

## Sapphire Systems Inc. – Standard Terms and Conditions

### 1. Definitions

In this agreement the following definitions shall apply:

- 1.1 The “**Company**” shall mean Sapphire Systems Inc. a company registered in the United States and whose registered office is at 405 Lexington Ave – 49<sup>th</sup> Floor, New York, New York 10174
- 1.2 The “**Customer**” shall mean **Customer** a company registered in the United States and whose registered office is at, **New York, New York 10007**
- 1.3 The use of the term “**Product**” shall (unless stated otherwise) be treated as including reference to all products and Services supplied by the Company (including without limitation Software and any other computer programs, manuals and any products resulting from the provision of any services).
- 1.4 The use of the term “**Service(s)**” shall (unless stated otherwise) be treated as including reference to all services provided by the Company in the normal course of business associated with the Software being supplied or requested by the Customer where the Software has not been supplied by the Company.
- 1.5 Unless otherwise agreed in writing by an authorised officer, “**Working Hours**” shall be taken to mean 09:00 am to 5:30 pm EST, CST, MST, PST – Need to change for respective time zones. on all days except weekends and federal holidays.
- 1.6 The term, “**On Site Working Hours**” will be the hours during which Company staff will provide Services to the Customer. Unless otherwise agreed in writing this shall be taken to mean 09:00 am to 5:30 pm EST, CST, MST, PST – Need to change for respective time zones time, less a one hour break for lunch, on all days except weekends and federal holidays.
- 1.7 “**Order**” means any order for product(s) or services or licence for a product from the Company on the Company's prescribed form. The Company does NOT accept any terms and conditions placed on it by the Customer which are not specifically agreed prior to any such order being placed.
- 1.8 “**Software**” means such of the software as listed in each applicable order form and appropriate User Manual for which the Customer places an order (at the time of execution of this agreement or thereafter). It does not include the source code of such computer programs. It does include new releases, updates and revisions to such computer programs but only as part of any maintenance and support options for which the Customer may have opted.
- 1.9 “**User Manual**” means any manual in printed or electronic form designed and intended to assist end users of the Software in the use and operation of the Software.
- 1.10 The term “**Agreement**” shall be treated as including these terms together with any or all of:
  - I. any written order form with any transaction-specific terms and conditions and appendices attached to it. In the event of any conflict between these terms and those included in the order form, the terms of the order form will prevail.
  - II. where provided, any written statement of requirements from the Customer as modified by way of response as the Company.
  - III. where applicable the relevant third party or Sapphire software license and maintenance agreement. In the event of any conflict between these terms and those in the relevant licence and maintenance agreement, the terms of the licence and maintenance agreement will prevail.

- IV. Sapphire Standard Support Terms and Conditions. In the event of any conflict between these terms and those of the Sapphire Standard Support Terms, the terms of the Sapphire Standard Support Terms will prevail.
- 1.11 **"Intellectual Property Rights" or "Intellectual Property"** means patents, trade marks, service marks, rights (registered or unregistered) in any designs, applications for any of the foregoing, trade or business names, copyright (including rights in computer software) and topography rights; rights in know-how and other proprietary knowledge and information; internet domain names; rights protecting goodwill and reputation; database rights and all rights and forms of protection of a similar nature to any of the foregoing or having equivalent effect anywhere in the world.
- 1.12 The term **"Project Plan"** means the implementation plan agreed by both the Customer and Company in writing at the commencement of the project, this plan will contain target dates for delivering various aspects of the project, descriptions of tasks to be carried out and those responsible for doing so. Services days to be supplied by the Company, as detailed on any Order, may be used between tasks as determined by the Company's project manager. This plan will be subject to regular review and any changes will be agreed by both parties.
- 1.13 The term **"Minor Error(s)"** means a fault or defect which does not render the system in part or whole inoperable and which has the effect of causing minor inconvenience to the user and does not have a material negative impact on the Customer.

## 2. Entire agreement

This Agreement is the entire agreement and understanding of the parties. It supersedes any previous agreement between the parties relating to its subject matter.

