors and assigns against all damages, losses and expenses arising as a result of any action or claim that the Client Content, the materials and/or content on the Client's Website and/or being backed up by Boilerhouse Media including the E-mail Materials and/or Website Materials constitute Inappropriate Content.

9.10. The Client warrants that any personal data on the system hosted by Boilerhouse Media complies fully with the Data Protection Act 1998 and associated legislation and hereby indemnifies Boilerhouse Media against any infringement of such legislation (except insofar as Boilerhouse Media is responsible for the security of the system and the materials) and in particular acknowledges that Boilerhouse Media does not operate or exercise any control over, and accepts no responsibility for where or in what jurisdiction the materials may be received.

9.11. The Client undertakes and shall contractually procure that each of its users and/or visitors undertake not to upload any materials and/or contents onto the Client's Website which are Inappropriate Content. The Client shall be solely responsible for the accuracy, legality, and compliance with the relevant rules and regulations in respect of the materials and/or content uploaded onto the Client's Website.

9.12. The Client warrants that it has and shall contractually procure that its users have obtained all necessary consents, approvals and licences for the use of third party Intellectual Property and the use of such third party Intellectual Property will not violate any intellectual property rights belonging to any third party.

9.13. The Client shall indemnify and hold harmless Boilerhouse Media against any claims, proceedings, losses, liabilities, damages (including reasonable costs), charges and expenses of whatever nature arising out of or in connection with any claim or action made against Boilerhouse Media relating to a breach of any sub-clauses of Clause 9.5 of these Conditions by the Client and/or its users provided that Boilerhouse Media will not make any admissions without the Client's prior written consent and not take any step (or omit to take any step) which would prejudice the Client's defence of the claim, and shall allow the Client to conduct and/or settle all negotiations and litigation resulting from such claim. Boilerhouse Media shall, at the request of the Client, afford all reasonable assistance with such negotiations or litigation and shall be reimbursed by the Client for any reasonable out of pocket expenses incurred in so doing.

## 10. SUPPORT AND MAINTENANCE

10.1. Where agreed by the Parties in the Scope of Work, Boilerhouse Media will provide the Client with support and maintenance services (Support and Maintenance Services) in the event there are problems, faults and/or errors with regard to the applicable Services performed by Boilerhouse Media for such period and in accordance with such terms specified in the Scope of Work in question.

10.2. The Support and Maintenance Services will commence upon the Client's Website passing the Acceptance Test.

10.3. The Parties may mutually agree to renew the Support and Maintenance Services for such additional periods as may be agreed between the Parties. Unless

otherwise waived by Boilerhouse Media, any renewals of the Support and Maintenance Services shall be made in writing.

10.4. Where the Client and/or the Client's users are unable to access the Client's Website, the Client shall first ascertain whether the inability to access the Client's Website is caused by a failure on the part of the Client's Website or the Client's internet service provider or server. Where fault lies with the Client's Website, the Client's authorised representative shall contact Boilerhouse Media immediately by email: support@boilerhouse.co.uk Telephone Number: 0845 094 5641 200 3087

10.5. Upon receiving the Client's report, Boilerhouse Media shall use reasonable endeavours to carry out the Correction to allow the Client and its users to access the Client's Website and where applicable in accordance with the service levels set out in the Scope of Work. Where it is subsequently established that fault does not lie with the Client's Website but with the Client's equipment or its internet connection, Boilerhouse Media reserves the right to charge the Client such reasonable cost as Boilerhouse Media may have incurred.

## 11. HOSTING SERVICES

11.1. Where the Services specified in the Scope of Work include Website Hosting Services and/or E-mail Hosting Services, Boilerhouse Media shall using reasonable skill and care, provide such Website Hosting Services and/or E-mail Hosting Services in accordance with the Client's requirements detailed in the Scope of Work.

11.2. The Client will be entitled to request Boilerhouse Media to assist the Client with such updating and/or uploading of new Website Material and the Parties will mutually agree such fees payable by the Client to Boilerhouse Media for such assistance.

