

## AMBERFIN SOFTWARE, PRODUCTS AND SERVICES TERMS AND CONDITIONS

These Software, Products and Services Terms and Conditions (the "Terms and Conditions") shall apply to the provision of software and services by 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") to the client identified in the corresponding Quote (as defined below) ("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 requires the use of the software; and
- c) Company is able to provide and Client wishes to purchase a licence to use the software, services and ancillary hardware products, under the terms and conditions set out below

### COMPANY AND CLIENT HEREBY AGREE AS FOLLOWS:

#### 1 Definitions.

The following terms have the meanings set forth below whenever they are used in these Terms and Conditions:

- "Authorised Third Party" means a third party who is authorised to access the Software using appropriate security measures and is named in the Order Acknowledgement.
- "Commencement Date" means the commencement date as specified in the Order Acknowledgement.
- "Contract" means a contract for the supply by Company and purchase by Client of Products and/or licences to use the Software, and/or of Services 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 Specifications, 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 and the Services.
- "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, and which is identified by its MAC address as advised by Client to Company.
- "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.
- "Licence Fee" means the fee paid by Client to Company in respect of its licence to use the Software in accordance with Clause 4, as set out in the Order Acknowledgement.
- "Licensed Materials" means the Specification, the Software and the Documentation.
- "Maintenance" means the provision of Updates and Upgrades in accordance with the Support and Maintenance Terms and Conditions.
- "Order" means Client's purchase order for Software, Products and/or Services, 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.

“Products”	means the hardware products supplied by Company to Client as set out in the Order Acknowledgement.
“Product Fee”	means the fees paid by the Client to the Company for the Products as set out in the Order Acknowledgement.
“Quote”	means a written quotation for the provision of Licensed Materials, Services and/or Products, as confirmed in the Order Acknowledgement, and which specifies: <ul style="list-style-type: none"> <li>a) The name and quantity of the Products to be supplied; and</li> <li>b) The name of the Software;</li> <li>c) The Product Fee; and</li> <li>d) The level of licence to be supplied, and the corresponding Licence Fee.</li> </ul>
“Services”	means the installation and training provided by Company as further set out in the applicable Order Acknowledgement.
“Services Fee”	means the fee payable by Client to Company in respect of the Services as set out in the applicable Order Acknowledgement.
“Site”	means the Client site at which the Products and the Software shall be delivered and installed, and at which the Hardware is located.
“Software”	means the software licensed by Company to Client in accordance with the terms and conditions of the Contract as set out in the Order Acknowledgement, and including the Enhancements.
“Solution”	means the Software, the Products and the Services delivered under a single Contract.
“Special Conditions”	means any special conditions set out in the Order Acknowledgement that expressly reference and amend or remove a provision of these Terms and Conditions.
“Specification”	means the document setting out the functional and technical specification for the Software or for an Enhancement, as agreed in writing by Company and Client and incorporated in or referenced by the Order Acknowledgement.
“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 a licence to use the Licensed Materials and/or the Services, 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 Software, Products and Services (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 12.

### **3 Supply of Software, Products and Services**

- 3.1 Company agrees to provide subject to the terms of the Contract the Licensed Materials, the Services and Products as set out in the Order Acknowledgement and in accordance with the relevant Specification.
- 3.2 Company may deliver the Services itself or by its subcontractors, providing always that Company shall be fully liable for the acts and omissions of its subcontractors in the performance of the Services.
- 3.3 Subject to Company's express written consent, such consent not to be unreasonably withheld or delayed, Client may appoint an Authorised Third Party to act on Client's behalf with respect to the Software, the Services and the Products, providing always that Client shall be fully liable for the acts and omissions of its Authorised Third Party as though Client had itself made such act or omission.