- 2.1 Each of the parties acknowledges and agrees that in entering into this Agreement, and the documents referred to in it, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this Agreement or not) other than as expressly set out in this Agreement as a warranty.
- 2.2 The only remedy available to either party for breach of the warranties shall be for breach of contract under the terms of this Agreement.
- 2.3 Nothing in this sub-clause shall operate to limit or exclude any liability for fraud or fraudulent misrepresentation.

## 3. Time

- 3.1 The Company will use its best practicable endeavours to perform its obligations by any relevant target dates set out in the agreement or agreed Project Plan which the Company and Customer will agree upon in writing. Any changes to dates set out in the Project Plan will have to be agreed by both parties in writing. Any target dates agreed to in the Project Plan will not be of the essence.

## 4. Delay and force majeure

- 4.1 Neither party shall be liable for any delay or failure in performing any of its obligations under this Agreement if such delay or failure is caused by circumstances outside the reasonable control of the party concerned (including any delay caused by any act or default of the other party).

## 5. Assignment and sub-licensing

- 5.1 The Company may assign any of its rights or obligations arising under this Agreement to any of its associated companies. The Company may sub-contract any of its obligations under this Agreement.
- 5.2 The Customer may not without the consent of the Company assign the benefit of this Agreement or any rights under it (including any licence). The Company's consent to such an assignment shall not be unreasonably withheld provided that prior to the assignment taking effect:
- a. where required to do so, the Customer transfers or deletes all of the copies of the computer programs in its possession and ceases all further use of the computer programs; and
  - b. the person to whom the computer programs and the benefit of this Agreement are to be transferred enters into a separate agreement with the Company to perform and observe all of the Customer's obligations under this Agreement, including the payment of any necessary assignment fees.
- Any assignment to another person shall not relieve the Customer of any of its obligations or liabilities under this Agreement.
- 5.3 The Customer may not sub-license any rights granted to it under this Agreement.

## 6. Title and risk

- 6.1 Risk of loss of or damage to each product shall pass to the Customer on delivery of the product. Ownership and all title to each product shall remain with the Company until the Company has received 100% of the payment due in accordance with this Agreement for all products and services to be supplied by the Company under this Agreement.
- 6.2 If such payment is not made or if prior to such payment being made the Company becomes entitled to terminate this Agreement (whether or not it actually does so), then the Company may require the Customer to return all products and may on reasonable notice to the Customer enter the Customer's premises during Working Hours in order to remove and recover such products (after which the Company may sell or deal with the products concerned as it sees fit).
- 6.3 Notwithstanding the provisions of this clause, unless expressly provided otherwise by this Agreement, no rights, including Intellectual Property Rights, in or relating to any computer programs supplied by the Company shall pass to the customer, save a right to possess and use the computer programs supplied in accordance with the terms of this Agreement.
- 6.4 Recovery of products by the Company under this clause 6 shall be without prejudice to any other rights or remedies available to the Company.

## 7. Payment

- 7.1 The Customer shall pay to the Company such charges as are set out in the order form or otherwise provided for by this Agreement.
- 7.2 All charges referred to in this Agreement are exclusive of sales tax and the Customer shall be responsible for paying to the Company all applicable sales tax and any other similar taxes imposed on charges for services or supplies made by the Company under this Agreement.
- 7.3 The Customer shall be responsible for the payment of any taxes imposed by any governmental taxing authority on the amounts the Customer is liable to pay to the Company under this Agreement, including, but not limited to, withholding taxes of whatever nature ("**Withholding Taxes**"). The Customer agrees promptly to pay any Withholding Taxes and obtain and deliver to the Company proof of payment of such Withholding Taxes together with official evidence thereof issued by the governmental authority

concerned, sufficient to enable the Company to support a claim for a tax credit in respect of any sum so withheld. If the Company is unable to obtain such tax credit due to the Customer's failure to comply with the above provision, then the Customer agrees to pay to the Company a sum equal to the amount of the tax credit not able to be claimed by the Company.

