Terms and conditions of

Big Room Internet Ltd

1. APPLICATION TERMS AND CONDITIONS

1.1. These are the terms on which Big Room Internet Limited (Company No. 02198945) ('Big Room Internet') with its registered address at 7 Malvern Road, St Johns, Worcester, Worcestershire, WR2 4ZH do business. They do not affect the Client's (defined below) statutory rights. They are designed to set out clearly Big Room Internet's responsibilities and the Client's rights.

1.2. Big Room Internet offers a one stop web solution to meet the Client's needs to have an effective web presence on the internet. The Client may select from Big Room Internet's website, brochure or marketing materials a range of products and services which Big Room Internet has to offer.

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. 'Big Room Internet Content' means any content and/or materials owned by Big Room Internet and/or its licensor which shall exclude Client Content.

2.1.3. 'Client' means you, the corporate entity or individual obtaining the Services from Big Room Internet.

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 Big Room Internet or its licensors and which the Client provides and/or specifically requests Big Room Internet 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 Big Room Internet 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 Big Room Internet 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 Big Room Internet 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 Big Room Internet Content.

2.1.9. 'Contract' means any contract made between Big Room Internet 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 Big Room Internet for the domain name acquisition and registration services and/or the domain name renewal services offered by Big Room Internet 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 Big Room Internet.

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 Big Room Internet 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 Big Room Internet 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 Big Room Internet 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 Big Room Internet 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 Big Room Internet 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. Headings will not affect the 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 Big Room Internet are transacted and processed unless otherwise agreed in writing by a director of Big Room Internet.

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 Big Room Internet 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 Big Room Internet 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.

3. APPOINTMENT OF BIG ROOM INTERNET, THE INITIAL SCOPE OF WORK AND AGREED SCOPE OF WORK

3.1. The Client appoints Big Room Internet to carry out the Services and Big Room Internet accepts such appointment.

3.2. Upon receipt of a request by Big Room Internet to provide the Client with the Services, Big Room Internet 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) and such other relevant information which the Parties deems as relevant ('Scope of Work'). For the avoidance of doubt, unless otherwise agreed, work expanded to prepare the Scope of Work will be charged by Big Room Internet at Big Room Internet's then applicable hourly rates.

3.4. Big Room Internet undertakes to prepare the Initial Scope of Work and Scope of Work using reasonable care and skill.

4. APPOINTMENT OF BIG ROOM INTERNET AS AGENT TO ACT FOR CLIENT

4.1. Where the Client is acquiring, or renewing a domain name, the Client appoints Big Room Internet 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 Big Room Internet to carry out Search Engine Marketing Services for the Client and Big Room Internet accepts such appointment.

4.3. By instructing Big Room Internet 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, Big Room Internet 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 Big Room Internet with a few of its choices and prioritising such choices in a manner which Big Room Internet 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 Big Room Internet as soon as it is reasonably practicable. For the avoidance of doubt, the Client is solely responsible for the information which it provides to Big Room Internet.

5.3. Big Room Internet 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. Big Room Internet 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. Big Room Internet 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 Big Room Internet 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 Big Room Internet 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 Big Room Internet to renew the Domain Name on behalf of the Client and Big Room Internet 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 Big Room Internet may subsequently send to the Client, the Client is solely responsible to notify Big Room Internet in writing and to ensure that Big Room Internet receives such notice with regard to the date of renewal of the Domain Name 30 days before such renewal date and Big Room Internet 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 Big Room Internet 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'), Big Room Internet will perform the Search Engine Marketing Services for the Client in accordance with the Statement 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 Big Room Internet for any losses and/or damages suffered by Big Room Internet if the use of the aforesaid by Big Room Internet as part of the Search Engine Marketing Services infringes the Intellectual Property rights of any third parties.

7.3. While Big Room Internet will use reasonable care and skill in providing the Search Engine Marketing Services, Big Room Internet does not warrant that any descriptions, meta tags or content used by Big Room Internet ('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 Big Room Internet of such infringement forthwith and Big Room Internet 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 Big Room Internet'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, Big Room Internet 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 Big Room Internet 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 Big Room Internet for any loss, damages and/or claims brought against Big Room Internet.

8.3. Big Room Internet 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. Big Room Internet grants the Client a non-exclusive licence the use any Big Room Internet 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, Big Room Internet 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, Big Room Internet 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 Big Room Internet's warranties and support obligations null and void.

8.6. Notwithstanding Clause 8.5 of these Conditions, Big Room Internet 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 Big Room Internet Content (as the case may be) becomes or, in the opinion of qualified legal counsel (selected by Big Room Internet), is likely to become the subject of any Intellectual Property rights claim by third parties, the Client will permit Big Room Internet :

8.7.1. to replace all or part of the Software and/or Big Room Internet 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 Big Room Internet Content (as the case may be) as necessary to avoid such claim, provided that the Software and/or Big Room Internet Content (as the case may be) (as amended) functions in substantially the same way as the Software and/or Big Room Internet 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 Big Room Internet Content (as the case may be).

8.8. Subject to Clause 18 of these Conditions, if the Software and/or Big Room Internet Content (as the case may be) is determined in a court of law to be infringing and Big Room Internet is unable after commercially reasonable efforts to procure for the Client the right to continue using the Software and/or Big Room Internet 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 Big Room Internet Content (as the case may be) shall be

terminated and Big Room Internet 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 Big Room Internet Content.

8.9. Without prejudice to Clause 18 of these Conditions, Big Room Internet 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 Big Room Internet 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 Big Room Internet (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 Big Room Internet 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 Big Room Internet 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. Big Room Internet 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 Big Room Internet 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 Big Room Internet 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. Big Room Internet may include the statement "Designed by Big Room Internet Limited" on the home page of the Client's Website in a form to be agreed.