### **4 Licence Grant**

- 4.1 Subject to the terms and conditions of the Contract, Company hereby grants to Client a personal, non-transferable, perpetual and non-exclusive licence to use the Software on the Hardware for Client's own internal business purposes only.
- 4.2 Client may make such copies of the Licensed Materials as are reasonably necessary for Client's use of the Software and shall reproduce all copyright and other notices placed upon the Licensed Materials by Company or Company's subcontractors or licensors on all such copies. All such copies shall be part of the Licensed Materials and shall be subject to the terms and conditions of the Contract.
- 4.3 Client agrees that:
  - a) Client will not install the Software on any hardware but the Hardware;
  - b) Client will not reverse engineer, decompile, or disassemble the Software, except to the extent that Company cannot prohibit such acts by the applicable law;
  - c) Client will not sell, assign, license, lease, rent, loan, lend, transmit, network, or otherwise distribute, transfer or make available the Licensed Materials in any manner to third parties;
  - d) Client will Use the Licensed Materials for Client's own internal purposes only, and will not use the Licensed Materials to provide services to third parties through a service bureau or other arrangement. Notwithstanding the foregoing, an Authorised Third Party may use the Licensed Materials to provide services to Client only, on an outsourced basis, subject to the provisions of Clause 3.3;
  - e) Client is expressly prohibited (except where expressly permitted in writing by Company) from adapting, modifying, merging, revising, improving, translating, upgrading, enhancing and creating derivative works of the Licensed Materials for any purpose including error correction or any other type of maintenance;
  - f) Client will maintain true and accurate records to enable Company to ensure Client's compliance with the Contract. For the duration of the Contract and for a period of twelve (12) months afterwards Client will permit Company to have access to all of Client's relevant records and computer systems that may reasonably be required in relation thereto;
  - g) Client will take security measures sufficient to reasonably safeguard the Licensed Materials from theft or from access by persons other than Client or Client's authorised employees and Authorised Third Parties;
  - h) Client will not move the Software from the Site or operate it on any hardware other than the Hardware without Company's prior written consent, such consent not to be unreasonably withheld or delayed; and
  - i) Client will keep the Licensed Materials free and clear of all claims, liens and encumbrances.

### **5 Services**

- 5.1 Company shall deliver the Services in accordance with the Contract.
- 5.2 If the Services include training, Client shall be responsible for the provision of an appropriate venue, refreshments and reasonable facilities for such training. Client acknowledges that each training session may include a maximum of six (6) delegates.
- 5.3 In the event that Company is unable to deliver the Services on the scheduled date due to failure of the Client to meet its obligations hereunder, the duration of the Services shall be extended by the amount of such delay and the Services Fee shall be increased accordingly.

## **6 Products**

- 6.1 We shall deliver the Products to the Site specified in the Order Acknowledgement.
- 6.2 Risk in the Products shall pass to Client upon delivery. However, title in the Products will not pass to Client until Company has received payment in full of all sums due to Company in respect of the Products.
- 6.3 Until title in the Products passes to Client, Client shall hold the Products as bailee for Company and take proper care of it, keeping it insured at Client's expense.
- 6.4 Before title has passed to Client and without prejudice to any of Company's other rights, in the event that any of the events described in Clause 12.2 (a) or (b) occur or Company acting reasonably believes that such event may occur, Company may repossess some or all of the Products and Company's employees or agents may enter upon Client's premises for that purpose. This right and licence shall continue after and despite the termination for any reason of the Contract.

## **7 Client's Cooperation.**

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) the provision of Hardware that complies with the corresponding Hardware Specification;
- c) use the latest version of the Software made available to it by Company; and
- d) copy and use the Software, Documentation, Products and all other materials provided hereunder only in accordance with the terms of the Contract.

## **8 Personnel.**

- 8.1 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.
- 8.2 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 the Services 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.

## **9 Fees & Payment.**

- 9.1 Company may invoice the Licence Fee, the Services Fee and the Products Fee in accordance with the Order Acknowledgement on or after the Effective Date of the Contract.
- 9.2 Client shall pay Company's reasonable travel and subsistence expenses incurred solely and necessarily in the delivery of the Services.
- 9.3 Client shall pay interest on any outstanding undisputed sum due to be paid by Client to Company at the rate of seven (7) percent per annum above the base rate of Barclays Bank PLC (or its successor) accruing daily from 15 days from the date upon which such sum became payable until the date of its payment. Client shall notify Company in writing within 10 days of receipt of an invoice that the invoice is in dispute.
- 9.4 Client hereby agrees to pay Company's invoices by wire transfer within 30 days of the date thereon unless otherwise specified in the Order Acknowledgement.

