

The following Terms and Conditions apply to all products and services provided by Epix Media Limited. By engaging in business with Epix Media Limited, you are deemed to have agreed to the Terms and Conditions set out below.

1. INTERPRETATION

1.1 Definitions. In these Conditions, the following definitions apply:

Additional Costs: means costs that are not included in the Order and are additional costs which arise beyond Epix Media's control;

Animation Video: means an animated video comprised of illustrations, graphics, digital and multimedia effects;

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business;

Charges: the charges payable by the Customer for the supply of the Services in accordance with clause 7 and any Additional Costs;

Commencement Date: has the meaning set out in clause 2.2;

Conditions: these terms and conditions as amended from time to time in accordance with clauses 2.7 and 15.8;

Contract: the contract between Epix Media and the Customer for the supply of Services in accordance with these Conditions;

Crew: means persons sourced by Epix Media for the purpose of conducting the Shoot;

Customer: the person or firm who purchases Services from Epix Media;

Customer Authorised Representative: the Customer's representative appointed in accordance with clause 6.1(b);

Customer Materials: means all documents, materials, data, proprietary software (and the media on which they are each recorded), and any other content, supplied by the Customer to Epix Media from time to time;

Deliverables: the deliverables set out in the Order produced by Epix Media for the Customer;

Domain services: those domain registration and other related services (if any) provided to the Customer by or through Epix Media as described in the Order or otherwise agreed with Epix Media;

Draft Product: means a clean edited version of the Video Project which is satisfactory to Epix Media as a working version of a video and which shall be submitted to the Customer for their approval;

Epix Media: Epix Media Limited, a limited liability company registered in England and Wales with company number 8029008;

Epix Media Materials: means all documents, materials, data, proprietary software (and the media on which they are each recorded), which are owned by Epix Media at the date of the Contract and/or which are created by Epix Media independently of the Contract and/or which are created by Epix Media as a result of performing the Services;

Filming Date: means a date requested by the Customer and/or a date suggested by Epix Media and agreed by the Customer for the purpose of filming the Video Project;

Filming Equipment: means the equipment required by Epix Media in order to undertake the Shoot, including but not limited to cameras, lighting, sound and grip equipment;

Filming Location: means the location(s) of any filming which forms part of the Video Project, as agreed between the Customer and Epix Media prior to filming;

Finished Product: means a clean edited version of the video which is approved by Epix Media and the Customer;

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

IT Support: means any technical assistance, support or knowledge in relation to the Customer's computer systems, software and equipment;

Naming Authority: means the entity responsible for the allocation and distribution of the domain name;

Order: the Customer's written acceptance of Epix Media's Project Proposal;

Personal Data: as defined in the Data Protection legislation in force from time to time;

Post-Production: means the capturing, logging and editing of the film captured during the Shoot or the compositing and editing of the Production of the Video Project, commencing on the earliest available opportunity upon completion of the Shoot or Production and until the video is edited and the Finished Product authored to a satisfactory standard by Epix Media and approved by the Customer or where the Shoot has already taken place, the entirety of the Video Project;

Pre-Production: means the overall process of defining parameters of the desired Finished Product prior to the commencement of the Shoot or Production;

Production: means the setting out of the layout, modelling, texturing, lighting, rigging and/or animating of the Video Project, where it does not involve any Shoot;

Project Proposal: means the description or specification of the Services provided in writing by Epix Media to the Customer; the Project Proposal may refer to supporting documentation providing detail and scope for the Services;

Server: a computer server administered by Epix Media;

Services: the services, including the Deliverables, supplied by Epix Media to the Customer as set out in the Project Proposal excluding the Web Hosting services, Domain services, any internet/email services or any services offered to the Customer by third parties and/or as agreed with Epix Media in accordance with these Conditions , including but not limited to Website Services and Video Project Services and any graphic design and brand development services;

Shoot: means the filming of space (private or public) and/or the Customer and/or other persons necessary for the purpose or in relation to producing the Video Project, prior to Post-Production;

Site: the website to be hosted by Epix Media for the purpose of providing the Services;

Software: means the software of the Customer that is used to provide the Services;

Time-lapse: means the filming technique of taking a sequence of frames at set intervals to record changes that take place slowly over time, achieved by a fixed or moving camera, often left unattended for long periods;

Third Party Materials: means all documents, materials, data, proprietary software (and the media on which they are each recorded) and any other content, used by Epix Media and/or the Customer in relation to the Services from time to time;

Video Project: means any corporate, Animation Video and Time-lapse video services provided by Epix Media including but not limited to Pre-Production, the Shoot, the Production and Post- Production in order to achieve the Finished Product;

Web Hosting services: means any internet hosting services for websites offered by Epix Media or a third party;

Website Services: means any website design and development services provided by Epix Media.