- 7.4 The Company may invoice for all sums payable under this Agreement as they become due and each such invoice shall be paid by the Customer within 30 days of the date of the invoice. All software sales are subject to mandatory payment with order.
- 7.5 In the event the Customer wants to dispute an invoice rendered by the Company it may do so within 14 (fourteen) days of the date of the invoice. The Customer must provide the Company all necessary detail and reasons for disputing the invoice and in the case of an invoice for services this must include all documentary evidence and proof that the services were either not delivered or of such poor quality that there was no benefit to the Customer. Notification of a disputed invoice should be sent in writing (e-mail) to the Customer's account manager.
- 7.6 The Company may charge interest on all sums outstanding beyond the date on which they are due for payment under this Agreement from the date payment was due until the date of payment (and before as well as after judgement). Such interest shall accrue and be calculated on a daily basis, at a rate of 2% per annum above the base rate from time to time of Barclays Bank plc.
- 7.7 The Customer shall indemnify the Company against all legal and other fees and expenses incurred by the Company in relation to the collection of any overdue accounts under this Agreement.
- 7.8 All payments to be made by the Customer under this Agreement shall be made without any deduction or set-off.

## 8. Cancellation of orders

- 8.1 Once an order has been placed by the Customer, the Customer may cancel such order at any time thereafter prior to its fulfilment without further obligation to the Company in respect of such order provided that in the case of an order for:
- a. the supply of third party software, the Customer shall remain liable to the Company in respect of any irrecoverable costs imposed upon the Company by a third party;
  - b. services, the Customer shall pay for such work as may have been carried out by the Company under its standard cancellation terms (see 8.3). If a fixed fee payment has been agreed, the payment shall be calculated on a *pro rata* basis;
  - c. services where resources of the Company have been allocated to the Customer for a fixed period, the Customer shall continue to pay for such resource until such resource is reallocated, provided that the Company uses all reasonable efforts to do so.
- 8.2 Any sum paid to the Company by way of deposit or advance payment in respect of such order shall be applied by the Company to meet any outstanding payment due to the Company under clause 8.1. Any positive balance shall be reimbursed to the Customer and any negative balance shall be invoiced to the Customer and shall be payable in accordance with the terms of this Agreement.
- 8.3 All services days booked and confirmed which are subsequently cancelled by the Customer with less than 5 (five) working days' notice to the Company will be invoiced to the Customer and will be payable in full.

## 9. Warranties and other terms

- 9.1 The Company will provide Services during On Site Working Hours and warrants such Services will be provided by it with reasonable care and skill in line with industry best practise.
- 9.2 Minor Error(s) or interruptions in the operation of any products shall be treated as not amounting to a breach of any conditions, warranties or other terms relating to the products.
- 9.3 The Customer shall as soon as reasonably possible inform the Company of any breach of any term of this Agreement in relation to any products of which the Customer becomes aware.
- 9.4 In the event of any breach of any term of this Agreement, the Company shall be given a reasonable opportunity, in any case not less than 30 working days to correct the breach by (as appropriate):
- a. repairing or rectifying defects in any products;
  - b. if this proves unsuccessful or is not practical, replacing the products or the relevant part of the products with other products or parts of substantially equivalent or better specification; or
  - c. repeating performance of any services.
- 9.5 Save as expressly set out in this Agreement, no conditions, warranties, representations or other terms (whether express or implied or arising through trade usage or custom) apply to the products and in particular no condition, warranty, representation or other term shall apply to the effect that:
- a. the products are or will:
    - (i) be of satisfactory quality;
    - (ii) conform to any particular description other than any contained in the order form or otherwise expressly referred to in this Agreement;
    - (iv) be error free;
    - (v) work in combination with other software or hardware;
    - (vi) be fit for any particular purpose (whether made known to the Company or not) or that they will operate to any particular standards of performance; or
  - b. services provided by the Company under this Agreement will result in products functioning as if such warranty or representation had been made.
- 9.6 The Company shall not be responsible for its failure to perform any of its obligations under this Agreement, if such failure is a result, directly or indirectly, of the inability of Customer's products, the lack of availability of the Customer's staff or appropriately skilled resources, third party's products, or a previous version of the Company's products which have been superseded and the Customer has failed to update the product(s) within 30 days of the Company providing the Customer with of the updated product(s).