11.3. Boilerhouse Media will use its reasonable endeavours to ensure that the E-mail Hosting Services and/or Website Hosting Services (as the case may be) are available all the time.

11.4. Notwithstanding Clause 11.3 of these Conditions, while Boilerhouse Media will endeavour to ensure that the E-mail Hosting Services and/or Website Hosting Services (as the case may be) is available all the time, Boilerhouse Media does not guarantee that the E-mail Hosting Services and/or Website Hosting Services (as the case may be) will be uninterrupted, secure or error-free or that any data generated, stored, transmitted or used via or in connection with the E-mail Hosting Services and/or Website Hosting Services (as the case may be) will be complete, accurate, up to date, received or delivered.

11.5. The Client acknowledges that Boilerhouse Media may from time to time carry out repairs, maintenance and/or improvements to E-mail Hosting Services and/or Website Hosting Services (as the case may be). In this regard, Boilerhouse Media will use reasonable endeavours to inform the Client of such non availability of the E-mail Hosting Services and/or Website Hosting Services (as the case may be) and ensure that such maintenance and/or improvements are carried out outside normal business hours.

11.6. For the avoidance of doubt, the Client acknowledges that the E-mail Hosting Services and/or Website Hosting Services (as the case may be) are dependant on the Client having an internet connection. The Client acknowledges that Boilerhouse Media does not provide internet connection services to the Client nor does Boilerhouse Media acts as the Client's Internet Service Provider (ISP). The Client is responsible for its own internet connection.

11.7. Boilerhouse Media shall as soon as it is practicable on request by the authorised personnel of the Client, suspend availability of the Website Materials and/or the E-mail Materials and shall likewise, on request by the authorised personnel of the Client, as soon as it is practicable, procure that the provision of access to such materials is resumed following such suspensions.

11.8. Where the Client requires changes to the Website Hosting Services and/or E-mail Hosting Services, any such changes shall be agreed pursuant to the variation procedures set out in Clause 13 of these Conditions.

## 12. REMOTE BACKUP SERVICES

12.1. Boilerhouse Media shall using reasonable skill and care, provide the Remote Backup Services in accordance with the Client's requirements detailed in the Scope of Work. Unless otherwise agreed in the Scope of Work, Boilerhouse Media shall remotely backup the Client's data on a weekly basis.

12.2. The types, amount and/or the period of which the client data will be remotely backed up by Boilerhouse Media shall be as detailed in the Scope of Work (Client Data).

12.3. Boilerhouse Media is not responsible for the quality, accuracy and state of the Client Data which it backs up for the Client at the point such Client Data is backed up. The Client is solely responsible to ensure that quality, accuracy and state of the Client Data is of satisfactory quality.

#### 12.4. The Client shall:

12.4.1. ensure that it is entitled to transfer any personal data so that Boilerhouse Media may backup such data and provide the Client with the Remote Backup Services; and

12.4.2. ensure that the transfer and/or backing up of such Client Data does not infringe the Intellectual Property rights of any third parties.

12.4.3. The Client agrees to indemnify and hold blameless Boilerhouse Media for any losses, damages and cost arising from any breach of the Client's obligations under Clause 12.4 of these Conditions.

### 13. VARIATIONS

13.1. The Parties acknowledge that the Client may require changes or variations to the Services set out in the relevant Scope of Work.

13.2. Where the Client requires changes to be made to the Services detailed in the Scope of Work, the Client shall notify Boilerhouse Media of such change in writing and set out the changes and reasons for such changes. Boilerhouse Media will review the changes and prepare a proposal on such steps required and cost implications on the changes requested by the Client. For the avoidance of doubt, unless otherwise agreed in writing by the Parties, Boilerhouse Media shall be entitled to charge the Client to prepare such proposal and such charges shall be based on Boilerhouse Media's then applicable hourly rates.

13.3. The Client will have the opportunity to review and approve such proposal by Boilerhouse Media and where the Client accepts Boilerhouse Media's proposal, the Client shall confirm such acceptance in writing and the proposal by Boilerhouse Media will form part of the Scope of Work in question.

