

AMBERFIN SUPPORT AND MAINTENANCE TERMS AND CONDITIONS

These Support and Maintenance Terms and Conditions, including the SLA, set out the basis on which AmberFin Limited, a company registered in England and Wales with Company No. 06518321 whose principal place of business is at Belvedere, Basing View, Basingstoke, Hampshire RG21 4HG United Kingdom ("Company") shall provide support and maintenance services to the client identified on the Order Acknowledgement ("Client").

WHEREAS:

- a) Company is engaged in the development of software in the area of film and broadcast media ingest, format conversion and remastering, and the supply of associated services and products;
- b) Client has licensed Company's software under a separate agreement and wishes to receive support and maintenance services in respect of such software

COMPANY AND CLIENT HEREBY AGREE AS FOLLOWS:

1 Definitions.

The following terms have the meanings set forth below whenever they are used in the Contract:

"Contract"	means a contract for the supply by Company and purchase by Client of Support and Maintenance in accordance with these Terms and Conditions which shall become effective upon Company's acceptance of an Order in accordance with Clause 2.1. The Contract shall be comprised of the Order Acknowledgement, these Terms and Conditions and the Order plus any other documents specifically referenced and incorporated therein.
"Documentation"	means the applicable end user manuals, training material and other information made available by Company to Client at its discretion in either printed or machine readable form with respect to the Software.
"Effective Date"	means the date on which a Contract is deemed to have been created, and shall be the date on which Company issues the Order Acknowledgement.
"Hardware"	means the hardware onto which the Software may be installed, and in conjunction with which the Software will operate.
"Hardware Specification"	means the minimum technical specification and configuration that must be met by the Hardware in order to ensure the correct operation of the Software, as set out in the Documentation.
"Hot fix"	means a software patch on a part of the Software containing a quick-fix remedy to an urgent Issue, and does not undergo the same quality procedures as a regular Update due to the time constraints involved.
"Issue"	means the failure of the Software to comply with a reasonable interpretation of its Documentation.
"License"	means the licence under which the Client may use the Software, granted under Company's Software, Products and Services Terms and Conditions or such other terms and conditions as applied at the time of such licence grant.
"License Fee"	means the fee paid by Client to Company in respect of its License to use the Software.
"Maintenance"	means the provision of Updates and Upgrades in accordance with the SLA.
"Order"	means Client's purchase order for Support and Maintenance, that references the applicable Quote and is subject to these Terms and Conditions to the exclusion of all other terms and conditions.
"Order Acknowledgement"	means Company's written (to include by email) acknowledgement of Client's Order.

- “Quote” means a written quotation for the provision of Support and Maintenance, as confirmed in the Order Acknowledgement, and which specifies:
- c) The name and quantity of the Products to be supported; and
 - d) The name of the Software to be supported; and
 - e) The Support and Maintenance Fee.
- “SLA” means the service level agreement set out in Annex A hereto.
- “Software” means the software licensed by Company to Client under the Licence and supported under the Contract, as set out in the Order Acknowledgement, and including all Hot fixes, Updates and Upgrades supplied to Client under the Contract.
- “Support” means those activities relating to the collection and evaluation of data relating to Issues, establishing work-arounds and the provision of software fixes to resolve such Issues in accordance with the SLA.
- “Support and Maintenance Fee” means the fee payable by Client to Company in respect of the provision of Support and Maintenance for the Software, as set out in the Quote 1 or as calculated in accordance with Clause 3.4, if Client remains on a version of the Software that is outside the Support Window, as defined in Clause 3.3c).
- “Third Party Software” means software that is developed and supplied by parties other than Company, and in conjunction with which the Software will operate, as set out in the Documentation.
- “Update” means a release of the Software containing fixes to one or more Issues, and potentially some minor enhancements to the Software functionality, identifiable by an increment to the second digit identifying the particular release (e.g. a change from release 2.3 to 2.4 would be an Update).
- “Upgrade” means a release of the Software providing significant enhancements to the Software functionality, identifiable by an increment to the first digit identifying the particular release (e.g. a change from release 2.3 to release 3 would be an Upgrade).
- “Working Day” means a day from Monday to Friday excluding English public and Bank holidays.