- 9.5 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.
- 9.6 Company shall notify Client of any increases in the Licence Fee and/or the Product Fee in advance of the execution of any new Schedule for the purchase of additional licences or Products.
- 9.7 If payment of the Licence Fee, Services Fee or Product Fee or any part thereof is overdue then unless Client has notified Company in writing that such payment is in dispute within 10 days of the receipt of the corresponding invoice Company shall notify Client in writing of such delay and in the event that such fees are not paid in full within 10 days of the date of such notice, Company may at Company's option:
- a) suspend provision of the Software and/or Services and/or delivery of the Products until the overdue fees are paid in full; or
  - b) treat such as material breach and terminate the Contract in accordance with Clause 12.2 (a).

## 10 Warranty

- 10.1 Company hereby warrants that for a period of ninety (90) days from the date of Acceptance the Software will comply with a reasonable interpretation of its Specification. Company does not warrant that the operation of the Software will be uninterrupted or error free.
- 10.2 Company hereby warrants that the 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.
- 10.3 Company hereby warrants that for a period of ninety (90) days from delivery the Products will be free of defects in materials and workmanship. In the event that the relevant manufacturer of the Products offers a longer warranty period, Company shall extend this warranty offering accordingly.
- 10.4 Save as expressly provided in Clause 10.1, Clause 10.2 and Clause 10.3 of these Terms and Conditions, Company specifically excludes but without limitation all other conditions, warranties, representations or other terms relating to these Terms and Conditions or any Contract including any warranties that might otherwise be implied or incorporated into these Terms and Conditions or any Contract, such as those of satisfactory quality, fitness for a particular or any purpose, or ability to achieve any particular result.
- 10.5 Client hereby agrees that Client's sole remedy in respect of any non-conformance with the warranties in Clause 10.1 and Clause 10.2 is that Company shall at Company's expense remedy such non-conformance and if in Company's reasonable opinion Company is unable to remedy such non-conformance then Company shall refund the corresponding Fees, if paid, whereupon the Contract including its Schedules and Annexes shall immediately terminate.
- 10.6 Client hereby agrees that Company's sole remedy in respect of any non-conformance with the warranty in Clause 10.3 is that Client shall return any defective Products to Company and Company shall procure the repair or replacement of any defective Product.
- 10.7 If Company procures the replacement of a Product, the replacement Product may be new or used but it shall in any event be covered by the warranty in Clause 10.3 for the remainder of the warranty period applicable to the original Product or for 30 days, whichever is the longer.
- 10.8 In the event of damaged or faulty Products that are no longer covered by their warranty, Client may request repairs or replacement Products from Company. Company shall use Company's reasonable endeavours to offer Client such repairs or replacement at Company's then-current price provided such repairs or replacement are then available to Company.
- 10.9 The warranties given in Clause 10.1, Clause 10.2 and Clause 10.3 are all provided subject to Company's limit of liability as set out in Clause 11 and shall not apply to the extent that the warranty claim arises from any element of the Software or Products:
- a) being used outside their normal operational parameters as set out in the Specification;
  - b) being used other than in accordance with the Documentation; or

- c) being modified other than by Company or under Company's explicit written instructions; or
- d) being subject to accidental damage; or
- e) being integrated with third party software or hardware or products other than the Hardware and the Products without Company's prior written consent.

## **11 Limitation of Liability.**

- 11.1 Nothing in these Terms and Conditions or any 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 Software supplied pursuant to the Contract, or (iii) any other liability that cannot be excluded by law.
- 11.2 Subject to Clause 11.1, 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. For the avoidance of doubt, in the event of loss of, damage to or corruption of data arising from any act or omission of Company's under the Contract, Company be liable for the cost of restoring such data from backups where available, but not for the value of any lost or corrupted data that could not be so recovered.
- 11.3 Except as provided in Clause 11.1 and in Clause 11.2 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 125% of the aggregate of the Licence Fees, Services Fees and Products Fees paid and payable by Client during the twelve (12) month period immediately prior to Client's claim in respect of the Solution that is the subject of such claim.
- 11.4 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 "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.
- 11.5 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.
- 11.6 Save as provided in Clause 11.7 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 and the Proposal.
- 11.7 Nothing in the Contract shall exclude or limit Company's liability for any Misrepresentation made by Company fraudulently.