13.4 For the avoidance of misunderstanding no modifications or alterations to any designs or other work supplied to the Client by The Company may be made without the consent of The Company. Any agreed modifications or alterations shall only be carried out by, under the supervision of or with the express permission of The Company.

### 14. ACCEPTANCE TESTING

14.1. Boilerhouse Media shall carry out such Services and thereafter, inform the Client when such Services are ready to undergo acceptance testing.

14.2. Boilerhouse Media and the Client will jointly carry out the Acceptance Test.

14.3. Where the Services pass the Acceptance Test, the Client shall forthwith confirm such acceptance in writing in such a form as may be reasonably requested by Boilerhouse Media.

14.4. Where the Services fail the Acceptance Test, Boilerhouse Media will carry out such Correction to ensure that such Services meet the requirements set out in the Acceptance Test. Boilerhouse Media will have no less than 30 days to carry out such Correction. Thereafter the Parties will commence acceptance testing in accordance with the Acceptance Test.

14.5. Where the Services pass the Acceptance Test, on the second attempt, Clause 14.3 of these Conditions will apply. If the Services fail the Acceptance Test on the second attempt, Clause 14.4 of these Conditions will apply.

14.6. Where the Services pass the Acceptance Test on the third attempt, Clause 14.3 of these Conditions will apply. If the Services fail the Acceptance Test on the third attempt, the Client will be entitled to terminate the relevant Contract.

14.7. Notwithstanding Clauses 14.6 of these Conditions, the Client shall be deemed to have accepted the Services if:

14.7.1. the Client uses the Client's Website, E-mail Hosting Services and/or Website Hosting Services (as the case may be) for its business purposes, any revenue-earning purposes or to provide any services to third parties other than for test purposes; or

14.7.2. the Client unreasonably delays the start of the relevant Acceptance Test or any retests for a period of more than seven working days from the date on which Boilerhouse Media is ready to commence running such Acceptance Tests or retests (as the case may be).

### 15. CLIENT S RESPONSIBILITIES

15.1. The Client shall be responsible for the accuracy and completeness of the Website material and other materials supplied to The Company.

15.2. The Client shall provide Boilerhouse Media with or shall procure that the Client's current hosting service provider provides Boilerhouse Media with the Website Material and/or E-mail Material (as the case may be) so as to enable Boilerhouse Media to provide the E-mail Hosting Services and/or Website Hosting Services (as the case may be) to the Client.

15.3. The Client acknowledges that where Boilerhouse Media is unable to

implement the E-mail Hosting Services and/or Website Hosting Services (as the case may be) due to the fault of the Client, Boilerhouse Media shall not be liable for any losses and/or damages suffered by the Client. In addition,

Boilerhouse Media reserves the right to invoice the Client for any additional expenses reasonably incurred by Boilerhouse Media as a result of such delays by the Client.

15.4. Unless Boilerhouse Media is providing the Client with Remote Backup Services, the Client is solely responsible to back up its Website Material and/or E-mail Materials and Boilerhouse Media shall not be liable to the Client for any loss and/or damage suffered by the Client as a result of the Client not backing up its Website Material and/or E-Mail Materials.

15.5. The Client shall ensure that it grants Boilerhouse Media access and authorisation to the Client's central servers to perform the Remote Backup Services.

15.6 Where appropriate hard copy proofs of all work will be submitted for The Client's approval and The Company shall not be liable for errors not corrected by the Client in such proofs.

15.6.1 Any alterations, additional work and additional proofs required by The Client after the proofs have been signed off may incur additional charges. Where such late alterations are requested by The Client, The Company will provide a separate quotation in writing for the additional charges and no work will be undertaken until the quotation has been agreed.

15.7 Where style, type, layout colour etc is left to the judgment of The Company, changes subsequently required by the Client may incur additional charges.