2 Contract Formation

- 2.1 Upon receipt of a Quote, Client may accept the Quote by submitting an Order referencing the Quote. Company shall check the Order to ensure that it is consistent with the Quote and these Terms and Conditions, and shall issue an Order Acknowledgement. Company’s issue of an Order Acknowledgement shall create a binding Contract for the supply and purchase of Support and Maintenance, as set out in the Order Acknowledgement.
- 2.2 The Special Conditions (if any) shall take precedence over the provisions of these Terms and Conditions which they expressly amend or remove. Subject to the foregoing, in the event of any conflict these Terms and Conditions shall take precedence over any Order Acknowledgement.
- 2.3 Any terms and conditions in addition to, or at variance with, these Terms and Conditions contained within Client’s Order shall be void and of no effect unless Company incorporates them expressly in the Special Conditions.
- 2.4 The order of precedence of the documents making up the Contract shall be as follows (highest first):
- a) the Special Conditions;
 - b) these Terms and Conditions;
 - c) the remainder of the Order Acknowledgement relating to Support and Maintenance (other than the Special Conditions); and
 - d) the Order.

- 2.5 In the event that Client does not wish to proceed with an Order subject to these Terms and Conditions, it may cancel the corresponding Contract without liability provided it notifies Company of such in writing (to include by email) within three (3) working days of receipt of the corresponding Order Acknowledgement. After this period, any Contract may only be terminated in accordance with the provisions of Clause 9.2.

3 Support and Maintenance

- 3.1 Subject to the terms and conditions of the Contract, and for the duration set out in the Order Acknowledgement, Company shall provide Support and Maintenance in respect of the Software.
- 3.2 Company shall not be obliged to provide Support and Maintenance if payment of the Support and Maintenance Fee by Client is overdue.
- 3.3 In consideration for the payment of the Support and Maintenance Fee, Company shall:
- a) respond to Issues in accordance with the provisions of the SLA;
 - b) supply Support and Maintenance only to Support Engineers;
 - c) Supply Support and Maintenance for the shorter of (i) a period of twelve months from the date of purchase of the Licence; or (ii) the current and previous Upgrade of the Software, where the shorter of which shall be referred to as the "Support Window";
 - d) promptly notify and make available to Client all new Updates of the Software (and associated Documentation) for use by Client only in accordance with the terms of the License Agreement; and
 - e) respond to reasonable queries from Client.
- 3.4 In the event that the Software includes Digimetrics 'Aurora' products (as identified in the Order Acknowledgement), Company reserves the right to cease to provide Support and Maintenance for such 'Aurora' products in the event that Digimetrics cease to provide support and maintenance to Company for such 'Aurora' products.
- 3.5 In the event that Client chooses to remain on an Upgrade release of the Software that is outside the Support Window, as defined in Clause 3.3c), Company may, at its discretion and subject to written agreement with Client, continue to provide Support and Maintenance on such older Software in consideration of an increased Support and Maintenance Fee, where such shall be calculated as follows:
- Support and Maintenance Fee for Software outside the Support Window =
standard Support and Maintenance Fee * 140%ⁿ
- where n= number of full years Client has purchased support for Software outside its Support Window.
- 3.6 Company shall promptly notify the Client of all new Upgrades of the Software and shall, at Client's request and upon payment of the corresponding fee (if any), make such Upgrades (and associated Documentation) available to Client for use by Client only in accordance with the terms of the License Agreement.
- 3.7 In order to permit Delivery of Hotfixes, Updates and Upgrades the Client should have access to the internet. Company accepts no liability for any loss or damage or delays in access to Updates and Upgrades arising from Client's failure to obtain such access.
- 3.8 Upon request, Client shall ensure that Company's support personnel are provided with the appropriate approvals, access information and remote electronic access to the Software, or physical access to the computer equipment on which the Software is installed if in Company's reasonable opinion such physical access is necessary, for the purpose of investigating or rectifying reported Issues. In the event of Client providing such access but without the appropriate approvals, or in the event of Client not providing such access, Client shall not seek any action or remedy from Company in association with any loss or damage to Client arising from such unauthorised access or lack of access.