## 10. Replacement of Products

- 10.1 The Company may in order to comply with any of its obligations under this Agreement replace any products or any part of the products at any time, provided the replacement products or parts are of substantially equivalent or of a better standard and functionality to those replaced. Products which have been removed or withdrawn by the Company shall become the property of the Company.

## 11. Exclusions and limitations

**THIS IS AN IMPORTANT CLAUSE AND THE ATTENTION OF THE USER IS DRAWN TO ITS TERMS.**

- 11.1 The liability of each party:
- a. for death or personal injury resulting from the negligence of the Company or that of its servants or agents;
  - b. in relation to any other liability which may not by applicable law be excluded or limited; or
  - c. fraudulent misrepresentation
- is not excluded or limited.
- 11.2 Subject to clauses 11.1 and 11.3, the Company's liability under or in relation to this Agreement (whether for negligence, breach of contract or otherwise) shall be limited as follows:
- a. for physical damage to tangible property (excluding the computer programs supplied by the Company or other software), to the sum of \$3,000,000 (Three Million Dollars
  - b. for all other loss or damage, in respect of each event arising out of any Order, the amount paid or to be paid by the Customer to the Company in respect of such Order to a maximum of \$350,000 (Three Hundred and Fifty Thousand);
- provided that if more than one event results in substantially the same loss or damage then all such events shall be treated as one.
- 11.3 Subject to clause 11.1, even if such loss was reasonably foreseeable or the Company had been advised of the possibility of the Customer or a third party incurring the same, the Company excludes and accepts no liability for any claim by the Customer or a third party for any:
- a. loss of profits;
  - b. loss of sales;
  - c. loss of turnover;
  - d. loss of goodwill;
  - e. loss of bargain;
  - f. loss of opportunity;
  - g. loss of use of computer equipment, software or data or interruptions of business;
  - h. loss of time on the part of management or other staff;
  - i. indirect, consequential or special loss
- however arising.
- 11.4 The Customer agrees to afford the Company a reasonable period (and in any event not less than 30 days) following notification by the Customer in which to remedy any default by the Company under this Agreement.
- 11.5 Except in the case of an event of default arising under clause 11.1 above the Company shall have no liability to the Customer in respect of any event of default unless the Customer shall have served valid notice of the same upon the Company within two years of the date it became aware of the circumstances giving rise to the event of default or the date when it ought reasonably to have become so aware.
- 11.6 The parties acknowledge that the limitations on liability set out in this clause are regarded by the parties as being reasonable in all the circumstances and is also a recognition of the fact that, inter alia, it is not

within the Company's control how and for what purpose products or the results of services provided by the Company are used by the Customer.

## 12. Co-operation by the Customer

- 12.1 The Customer shall co-operate to a reasonable extent with the Company in order to assist the Company in performing its obligations under this Agreement. Such co-operation shall include:
- a. allowing the Company reasonable access to the Customer's premises during Working Hours or where required to do so giving the Company remote access to the relevant systems on which the computer programs are installed;
  - b. promptly reporting to the Company any defect or error in any products or services of which the Customer becomes aware (and confirming the details in writing);
  - c. providing any information which the Company may reasonably request;
  - d. making available suitably qualified and skilled staff.
- 12.2 The Customer shall allow the Company to check the use of products and for that purpose the Company is allowed to enter any of the Customer's premises during Working Hours on providing the Customer with 48 hours written notice
- 12.3 The Customer is responsible for ensuring that:
- a. all relevant hardware and equipment have been installed and commissioned; and
  - b. all operating systems, databases and any other software notified to the Customer by the Company has been installed and is correctly functioning,

to allow delivery and installation of the products intended to be delivered under this Agreement, by the specified date in the Project Plan or as otherwise agreed.