15.8 Where paper, disks, plates or other materials are supplied or specified by the Client, The Company will take every reasonable care to secure the best results, but responsibility will not be accepted for imperfect work caused by defects in or unsuitability of materials so supplied or specified. Additional costs incurred if materials are found to be unsuitable during production may be charged to the Client.

15.9 The Client shall indemnify The Company and keep them indemnified against all or any costs, claims, damages, demands and expenses (including legal costs) which may be incurred by or made against The Company by any third party by reason of the supply of The Company goods or services in accordance with the Client's instructions.

15.10 The Client warrants that any information or material which is supplied to The Company will be accurate and in no way misleading and will not infringe any third party's copyright, registered design, or other intellectual property rights or obligation of confidentiality. The Client will indemnify The Company against all actions, suits, claims, demands, losses, damages or expenses directly or indirectly incurred in consequence of any information or material provided by the Client or in consequence of performing any work for the Client.

15.11 The Company shall not be liable to the Client for any damage to goods, delay in delivery or loss or partial loss of goods in transit unless the Client notifies The Company in writing within seven days of delivery date. Failing which the goods shall be conclusively deemed to have been accepted by the Client.

15.12 The Client shall be responsible for effecting all necessary insurance in respect of any loss, damage, or expense that it may suffer directly or indirectly in relation to the provision or non-provision of The Company goods and services.

15.13 In any event The Company shall not be liable for any consequential loss however arising.

### 16. CHARGES AND PAYMENT

16.1. In consideration of Services performed by Boilerhouse Media, the Client shall pay upon demand all Boilerhouse Media fees in the amounts and on the dates specified in the Scope of Work or as stated in the relevant Boilerhouse Media's invoice. A contingency estimate equal to 10% of the estimated total cost for the commission will be shown in the quotation. While The Company will use their best endeavours to keep to the estimated total cost agreed the Client shall be liable for and shall pay upon demand an additional amount not greater than the 10% contingency where The Company shall so demand. Where all or part of the contingency costs are to be invoiced The Company will inform the Client of the amount and the reasons for the additional charges, in writing, at the earliest opportunity.

16.2. All Fees are exclusive of VAT.

16.3. Any schedule of payments shall be strictly adhered to.

16.4. The Client shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Client has a valid court order requiring an amount equal to such deduction to be paid by Boilerhouse Media to the Client.

16.5. No payment shall be deemed to have been received until Boilerhouse Media

has received the cleared funds.

16.6. If payment is not made on the due date, Boilerhouse Media shall be entitled at its sole discretion, without limiting any other rights it may have, to charge interest on the outstanding amount (both before and after any judgment) in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 with such interest to accrue on a daily basis from the due date until the outstanding amount is paid in full and/or suspend any of the Services until any monies payable by the Client to Boilerhouse Media have been duly settled.

16.6.1 This may happen automatically and without further reference to The Client starting upon the 26th day after the payment due date on the invoice and continuing until funds clear into The Company's bank account. If this becomes necessary a separate invoice for the interest will be issued at the end of the month in which the late payment occurred. An administration charge of £35.00 will be charged for each late payment invoice issued.

16.6.2 All interest and charges made for late payments must be paid within six working days of demand and without prejudice to any other remedy available The Company may charge interest on all late payments of interest and charges levied for late payment.

16.7. Unless otherwise agreed by the parties, any Fees payable shall be paid in Sterling.

16.8 In addition to fees, The Company shall be reimbursed of all reasonable out-of-pocket expenses actually and properly incurred in the execution of the commission. Such expenses will include but are not limited to hotel costs, subsistence and travelling expenses, use of car and courier services.

16.8.1 Estimates for expenses will be included in the quotation and agreed with the Client before the work commences. Where additional expenses arise during the course of a project such expenses will be agreed with the Client before such expenses are incurred.

16.9 Consumables such as CDs, fonts, prints and other reproductions of drawings, typesetting, the provision of dummies, models and mock-ups furnished at the client's request or with the client's approval (unless they comprise the design proposals or are included in a fixed fee agreement) and certain exceptional service charges such as international telephone charges shall be charged separately.