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 Big Room Internet 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. Big Room Internet 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. Big Room Internet 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 Big Room Internet 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 Big Room Internet, 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 Big Room Internet 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 Big Room Internet complies fully with the Data Protection Act 1998 and associated legislation and hereby indemnifies Big Room Internet against any infringement of such legislation (except insofar as Big Room Internet is responsible for the security of the system and the materials) and in particular acknowledges that Big Room Internet 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 Big Room Internet 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 Big Room Internet relating to a breach of any sub-clauses of Clause 9.5 of these Conditions by the Client and/or its users provided that Big Room Internet 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. Big Room Internet 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, Big Room Internet 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 Big Room Internet 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 Big Room Internet, 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 Big Room Internet immediately using the following details:

Email address: support@bigroominternet.co.uk

Telephone Number: 0121 200 3087

10.5. Upon receiving the Client's report, Big Room Internet 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, Big Room Internet reserves the right to charge the Client such reasonable cost as Big Room Internet 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, Big Room Internet 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 Big Room Internet 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 Big Room Internet for such assistance.

11.3. Big Room Internet 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 Big Room Internet 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, Big Room Internet not does 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 Big Room Internet 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, Big Room Internet 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 Big Room Internet does not provide internet connection services to the Client nor does Big Room Internet acts as the Client's Internet Service Provider ('ISP'). The Client is responsible for its own internet connection.

11.7. Big Room Internet 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. Big Room Internet 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, Big Room Internet 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 Big Room Internet shall be as detailed in the Scope of Work ('Client Data').

12.3. Big Room Internet 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 Big Room Internet 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 indemnity and hold harmless Big Room Internet 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 Big Room Internet of such change in writing and set out the changes and reasons for such changes. Big Room Internet 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, Big Room Internet shall be entitled to charge the Client to prepare such proposal and such charges shall be based on Big Room Internet's then applicable hourly rates.

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

14. ACCEPTANCE TESTING

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

14.2. Big Room Internet 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 Big Room Internet.

14.4. Where the Services fail the Acceptance Test, Big Room Internet will carry out such Correction to ensure that such Services meet the requirements set out in the Acceptance Test. Big Room Internet 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 Big Room Internet 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.

15.2. The Client shall provide Big Room Internet with or shall procure that the Client's current hosting service provider provides Big Room Internet with the Website Material and/or E-mail Material (as the case may be) so as to enable Big Room Internet 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 Big Room Internet 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, Big Room Internet shall not be liable for any losses and/or damages suffered by the Client. In addition, Big Room Internet reserves the right to invoice the Client for any additional expenses reasonably incurred by Big Room Internet as a result of such delays by the Client.

15.4. Unless Big Room Internet 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 Big Room Internet 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 Big Room Internet access and authorisation to the Client's central servers to perform the Remote Backup Services.

16. CHARGES AND PAYMENT

16.1. In consideration of Services performed by Big Room Internet, the Client shall pay Big Room Internet the Fees in the amounts and dates specified in the Scope of Work or as stated in the relevant Big Room Internet's invoice.

16.2. All Fees are exclusive of VAT.

16.3. Time for payment shall be of the essence.

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 Big Room Internet to the Client.

16.5. No payment shall be deemed to have been received until Big Room Internet has received cleared funds.

16.6. If payment is not made on the due date, Big Room Internet 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 Big Room Internet have been duly settled.

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

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 harmless Big Room Internet 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 Big Room Internet relating to a breach of this Clause 17.3 provided that Big Room Internet 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. Big Room Internet 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, Big Room Internet shall have the right to suspend access of the Domain Name on the internet where Big Room Internet is the webmaster in respect of the Domain Name.

17.4. The Client shall indemnify and hold harmless Big Room Internet 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 of breach of these Conditions by Big Room Internet.

18. LIMITATION OF REMEDIES AND LIABILITY

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

18.2. Big Room Internet 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, Big Room Internet 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, Big Room Internet'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 Big Room Internet 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 Big Room Internet Content), and grants Big Room Internet 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 20.1 shall be owned by Big Room Internet and/or its licensors including Big Room Internet Content, and Big Room Internet hereby grants to the Client a non-exclusive licence during the term of the relevant Contract to use such Intellectual Property rights for the purposes of utilising the Services provided by Big Room Internet.

19.3. The Client shall indemnify and hold harmless Big Room Internet 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.

19.4. Subject to Clauses 8.7, 8.8 and 8.9 of these Conditions, Big Room Internet 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 Big Room Internet Content other than Client Content infringes any intellectual property right of any third party, provided that:

19.4.1. Big Room Internet is notified promptly in writing of any such claim;

19.4.2. the Client makes no admission or settlement of such claim without Big Room Internet's prior written consent;

19.4.3. Big Room Internet has sole control of the defence and any negotiations for compromise; and

19.4.4. the Client provides, at Big Room Internet's expense, such assistance as Big Room Internet 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 Big Room Internet 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 Big Room Internet, any renewals of the Services or part thereof shall be made in writing.

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, Big Room Internet shall be entitled to terminate all Services provided by Big Room Internet to the Client if the Client fails to pay Big Room Internet any amount due by the Client to Big Room Internet 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 of 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.

20.4. On termination of the Contract for any reason the Client shall immediately pay to Big Room Internet all of Big Room Internet’s outstanding unpaid invoices and interest and, in respect of any services supplied but for which no invoice has been submitted, Big Room Internet 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.

21. CONFIDENTIALITY

21.1. Both Parties shall keep in strict confidence all information which are 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.

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 Big Room Internet 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 Big Room Internet 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.

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.

Last updated 23rd April 2010