Customer agrees to comply with all applicable local, state, national and foreign laws, treaties, regulations and conventions in connection with its use of the Service, including without limitation those related to data privacy, international communications, and the exportation of technical or personal data. Customer will ensure that any use of the Service by Customer's Users is in accordance with the terms of this Agreement. Customer agree to notify the Company immediately of any unauthorized use of any password or account or any other known or suspected breach of security or any known or suspected distribution of Customer Data. Customer acknowledges and agrees that the Service is subject to the U.S. Export Administration Laws and Regulations. Customer agrees that no part of the Service or information obtained through use of the Service, is being or will be acquired for, shipped, transferred, or re-exported, directly or indirectly, to proscribed or embargoed countries or their nationals, nor be used for nuclear activities, chemical biological weapons, or missile projects unless authorized by the U.S. Government. Proscribed countries are set forth in the U.S. Export Administration Regulations and are subject to change without notice, and Customer must comply with the list as it exists in fact. Customer certifies that neither Customer nor any Users are on the U.S. Department of Commerce's Denied Persons List or affiliated lists or on the U.S. Department of Treasury's Specially Designated Nationals List. Customer agrees to comply strictly with all U.S. export laws and assumes sole responsibility for obtaining licenses to export or re-export as may be required. Any unauthorized use of the Service may violate copyright laws, trademark laws, the laws of privacy and publicity, and communications regulations and statutes. The Service may use encryption technology that is subject to licensing requirements under the U.S. Export Administration Regulations, 15 C.F.R. Parts 730-774 and Council Regulation (EC) No. 1334/2000.

## 13. Confidentiality & Non Solicitation of Company Staff

- 13.1 Each party shall keep confidential any information disclosed to it by the other. Neither party shall disclose any such information to any third party save:
- a. any officer, employee or third party who may reasonably need to know it;



b. as otherwise required by law,

provided that each party shall be responsible for ensuring that any person to whom information is disclosed complies with any conditions of confidentiality applying to such information under this Agreement.

13.2 Nothing in clause 13.1 shall apply to any information:

a. which is (or which becomes) available to the public other than by breach of this Agreement or of any other duty;

b. which the party receiving the information already possesses or which it originates independently in circumstances in which that party is free to disclose it.

13.3 The obligations of this clause shall survive termination of this Agreement for a period of five years after such termination.

13.4 During the term of this Agreement and for a period of 6 months from (a) its expiry or termination or (b) if later, the last day of provision of the relevant Services, the Customer will not directly or indirectly including via a recruitment agency or through an approach by the person employed by the Company or acting on behalf of the Company, solicit the employment of or engagement of Services by any person employed by or acting on behalf of the Company in relation to the Services. If the Customer is in breach of this condition, then in recognition that the Company will suffer substantial damage, the Customer will pay the Company by way of liquidated damages and not by way of penalty a sum equal to 50% of the current annual salary of the employee concerned or \$35,000 whichever is the greater amount.

## 14. Termination and suspension

14.1 Either party may terminate this Agreement by notice to the other in the event that the other breaches any terms of this Agreement to any material extent and (in the case of a breach capable of remedy) fails to remedy that breach within 30 days of notice of the breach being given to it. A material breach shall include (but shall not be limited to) breach of the obligations relating to payment, confidentiality, export or the use by the Customer of any products.

14.2 Either party may immediately and without notice to the other terminate this Agreement:

a. if any distress or execution is made on either party's property or assets;

b. if either party makes or offers to make any arrangement with creditors;

c. if any resolution or petition to wind up either party's business (other than for the purpose of amalgamation or reconstruction) shall be passed or presented or if a receiver or administrative receiver of either party's undertaking, property or assets shall be appointed or a petition presented for the appointment of an administrator;

14.3 In the event of any breach by the Customer of any of its obligations under this Agreement (including without limitation any obligations as to payment in respect of this or any other agreement with the Company) then, in addition to any other rights which the Company may have, the Company may immediately and without notice suspend performance of its obligations under this Agreement until the Customer's obligations have been fully and properly performed.