- 1.2 In these Conditions, the following rules apply:
- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
 - (b) a reference to a party includes its personal representatives, successors or permitted assigns;
 - (c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
 - (d) any phrase introduced by the terms including, include, in particular or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
 - (e) a reference to **writing** or **written** includes faxes and e-mails.

2. BASIS OF CONTRACT

- 2.1 The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order are complete and accurate.
- 2.2 The Order shall only be deemed to be accepted when Epix Media issues written acceptance of the Order at which point and on which date the Contract shall come into existence (Commencement Date).
- 2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of Epix Media which is not set out in the Contract.
- 2.4 The Customer agrees that it shall not have a claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
- 2.5 Any samples, drawings, descriptive matter or advertising issued by Epix Media, and any descriptions or illustrations contained in Epix Media's catalogues or brochures or Project Proposal, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not have any contractual force. In relation to the Project Proposal, any description included for the purpose of stating the Services shall be contractually binding.

- 2.6 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.7 These Conditions supersede any previous Terms and Conditions distributed by Epix Media in any form. Epix Media reserves the right to change any rates and any of the Conditions at any time and without prior notice. Changes to these Conditions will be announced on Epix Media's website.
- 2.8 Any quotation given by Epix Media shall not constitute an offer, and is only valid for a period of 10 Business Days from its date of issue, unless Epix Media agrees otherwise.

3. SUPPLY OF SERVICES

- 3.1 Epix Media shall supply the Services to the Customer in accordance with the Order in all material respects.
- 3.2 If multiple concepts are provided to the Customer, only one concept is deemed to be given by Epix Media as fulfilling the Contract. All other concepts remain the property of Epix Media unless agreed otherwise in writing.
- 3.3 Epix Media shall use all reasonable endeavours to meet any performance dates specified in the Order, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services. Where the Customer's actions or inactions cause delay in the performance of the Services, the performance dates specified in the Order shall be revised analogous to such delay.
- 3.4 Epix Media shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and Epix Media shall notify the Customer in any such event.
- 3.5 Epix Media warrants to the Customer that the Services will be provided using reasonable care and skill.

- 3.6 Subject to clause 3.4 above, if either party wishes to change the scope of the Services,
- (a) it shall submit details of the requested change to the other in writing; and
 - (b) Epix Media shall, within a reasonable time, provide a written estimate to the Customer of the likely time required to implement the change, any variation to Epix Media's Charges arising from the change and any other impact of the change on the Services and the terms of the Contract.
- 3.7 If the Customer wishes Epix Media to proceed with the change, Epix Media has no obligation to do so unless and until the parties have agreed in writing on the necessary variations to its charges, the Services and any other relevant terms of the Contract to take account of the change.
- 3.8 The Customer acknowledges that for any technical or specialised work (including but not limited to any IT Support services) which is not expressly included the Order, the Customer will need to seek services from a relevant service provider and shall not hold Epix Media responsible for such work.
- 3.9 Approval of Services:
- (a) On completion of the Services, the Customer will be notified and have the opportunity to review them. The Customer should notify Epix Media in writing, of any unsatisfactory points within 7 Business Days of receipt of such notification.
 - (b) Any Services which have not been notified as unsatisfactory under 3.9(a) will be deemed to have been approved and the Contract will be deemed to have been completed.
 - (c) If the Customer rejects the Services within the 7 Business Day review period, or does not approve subsequent Services performed by Epix Media to remedy any points reported by the Customer as unsatisfactory, and Epix Media considers that the Customer is unreasonable in his repeated rejection of the Services, the Contract will be deemed to have been completed.
 - (d) For the avoidance of any doubt, the Services shall be provided to and accepted by the Customer as fully functioning, completed work. Any extra work will be charged additionally.