- 3.9 Company shall not be obliged to continue to provide Support in respect of the relevant Issue if Client cannot provide or obtain such approvals, information and access set out in Clause 3.8 above.
- 3.10 Company may supply Support and Maintenance itself or by its appointed agents. Company will remain fully responsible for the delivery of the Support and Maintenance to Client.
- 3.11 Company shall be under no obligation to provide Support in respect of:
- a) Issues resulting from any modifications or customisation of the Software not made by Company. For the avoidance of doubt, modifications to the Software shall include but not be limited to changes in any component of the Software as referenced in Schedule 1.
 - b) incorrect or unauthorised use of Software or operator error where such use or operation is not in accordance with the Documentation;
 - c) any programs used in conjunction with the Software;
 - d) faults in the Hardware;
 - e) faults in the Third Party Software; and
 - f) use of the Software with computer hardware, operating systems or other supporting software other than the Hardware and the Third Party Software.
- 3.12 Company shall notify Client in writing as soon as Company is aware that any Issue is not covered by Clause 3.3 and/or if such Issue is covered by Clause 3.11 and any time spent by Company investigating such Issues at Client's request after such notification will be chargeable at Company's then current rates. Company shall invoice such charges at Company's discretion and such shall be paid within 30 days from the date of said invoice.

4 Client's Cooperation.

- 4.1 Client shall provide co-operation and support to Company in Company's efforts to deliver the the Support and Maintenance. Such co-operation and support shall include, but not be limited to:
- a) a reasonable level of responsiveness to Company's requirements and communications;
 - b) the timely transmittal and release to Company of appropriate and accurate documentation, information and materials in respect of reported Issues;
 - c) granting to Company remote access to the Hardware on which the Software is installed if required for the provision of effective Support;
 - d) the making available of competent Support Engineers to assist Company when and to the extent as is reasonably requested by Company;
 - e) the use of the Software only in accordance with the relevant Documentation and the License Agreement.
- 4.2 Client shall:
- a) ensure that the Software is managed in a proper manner and that all persons with administrative authority over the Software shall be competent trained employees or shall be persons under their supervision;
 - b) use the latest Update or Upgrade of the Software made available to it by Company; and
 - c) copy and use the Software, Updates, Documentation and all other materials provided hereunder only in accordance with the terms of the Licence Agreement.
- 4.3 Client agrees that if Client does not perform Client's obligations under the Contract and such non-performance affects Company's ability to perform, Company shall not be considered in default under the Contract to the extent so affected.

5 Personnel.

- 5.1 In the event that Company visits Client's premises Client shall advise Company's staff, agents or subcontractors of all rules, regulations and practices with which they should comply while on those premises. Company's staff, agents and subcontractors shall comply with such rules and regulations whenever they are on Client's premises. Client shall take reasonable precautions to ensure the health and safety of Company's staff, agents and sub-contractors while they are on Client's premises.

- 5.2 Without in any way restricting the right of an employee freely to accept employment and change employment, if either party (the "Hiring Party") induces the other party's employee engaged in the delivery of Support or Maintenance or the development or integration of the Client Software to enter its service at any time during the term of the Contract or during a period of six months thereafter then the Hiring Party shall pay to the other party an amount being equivalent to fifty percent (50%) of the employee's net annual salary such sum being a genuine pre-estimate of the cost of the disruption that such inducement would cause to the efficient conduct of the affected party's business.

6 Fees & Payment.

- 6.1 Company may invoice the Support and Maintenance Fee on the Effective Date.
- 6.2 Client hereby agrees to pay Company's invoices within 30 days of the date thereon.
- 6.3 Client shall be liable for any other agreed upon fees, any national, European Union, value added, sales, excise, state, local or other taxes or customs duties applicable. For the avoidance of doubt, should Client be required by any law or regulation to make any deduction on account of tax including but not limited to Withholding Tax or otherwise on any sum payable under the Contract the sum payable shall be increased by the amount of such tax to ensure that Company receives a sum equal to the amount to be paid under the Contract.
- 6.4 Client shall pay an interest charge on any undisputed sum outstanding to Company at the rate of 7% above Barclays Bank Sterling base rate as at the date of invoice. Client shall notify Company in writing within 10 days of receipt of an invoice that the invoice is in dispute.
- 6.5 In the event that Client purchases additional Software so that its total aggregate Licence Fee increases, including but not limited to the purchase of new Upgrades in accordance with Clause 3.6, the Support and Maintenance Fee shall increase by a corresponding percentage.