14.4 The rights of termination in this clause 14 are without prejudice to any other rights which the Company may have whether under this Agreement or otherwise.

## 15. Data Protection



- 15.1 Each party shall comply at all times with the Data Protection Regulations in respect of any Personal Data processed by it pursuant to this Agreement.
- 15.2 In respect of any Personal Data processed by either party pursuant to this Agreement, each party warrants to the other that it has made all necessary registrations of its particulars where required, in accordance with the Data Protection Regulations.
- 15.3 The Company agrees that for Personal Data received from or on behalf of the Customer, or otherwise obtained in connection with the performance of its obligations:
- 15.3.1 that the Customer shall be the Data Controller;
- 15.3.2 to put in place arrangements and process to enable the Customer (or the relevant Data Controller) to comply with Data Protection Regulations; and
- 15.3.3 to process such Personal Data as a Data Processor, and not to determine the purposes for the processing of Personal Data unless expressly authorised in writing by the Customer.
- 15.4 The Company as Data Processor agrees:
- 15.4.1 to ensure that appropriate technical and organisational measures are adopted by it to ensure safekeeping against unauthorised or unlawful processing of the Personal Data and against accidental loss, or destruction of, or damage to the Personal Data;
- 15.4.2 to use the Personal Data solely for the purpose of performing its obligations under this Agreement and acknowledges that use of the Personal Data for any other purpose, in particular for its own purposes, is expressly prohibited;
- 15.4.3 to process the Personal Data only in accordance with the instructions of the Customer, and to undertake measures requested by the Customer for the Customer's data protection compliance;
- 15.4.4 to provide promptly to the Customer from time to time as part of this Agreement such information and access as the Customer may require in relation to the Personal Data and its processing;
- 15.4.5 to notify the Customer promptly of any unauthorised or non-compliant loss, access or other processing of Personal Data and shall direct data protection enquiries from Data Subjects to the Customer's data protection officer (as notified by the Customer to The Company from time to time) and to promptly forward all subject access reports to the Customer's data protection officer and in any event within five (5) Business Days from receipt;
- 15.4.6 not transfer any Personal Data outside of the United States of America (USA) without the Customer's prior written approval and such prior written approval may, at the Customer's sole discretion, be subject to The Company entering into a data export agreement (and/or procuring that any relevant sub-contractor of the Processor enters into a data export agreement) as required by the Customer.
- 15.4.7 to make arrangements to ensure that back-up records of the current Personal Data are maintained and updated on a regular basis;
- 15.4.8 to have appropriate procedures in place for the archiving and eventual destruction of Personal Data; and
- 15.4.9 to take reasonable steps to ensure the reliability of any personnel processing Personal Data and that any personnel processing Personal Data receive adequate training to ensure compliance with this Clause 15.
- 15.5 Should The Company no longer need any of the Personal Data for the performance of the Managed Services it shall return that Personal Data (and any copies of it) to the Customer in hard copy or in electronic form or at the request of the Customer shall destroy the Personal Data.

- 15.6 Before appointing any subcontractor as a Data Processor, The Company shall request the written approval of the Customer and shall provide all details that the Customer may reasonably require to determine whether the subcontractor should act as a Data Processor pursuant to this Agreement.
- 15.7 The Company shall seek the express authorisation of the Customer for any processing of Personal Data by a subcontractor and shall ensure that the subcontractor acts at all times as a Data Processor of the Personal Data and complies with equivalent obligations set out in this Clause 15.