16.9.1 Estimates for chargeable costs will be agreed in writing with the Client before such expenses are incurred.

16.10 The Company shall retain ownership of all materials and goods produced by it to the order of the Client until all goods and services provided to the Client have been paid for in full.

16.10.1 The risk in the goods shall pass to the Client upon delivery which for the avoidance of doubt means from the commencement of unloading activities or when collected from The Company by the Client or its Agent as the case may be or from the date and time of electronic delivery of digital files.

16.10.2 Electronic data and other materials owned by The Company or its supplier and used by The Company for example in the production of film setting, negatives, positives, plates, etc shall remain the exclusive property of The Company or its supplier as the case may be.

16.10.3 Any material made available to The Company by or on behalf of the Client shall, while it is in the possession of The Company or in transit, be at the Client's risk and The Company shall not be liable for any loss or damage to such materials however caused and the Client shall insure the said material accordingly.

16.10.4 All materials supplied to The Company by or on behalf of the Client may be destroyed and electronic data may be erased from memory and lithographic, or other work effaced immediately after the order is completed unless written arrangements are made to the contrary in the scope of work or elsewhere.

16.11 If a postponed commission is resumed without substantial alteration within a period of six months from the date of post-ponement, any fees paid shall rank as payments on account towards the total final fee payable on completion of the work. Where a commission has been postponed for a period exceeding six months and then resumed, any fees paid shall be regarded as final payment for the services originally rendered. The resumed commission shall be deemed to constitute a separate contract for which fees shall be renegotiated.

## 17. WARRANTIES AND INDEMNITIES

17.1. The Client warrants and represents that it has the full power and authority to enter into the relevant Contract for the Services specified in these Conditions and to execute such documents as required to effect the Domain Name acquisition, registration (with the Registry Administrator, domain name registrars and/or renewals of such Domain Name (as the case may be).

17.2. The Client warrants and represents that it is able to pay the Domain Name Fee in accordance with the terms of these Conditions.

17.3. The Client warrants and represents to the best of its knowledge that neither the acquisition, registration (with the Registry Administrator and/or search engines) and/or renewal of the Domain Name (as the case may be) nor the manner in which it is directly or indirectly to be used infringes the Intellectual Property rights or any other legal rights of any third party and that the Domain Name is not being registered for nor shall it at any time whatsoever be used for any unlawful purpose. In this regard, the Client shall indemnify and hold blameless Boilerhouse Media against any claims, proceedings, losses, liabilities, damages (including reasonable costs), charges and expenses of whatever nature arising out of or in connection with any claim or action made against Boilerhouse Media relating to a breach of this Clause 17.3 provided that Boilerhouse Media will not make any admissions without the Client's prior written consent and not take any step (or omit to take any step) which would prejudice the Client's defence of the claim, and shall allow the Client to conduct and/or settle all negotiations and litigation resulting from such claim. Boilerhouse Media shall, at the request of the Client, afford all reasonable assistance with such negotiations or litigation and shall be reimbursed by the Client for any reasonable out of pocket expenses incurred in so doing. Notwithstanding the foregoing, Boilerhouse Media shall have the right to suspend access of the Domain Name on the internet where Boilerhouse Media is the webmaster in respect of the Domain Name.

17.4. The Client shall indemnify and hold blameless Boilerhouse Media against all damages, losses and expenses arising as a result of any action or claim arising out of or in connection with the relevant Contract with regard to the services set out in Clauses 4.1, 5, 6 and 7 of these Conditions insofar as such action or claims is not caused by any negligence or breach of these Conditions by Boilerhouse Media.

## 18. LIMITATION OF REMEDIES AND LIABILITY

18.1. Nothing in these Conditions shall operate to exclude or limit Boilerhouse Media's liability for death or personal injury caused by its negligence or fraud.

18.2. Boilerhouse Media shall not be liable to the Client for any loss and/or damages arising from the relevant Contract and/or the Services.