7 Warranty

- 7.1 Subject to the limitations upon its liability in Clause 8, Company warrants to Client that all services supplied under the Contract will be carried out with reasonable skill and care by personnel whose qualifications and experience will be appropriate for the tasks to which they are allocated.
- 7.2 Save as expressly provided in Clause 7.1 of these Terms and Conditions, Company specifically excludes but without limitation all other conditions, warranties, representations or other terms relating to the Contract including any warranties that might otherwise be implied or incorporated into the Contract, such as those of satisfactory quality, fitness for a particular or any purpose, or ability to achieve any particular result.
- 7.3 In the event that Client believes the warranty in Clause 7.1 has not been met on any occasion, Client shall promptly notify Company according to the escalation process set out in the SLA, providing all details that may be necessary for Company to remedy the breach, and Company shall use all its reasonable endeavours to remedy such breach (either by itself or through a third party).

8 Limitation of Liability.

- 8.1 Nothing in the Contract shall exclude or limit Company's liability for (i) fraud or other criminal act, (ii) personal injury or death caused by the negligence of Company's employees in connection with the performance of their duties hereunder or by defects in any Hotfix, Update or Upgrade supplied pursuant to the Contract, or (iii) any other liability that cannot be excluded by law.
- 8.2 Subject to Clause 8.1, in no event will Company be liable under the Contract for any damages resulting from: (i) loss of, damage to or corruption of data, (ii) loss of use, (iii) lost profits, (iv) loss of anticipated savings, and/or (v) any indirect or consequential loss. Such liability is excluded whether such damages were reasonably foreseeable or actually foreseen.

- 8.3 Except as provided in Clause 8.1 and in Clause 8.2 Company's maximum aggregate liability to Client for any cause whatsoever shall be for direct costs and damages only and will be limited to a sum equivalent to 100% of the Support and Maintenance Fee paid and payable by Client during the twelve (12) month period immediately prior to Client's claim in respect of the Support and Maintenance that is the subject of such claim.
- 8.4 Company hereby excludes all liability that Company has not expressly accepted in the Contract. These limitations will apply regardless of the form of action, whether under statute, in contract, tort, including negligence, or any other form of action. For the purposes of this Clause 7 "Company" includes Company's employees, sub-contractors, licensors and suppliers who shall therefore have the benefit of the limits and exclusions of liability set out in this Clause in terms of the Contracts (Rights of Third Parties) Act 1999.
- 8.5 No action, regardless of form, arising out of transactions occurring under or contemplated under the Contract may be brought by either party more than two (2) years after the cause of action has accrued.
- 8.6 Save as provided in Clause 8.7 Client shall have no remedy in respect of any representation (whether written or oral) made to you upon which Client relied in entering into the Contract ("Misrepresentation) and Company shall have no liability to Client other than pursuant to the express terms of the Contract.
- 8.7 Nothing in the Contract shall exclude or limit Company's liability for any Misrepresentation made by Company fraudulently.

9 Duration & Termination.

- 9.1 Each Contract shall become effective on the Effective Date and shall continue for a period of twelve (12) months, unless and until terminated in accordance with the provisions of 2.5 or Clause 9.2.
- 9.2 Either party ("the Initiating Party") may forthwith terminate the Contract at any time:
- a) on giving written notice to the other party if the other party commits any material breach of any term of the Contract and in the case of a breach which is reasonably capable of remedy fails to remedy that breach to the reasonable satisfaction of the Initiating Party within thirty (30) days of a written request to remedy the same; or
 - b) if the other party has had appointed an administrator, receiver and manager, or administrative receiver, or has itself appointed an administrator, in any such instance over its undertaking or part thereof, or has passed an extraordinary resolution for a creditors' voluntary winding up or has been put into compulsory liquidation by a court having an insolvency jurisdiction for the company in respect of which the winding up order has been made, or has entered into a corporate voluntary arrangement as defined by the Insolvency Act 1986, or has ceased or threatened to cease to carry on its business or if any substantially similar event shall take place under the laws of another jurisdiction.
- 9.3 The expiry of the Contract or the termination thereof for whatever reasons shall be without prejudice to any other rights or remedies a party may be entitled to under law and shall not affect the respective rights and liabilities of either of the parties accrued prior to such termination.