## **12 Duration & Termination.**

- 12.1 Each Contract shall become effective on its Effective Date and shall continue unless and until terminated in accordance with the provisions of Clause 2.5 or Clause 12.2.
- 12.2 Either party ("the Initiating Party") may forthwith terminate a 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.

12.3 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.

### **13 Intellectual Property.**

13.1 Client acknowledges that the Licensed Materials and their design and specification are Company's exclusive intellectual property and that Client shall acquire no rights in the Licensed Materials or any other deliverables created hereunder (including but not limited to the Enhancements) save to the extent explicitly set out herein.

13.2 Company is the owner or licensee of the patent, copyright, trade secrets, trademarks and any other intellectual property rights which subsist in the Licensed Materials. Title to the Licensed Materials 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 for Client shall remain vested in Company or Company's licensors. Any rights not expressly granted herein are reserved to Company.

13.3 Subject to the provisions of this Clause 13, Company shall defend at Company's own expense any claim brought against Client alleging that the use of the Software or the Products in accordance with the Contract infringes a patent, copyright, or mask work belonging to a third party in the United States of America or European Union ("Intellectual Property Claim") and Company shall pay all damages awarded or agreed to be paid to any third party in settlement of an Intellectual Property Claim provided that Client:

(a) promptly furnishes Company with written notice of the Intellectual Property Claim upon becoming aware of the same;

(b) makes no admissions or settlements without Company's prior written consent;

(c) acts in accordance with Company's reasonable instructions and provides Company with reasonable assistance in respect of the Intellectual Property Claim; and

(d) gives to Company the sole authority to defend or settle the Intellectual Property Claim.

13.4 If in Company's reasonable opinion any Software or Product is or may become the subject of an Intellectual Property Claim then Company shall either:

(a) obtain for Client the right to continue using the relevant Software or Product;

(b) replace or modify the relevant Software or Product so that it becomes non-infringing; or

(c) if such remedies in (a) and/or (b) above are not in Company's opinion reasonably available, then Client shall cease to use the relevant Software or Product and Company shall refund to Client the corresponding portion of the Licence Fees or Product Fees paid in respect thereof.

13.5 Company shall reimburse Client's reasonable costs incurred in complying with the provisions of Clause 13.3.

13.6 Company shall have no liability for any Intellectual Property Claim resulting from the integration of the Software or the Products with other goods or software that were neither supplied nor combined with the Software or the Products by Company or if the same results from any breach of Client's obligations under the Contract.

13.7 This Clause 13 states Company's entire obligation and liability and Client's sole remedy in respect of any infringement or alleged infringement of any intellectual property rights arising from Client's use of the Software or the Products. Company hereby excludes all other obligations and liabilities in relation to infringement or alleged infringement of the intellectual property rights of any person.

## **14 Confidentiality.**

- 14.1 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.
- 14.2 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.
- 14.3 The provisions of Clause 14.2 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.
- 14.4 Each party may publicise its involvement with the other party.
- 14.5 If the Contract is terminated, each party shall, at the other party's option, return or destroy all Confidential Information of the other party.

## **15 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 or delayed.

## **16 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.

## **17 Notices.**

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

## **18 Entire Agreement.**

The Contract, including any annexes or schedules expressly incorporated by reference, 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. These Terms and Conditions shall prevail notwithstanding any variance with the terms and conditions of any order or purchase order submitted by Client.

## **19 Dispute Resolution, Law & Jurisdiction.**

- 19.1 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.
- 19.2 Subject to the provisions of Clause 19.1 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.
- 19.3 Notwithstanding the provisions of Clause 19.1, nothing in the Contract shall limit either party's right to seek injunctive relief.
- 19.4 The Contract shall be governed by English law.

## **20 Survival.**

The following clauses shall continue to be in effect after the termination or expiration of the Contract: 1, 2.4, 2.3, 6.3, 6.4, 8.2, 9, 10.4, 10.5, 10.6, 10.7, 10.8, 10.9, 11, 12.3, 13, 14, 17 - 21 inclusive.

## **21 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 11.4 herein but this does not affect any right or remedy of a third party that exists or is available apart from the Act.