18.3. Subject only to Clauses 18.1 and 19.2 of these Conditions, Boilerhouse Media shall not be liable for any indirect or consequential losses to the Client, damage to or loss of data, loss of profit, anticipated profits, revenues, anticipated savings, management time, replacement cost, goodwill or business opportunity which relate to the relevant Contract and/or Services, damage to Client Data, Client Content, the E-mail Materials and/or Website Materials and such other content and/or materials hosted on the Client's Website.

18.4. Subject only to Clauses 18.1, 18.2 and 18.3 of these Conditions, Boilerhouse Media's aggregate liability in respect of claims based on the Contract, and/or any or all of the Services in any calendar year whether in contract or tort (including negligence) or otherwise, shall in no circumstances exceed 100% of the Fees paid by the Client in respect of the relevant calendar year in question.

## 19. INTELLECTUAL PROPERTY RIGHTS

19.1. Subject to any other contracts entered into between the Parties, without prejudice to the other provisions in these Conditions, as between Boilerhouse Media and the Client, the Client retains all Intellectual Property rights in the Client Data, Client Content, E-mail Materials, the Website Materials and such other content and/or materials on the Client's Website (excluding Boilerhouse Media Content) supplied by the Client, and grants Boilerhouse Media a licence to use such Intellectual Property rights to the extent required to perform its obligations pursuant to the applicable Contract.

19.2. All Intellectual Property Rights in any works arising in connection with the performance of the Services other than those referred to in Clause 19.1 shall be owned by Boilerhouse Media and/or its licensors including Boilerhouse Media Content,

19.2.1 For the avoidance of misunderstanding all intellectual property rights arising in all or any of the work created by The Company are and shall remain the property of The Company until assigned in writing. Any fees paid to The Company shall not be deemed to include the assignment of any such intellectual property rights. The Client may initiate negotiations to secure the intellectual property rights in the work produced during the commission at any point before, during or after the completion of the commission.

19.2.2 Where illustrations, photographs or other third party materials are included in the design The Company will advise The Client about charges for acquiring appropriate rights in such materials and on the written instruction of The Client shall acquire such rights on behalf of The Client and shall inform the client in writing of the IP status of such materials used

19.2.3 For the avoidance of misunderstanding it should be noted that the intellectual property rights in illustrations and photographs commissioned or sourced by The Company, on behalf of the Client, will remain with the originator or

with The Company whichever shall apply unless specifically agreed in writing.

19.2.4 Rights of possession and intellectual property rights in all roughs, transparencies, concepts, speculative artwork and other materials delivered to the Client remain the property of The Company. The Client undertakes to return all such materials to The Company on demand.

19.3 All rights intellectual and actual in all coding, programming, and all digital electronic files created during the performance of the work commissioned remain the property of The Company unless and until the transfer of such rights is agreed in writing.

19.3.1 Boilerhouse Media will grant to the Client an enduring, non-exclusive licence to use such coding, programming, and digital electronic files, provided by Boilerhouse Media, for the purposes detailed in the scope of work.

19.4. The Client shall indemnify and hold harmless Boilerhouse Media against all damages, losses and expenses arising as a result of any action or claim that the materials owned by the Client which are referred to in Clause 20.1 and such other content and/or materials on the Client's Website infringe the Intellectual Property rights of any third party.

19.5 Subject to Clauses 8.7, 8.8 and 8.9 of these Conditions, Boilerhouse Media shall defend, hold harmless and indemnify the Client against all loss, damage, claims, liabilities, fees, costs and expenses arising out of any action brought against the Client based on a claim that the Software and Boilerhouse Media Content other than Client Content infringes any intellectual property right of any third party, provided that:

19.5.1 Boilerhouse Media is notified promptly in writing of any such claim;

19.5.2. the Client makes no admission or settlement of such claim without Boilerhouse Media's prior written consent;

19.5.3. Boilerhouse Media has sole control of the defence and any negotiations for compromise; and

19.5.4. the Client provides, at Boilerhouse Media's expense, such assistance as Boilerhouse Media reasonably requires.