10 Intellectual Property.

Company is the owner or licensee of the patent, copyright, trade secrets, trademarks and any other intellectual property rights which subsist in the Hotfixes, Updates and Upgrades. Title to the Hotfixes, Updates and Upgrades shall remain vested in Company or Company's licensors. For the avoidance of doubt title and all intellectual property rights to any design, new software, new protocol, new interface, enhancement, update, derivative works, revised screen text or any other items that Company creates shall remain vested in Company or Company's licensors. Any rights not expressly granted herein are reserved to Company.

11 Confidentiality.

- 11.1 Confidential Information shall be defined as any information (whether disclosed in oral, written or electronic form) belonging or relating to Company's or Client's business affairs or activities and which: (i) has been marked as confidential or proprietary, (ii) has been identified orally or in writing as being of a confidential nature, or (iii) may reasonably be supposed to be confidential in the circumstances.
- 11.2 Each party undertakes that for a period of five years from the date of disclosure it will not, without the prior written consent of the other party, use, disclose, copy or modify the other party's Confidential Information (or permit others to do so) other than is necessary for the performance of its rights and obligations under the Contract. Each party hereby agrees that it shall treat the other's Confidential Information with the same degree of care as it employs with regard to its own Confidential Information of a like nature and in any event in accordance with best current commercial security practices, disclosing such Confidential Information only to those of its employees, consultants and bona fide professional advisers who need to have such information for the purposes of the Contract, and ensuring that such employees, consultants and professional advisers shall be bound by the same confidentiality obligations as are set out in this clause.
- 11.3 The provisions of Clause 11.2 shall not apply to:
- a) any information in the public domain otherwise than by breach of the Contract;
 - b) information lawfully in the possession of the receiving party thereof before disclosure by the disclosing party;
 - c) information lawfully obtained without restriction from a third party; and
 - d) information required to be disclosed by a court of competent jurisdiction, governmental body or applicable regulatory authority provided that the party under such duty to disclose shall use all reasonable endeavours to give the other party as much prior notice of such disclosure as is reasonably practicable and permitted by law.
- 11.4 Each party may publicise its involvement with the other party.
- 11.5 If the Contract is terminated, each party shall, at the other party's option, return or destroy all Confidential Information of the other party.

12 Assignment.

Either party may assign the Contract or otherwise transfer any rights or obligations under the Contract with the other party's prior written consent, such consent not to be unreasonably withheld.

13 Force Majeure.

Neither party is responsible for failure to fulfil its obligations hereunder due to causes beyond its reasonable control that directly or indirectly delay or prevent its timely performance hereunder. Dates or times by which each party is required to render performance under the Contract shall be postponed automatically to the extent that the party is delayed or prevented from meeting them by such causes.

14 Notices.

All notices made pursuant to any Contract must be made in writing. Any written notice to be given or made pursuant to the provisions of any Contract shall be sent postage prepaid by registered or recorded mail or reputable courier service, addressed to the other party's address stated above and shall be marked for the attention of "The Company Secretary". Unless otherwise provided in the Contract, all notices shall be deemed as given on the day of their receipt by the receiving party.

15 Entire Agreement.

The Contract constitutes the entire agreement between the parties with respect to the subject matter hereof and shall supersede all previous representations, agreements and other communications between the parties, both oral and written. The Contract shall prevail notwithstanding any variance with the terms and conditions of any order or purchase order submitted by Client.

16 Dispute Resolution, Law & Jurisdiction.

- 16.1 In the event of any dispute arising under the Contract the parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure. Unless otherwise agreed by the parties, the mediator will be appointed by CEDR. No party may commence court proceedings in respect of any dispute arising out of the Contract until it has attempted to settle the dispute by mediation and either the mediation has terminated or the other party has failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay.
- 16.2 Subject to the provisions of Clause 16.1 each party hereby irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any disputes of whatever nature arising out of or relating to the Contract.
- 16.3 Notwithstanding the provisions of Clause 16.1, nothing in the Contract shall limit either party's right to seek injunctive relief.
- 16.4 The Contract shall be governed by English law.