## 16. Anti-Bribery and Corruption

- 16.1 In performing the Services (and otherwise undertaking activities in connection with this Agreement) Company shall:
- 16.1.1 comply with all applicable US law, regulations, codes and sanctions relating to anti-bribery and anti-corruption (“**Relevant Requirements**”);
- 16.1.2 not engage in any activity, practice or conduct which would constitute an offence under US anti—bribery and anti-corruption law.
- 16.1.3 comply with the Customer Group’s Anti-bribery policy as provided to Company and updated from time to time (“Customer Anti-Bribery Policy”);
- 16.1.4 have and shall maintain in place throughout the Service Period its own policies and procedures, including, but not limited to, adequate procedures under US anti-bribery law, to ensure compliance with the Relevant Requirements, the Customer Anti-Bribery Policy and Clause 16.1.2, and will enforce them where appropriate;
- 16.1.5 promptly report to Customer any request or demand received by Company in connection with the performance of this Agreement to offer, promise or give any undue financial or other advantage of any kind;
- 16.1.6 immediately notify Customer if a foreign public official becomes an officer or employee of Company or acquires a direct or indirect interest in Company (and Company warrants that it has no foreign public officials as officers, employees or direct or indirect owners at the date of this Agreement); and
- 16.1.7 promptly notify Customer if Company or any of its officers, or employees is prosecuted, charged or convicted of any offence under the Relevant Requirements.
- 16.2 Company represents, warrants and undertakes that, other than as disclosed in writing to Customer none of Company, its officers or employees have been prosecuted, charged or convicted of any offence under the Relevant Requirements.
- 16.3 Notwithstanding Clauses 21 and 22 of this Agreement, any dispute arising relating to the interpretation of Clause 16 shall be determined by Customer and Company, acting reasonably, and the decision shall be final and conclusive.
- 16.4 For the purpose of Clauses 16.1 to 16.3 (inclusive), the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with US anti-bribery law. For the purposes of Clauses 16.1 to 16.3 (inclusive), a person, any sub-contractor of Company (including any sub-contractor) under this Agreement will be deemed to be a person associated with Company.

## **17. Waiver of remedies**

- 17.1 No forbearance, delay or indulgence by either party in enforcing the provisions of this Agreement shall prejudice or restrict the rights of that party nor shall any waiver of its rights operate as a waiver of any subsequent breach and no right, power or remedy herein conferred upon or reserved for either party is exclusive of any other right, power or remedy available to that party and each such right, power or remedy shall be cumulative.

## **18. Variations**

- 18.1 Variations to this Agreement shall not be effective unless they are in writing and signed on behalf of both parties.

## **19. Unenforceable clauses**

- 19.1 In the event of any provision of this Agreement being held for any reason to be void voidable or unenforceable this shall not affect the validity or enforceability of any other provision of this Agreement or of the remainder of this Agreement as a whole.

## **20. Notices and consents**

- 20.1 All notices, agreements and consents under this Agreement shall be in writing and shall be sent to the address set out in section 1 of these terms or to such other address as either party shall notify to the other in accordance with this clause. Any letter may be delivered by hand or first class pre-paid letter and shall be deemed to be delivered if sent by hand when delivered and if by first class post 48 hours after posting.

## **21. Dispute resolution**

- 21.1 The parties shall try in good faith to resolve disputes relating to this Agreement by negotiation.
- 21.2 If the matter is not resolved through negotiation, the parties shall first try in good faith to resolve the dispute or claim through an Alternative Dispute Resolution (ADR) procedure as recommended to the parties by a mutually agreed Dispute Resolution organisation based in the State of California.
- 21.3 If the matter has not been resolved by an ADR procedure within 30 days of the initiation of such procedure, or if either party will not participate in an ADR procedure, the dispute shall be referred to litigation.

## **22. Governing law and jurisdiction**

- 22.1 This Agreement shall be governed by and interpreted in accordance with the California State law. Any dispute that arises between the parties concerning this Agreement shall subject to California State law and the parties hereby submit to the exclusive jurisdiction of that court for such purpose, without prejudice to the right of either party to apply to the court of any competent jurisdiction for emergency or interim relief.

## 23. Miscellaneous

23.1 In this Agreement:

- a. reference to persons shall include legal as well as natural persons and (where the context so admits) references to the singular shall include the plural and vice versa;
- b. reference to clause numbers and schedules shall be to those of this Agreement unless the contrary is stated;
- c. paragraph headings in this Agreement are for convenience only and shall not affect its interpretation.

The parties agree to the terms of this agreement as set out in sections 1 to 23 above.