## 20. TERMINATION

20.1. The Contract will commence on the Commencement Date and shall continue to be in force during the period where Services are being performed by Boilerhouse Media for the Client or the period specified in the Scope of Work (as the case may be) unless terminated earlier pursuant to the provisions of these Conditions.

20.2. The Parties may mutually agree to renew the Services and/or any part of the Services for such additional periods as may be agreed between the Parties. Unless otherwise waived by Boilerhouse Media, any renewals of the Services or part thereof shall be made in writing.

20.2.1 A contract for the design, printing or digital production of a periodical publication shall not be terminated by either party unless 13 weeks notice in writing is given. Such notice may be given at any time but whenever possible should be given after completion of work on any one issue.

20.2.1 The Company shall be entitled to suspend performance of the contract if and for so long as the Client shall be in breach of any of its obligations

20.2.2 Any agreement between The Company and the client shall terminate without notice if the Client commits any act of bankruptcy or commences any proceedings for winding up (other than for the purposes of amalgamation or reconstruction) or if an Administrator, Receiver or Liquidator is appointed for the whole or any part of the Client's business.

20.3. Without prejudice to any other rights or remedies which the Parties may have, either party may terminate the relevant Contract without liability to the other if:

20.3.1. the other Party fails to pay any amount due under such Contract on the due date for payment and remains in default not less than 7 days after being notified in writing to make such payment. For the avoidance of doubt, Boilerhouse Media shall be entitled to terminate all Services provided by Boilerhouse Media to the Client if the Client fails to pay Boilerhouse Media any amount due by the Client to Boilerhouse Media under these Conditions;

20.3.2. the other Party commits a material breach of any of the terms of the relevant Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or

20.3.3. is unable to pay its debts or enters into compulsory or voluntary liquidation (other than for the purpose of effecting a reconstruction or amalgamation in such manner that the company resulting from such reconstruction or amalgamation if a different legal entity shall agree to be bound by and assume the obligations of the relevant party under the relevant Contract) or compounds with or convenes a meeting of its creditors or has a receiver or manager or an administrator appointed of its assets or ceases for any reason to carry on business or takes or suffers any similar action which in the opinion of the party giving notice means that the other

may be unable to pay its debts.

20.3.4 Any agreement between The Company and the Client shall terminate if either party commits a breach of it and fails to remedy the breach within fourteen days after receiving notification in writing from the other party specifying the breach and requiring its remedy.

20.4. On termination of the Contract for any reason the Client shall immediately pay to Boilerhouse Media all of Boilerhouse Media's outstanding unpaid invoices and interest and, in respect of any services supplied but for which no invoice has been submitted, Boilerhouse Media may submit an invoice, which shall be payable immediately on receipt.

20.5. The accrued rights and liabilities of the Parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination shall not be affected.

20.6 On termination or postponement of the commission and where any intellectual property rights in any of the commissioned work have been assigned to the client, such rights shall in the event of any such termination or postponement automatically revert to and shall be assigned to The Company and the Client shall sign all documents and do all such acts in order to fulfil the same.

20.7 The Company shall not be liable for any delay or failure to perform any of its contractual obligations as a result of war, flood, storm, riot, fire, accident, civil commotion, acts of god, government action, failure of power supply, equipment failure, lock out, strike, default or failure of subcontractor or suppliers or any other cause beyond its reasonable control and The Company shall not be liable for any loss, damage or expense suffered by the Client or any third party arising directly or indirectly from any such matters.

## 21. CONFIDENTIALITY

21.1. Both Parties shall keep in strict confidence all information which is of a confidential nature and have been disclosed by one Party to the other Party and shall procure that the receiving Party's employees, agents, consultants or subcontractors keep in strict confidence all such information other than for the purposes of performing its obligations under the Contract. The Client shall undertake not to disclose to a third party organisation any confidential information obtained from The Company concerning The Company's business without The Company's giving prior agreement in writing.