17 Survival.

The following clauses shall continue to be in effect after the termination or expiration of the Contract: 1, 5.2, 6, 7, 9.3, 10, 11, 14 - 18 inclusive.

18 General.

If any provision of the Contract is adjudged by a court of competent jurisdiction to be invalid, void, or unenforceable, the parties agree that the remaining provisions of the Contract shall not be affected thereby, and that the remainder of the Contract shall remain valid and enforceable. No waiver by either party of any term hereof shall constitute a waiver of any such term in any other case whether prior or subsequent thereto. No single or partial exercise of any power or right by either party shall preclude any other or further exercise thereof or the exercise of any such power or right under the Contract. The Contract may not be changed, modified, amended, released or discharged except by a subsequent written agreement or amendment executed by duly authorised representatives of Company and Client. A person who is not a party to the Contract has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract except as explicitly provided by Clause 8.4 herein but this does not affect any right or remedy of a third party that exists or is available apart from the Act.

A ANNEX A

Service Level Agreement

A.1 Issue Reporting.

Support Engineers must report Issues to Company in the following ways:

- 1 by telephone on +44 (0) 1256 317517 (UK) or +1 818 768 8948 (US)
- 2 by use of Company's online support portal, login details for which will be provided with the Order Acknowledgement.

All issues will be logged and tracked via the online support portal. The response and resolution times set out below shall only apply to Issues logged via the Company's online support portal. If direct email or telephone is used to log or communicate information relating to a support Issue, response and resolution times may be compromised.

A.2 Support Hours.

Company will provide telephone support for reporting, correcting and resolving issues within the timeframes set forth herein. Company will maintain records of all reported issues made by client personnel.

Telephone support will be available to Client from Monday to Friday, between 09:00 hrs and 18:00 hrs (local time in Basingstoke – England, via the UK number above, and local time in Burbank – California, via the US number above).

A.3 Issue Categories.

Issues will be categorised as set out below by Company in Company's reasonable opinion at the time each Issue is reported:

Severity	Description
P1:	Client's system is severely degraded, such that Client is unable to access core functionality, with a direct impact on the Client's business processes.
P2:	Client's system is degraded such that some functionality, key to the Client's business processes, is limited or unavailable.
P3:	A non-urgent issue that requires investigation.
Consultation Request:	A request for training, consultancy, or a specific enhancement to the Software as set out in Clause Error! Reference source not found. of the Terms and Conditions.

A.4 Response and Resolution Times.

Company shall use its reasonable endeavours to respond to and resolve Issues during the timeframes set out below, where the durations specified are business hours, i.e. hours during which the Support services are available as set out in Clause A.2 above.

Severity	Response time		Replication time	Resolution time	
	Acknowledgement	Follow up		Update frequency	Solution
P1	1 hr	1 day hrs	1 day	Workaround	NA
				Hot-fix	5 days
P2	1 hr	2 days	1 week	Maintenance release	1 month
P3	1 hr	5 days	1 month	GA Release	6 months
Other requests	1 hr	2 days	NA	NA	NA

The current status of the issue can be viewed via the Company's online support portal.

A.5 Escalation.

In the event that the Client has concerns regarding the Company's progress with a particular issue or with any other matter regarding the delivery of Support and Maintenance, the Client may raise such concerns with the Company according to the following escalation path:-

1. Head of Client services +44 (0) 1256 317517
2. VP Engineering, Peter Elleby +44 (0) 1256 317500
3. CEO, Jeremy Deaner +44 (0) 1256 317535

Issues outside the ordinary may also be escalated within Company by the head of Client Services to facilitate their resolution.

A.6 Upgrades, Updates and Hot fix process

Where an Upgrade, Update or Hot fix is used to remedy an Issue it is the responsibility of the Client to ensure that this release resolves the Issue and that the Client is happy to continue with this release until a future Update, Upgrade or Hot fix is available. If the Client finds that the new release provided does not resolve the Issue to an acceptable level then the Client is free to revert back to their previous version of the software and shall notify the Company of such. The Company shall then create a new Issue, which shall be resolved in accordance with the provisions of Clause A.4 above.