21.2. The obligations set out in Clause 21.1 of these Conditions shall not apply to confidential information that the receiving party can demonstrate is or has become publicly known other than through breach of this Clause 21, was in the possession of the receiving party prior to disclosure by the disclosing Party, was received by the receiving Party from an independent third party who has full right of disclosure, or was independently developed by the receiving Party or was required to be disclosed by a governmental authority, provided that the Party subject to such requirement to disclose gives the other Party prompt written notice of the requirement.

21.3. The Parties agree that Boilerhouse Media shall be entitled to use the Client's name and trade mark for marketing and promotional purposes.

## 22. DATA PROTECTION

22.1. In this Clause 22, Personal Data has the meaning given in the Data Protection Act 1998.

22.2. The Client acknowledges that to the extent Boilerhouse Media processes any Personal Data on behalf of the Client:

22.2.1. it shall act only on instructions from the Client; and

22.2.2. it has in place appropriate technical and organisational security measures against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data.

## 23. NOTICES

23.1. A notice given under these Conditions:

23.1.1. shall be in writing in the English language (or be accompanied by a properly prepared translation into English);

23.1.2. shall be sent for the attention of the person, and to the address, fax number or e-mail address specified in the Scope of Work (or such other person, address, fax number or e-mail address as the receiving party may have notified to the other, such notice to take effect five days from the notice being received); and

23.1.3. shall be:

- Delivered personally;
- Sent by fax or e-mail;
- Sent by pre-paid first-class post, recorded delivery or registered post; or

• Sent by registered airmail (if the notice is to be served or posted outside the country from which it is sent).

23.2. A notice is deemed to have been received:

23.2.1. if delivered personally, at the time of delivery;

23.2.2. in the case of fax or e-mail, at the time of transmission, provided a confirmatory copy is sent by first-class pre-paid post or by personal delivery before the end of the next working day;

23.2.3. in the case of pre-paid first class post, recorded delivery or registered post, 48 hours from the date of posting;

23.2.4. in the case of registered airmail, five days from the date of posting; or

23.2.5. if deemed receipt under the previous paragraphs of this Clause 23.2 is not within business hours (meaning 9.00 am to 5.30 pm Monday to Friday on a day that is not a public holiday in the place of receipt), when business next starts in the place of receipt.

23.3. To prove service, it is sufficient to prove that the notice was transmitted by fax to the fax number or e-mail address of the relevant party or, in the case of post, that the envelope containing the notice was properly addressed and posted.

#### 24. DISPUTE RESOLUTION

24.1. If any disagreement and/or dispute arise in connection with these Conditions and/or Contract, the Parties will use utmost good faith to settle such disagreement and/or dispute amicably.

24.2 Where any difference or dispute arising out of these terms and conditions cannot be determined the matter can be referred to the arbitration of a person appointed by agreement between both parties or, failing agreement within fifteen days after either party has given to the other a written request to agree to the appointment of an arbitrator, a person nominated at the request of either party by the President or a Vice-President, for the time being, of the Chartered Institute of Arbitrators.

24.3 The waiver or non-enforcement by The Company of any breach or non-observance of any of these Conditions shall not prevent the subsequent enforcement of these Conditions in full and shall not be deemed a waiver of any subsequent breach.

24.4 These Conditions shall apply to all goods and services supplied by The Company. Any provision, stipulation or condition in the conditions of order of the person, firm or company to whom such goods and services are supplied or otherwise which conflicts with or in any way qualifies or negates any of these Conditions shall have no effect and these Conditions shall prevail.

24.5 These Conditions shall not be varied, waived or modified except in writing under the hand of a duly authorized officer of The Company.

24.6 The Company reserves the right to vary these Conditions from time to time subject to giving prior written notice to the Client.

24.7 Any provision of these Conditions that is or may be void or unenforceable shall to the extent of such invalidity or unenforceability be deemed severable and shall not affect any other provision of these Conditions.

#### 25. LAW AND JURISDICTION

25.1. These Conditions and Contract shall be governed by and construed in accordance with English law and the English Courts shall have jurisdiction.