- 3.10 Epix Media shall not release any Services and/or Deliverables to the Customer before receiving the full payment of the Charges under the Contract and/or as agreed between Epix Media and the Customer, in cleared funds.

4. WEBSITE SERVICES

Where the Services include Website Services to be provided to the Customer, the following provisions additionally apply:

4.1 Software

- (a) The Customer assumes sole responsibility for ensuring that the Software functionality meets its requirements before signing the Order.
- (b) Unless the Order explicitly states otherwise, the Customer bears all costs for modification to the Software in the event that the Customer discovers, subsequent to signing the Order, that the Software functionality does not meet its requirements.
- (c) No Software or internet service can be guaranteed to be 100% reliable. Epix Media shall not be liable for any losses caused resulting from the use (or inability to use) of the Website Services, due to faults in the Software or underlying software, hardware, networks or any other cause of failure.

4.2 Web Hosting

- (a) Epix Media, or the relevant third party, may offer the Customer a Web Hosting service for the Customer's website. The Order may give details of the yearly fees payable for such Web Hosting service but shall not form part of the Services for the purpose of these Conditions.
- (b) The yearly fees for the Web Hosting service are chargeable from the point at which that service is made available to host the Site. This could be the time at which the Website Services project moves to the 'build' stage or when the Customer requests a transfer from another Web Hosting service provider.
- (c) The Customer may terminate the Web Hosting service by giving one month's written notice from the next due payment, subject to the minimum contract period that may be applicable in accordance with the terms and conditions of the Web Hosting service which shall prevail.
- (d) Epix Media may offer the Customer the option of applying an SSL (Security Certificate) to the Site on a yearly fee basis. The Customer acknowledges that Epix Media is not liable for any security issues arising on the Site either from not applying an SSL or the expiration of an SSL or otherwise.

- (e) Epix Media shall not be responsible for the suspension or expiration/termination of the Web Hosting Service (including any email services and the application of an SSL certificate) or for any other impact of that suspension or expiration/termination to the Customer caused by the Customer's delay in paying for its renewal or for any other reason whatsoever and any additional fees or penalties payable shall be the sole liability of the Customer.
- (f) The Customer agrees to abide by rules issued from time to time by the Web Hosting service regarding acceptable use of their services and in particular agrees:
 - (i) to abide by the separate terms and conditions of the relevant acceptable usage policy, available on request.
 - (ii) that Web Hosting service may be provided by a third party and that the Terms and Conditions, including the Acceptable Usage Policy, of that third party shall apply to the Customer.
- (g) The Customer acknowledges that the Website Services' availability may be affected by any limitations imposed by the Web Hosting service and Epix Media shall not be responsible in any way for any disruptions in the Website Services.

4.3 Other internet services

- (a) The Customer agrees that it is their responsibility to source all of the appropriate services required to run the Site, including domain name management and email, unless agreed otherwise with Epix Media and in such case those services shall not be part of the Services for the purpose of these Conditions.
- (b) Epix Media does not offer Internet Service Provider (ISP) services, such as provision of an internet connection to the Customer's computer or computer network and shall not be responsible to ensure internet connectivity for the purpose of running the Site.
- (c) Epix Media may, or the relevant third party, offer email services to the Customer as part of the Web Hosting service, and in such case, the Customer acknowledges that Epix Media shall not be responsible to provide any IT Support in relation to those services including but not limited to any support (technical or otherwise) relating to email software such as Outlook.

- (d) Epix Media shall not be responsible for the suspension or expiration/termination of any email services or email box expansions or for any other impact of that suspension or expiration/termination to the Customer caused by the Customer's delay in paying for its renewal or for any other reason whatsoever and any additional fees or penalties payable shall be the sole liability of the Customer.

4.4 Domain services

- (a) Epix Media may offer the Customer domain name purchase, registration, renewal and domain management services for one or more domain names related to the Customer's website. The Order may give details of the fees payable for such services but those services shall not be part of the Services for the purpose of these Conditions.
- (b) The contract for the registration of the domain name is between the Customer and the Naming Authority. The Customer is bound by the terms and conditions of the Naming Authority.
- (c) Epix Media cannot guarantee that they will be able to register any requested domain name and, until specific confirmation of registration has been given, the Customer cannot assume registration has been affected.
- (d) Epix Media gives no warranty that the domain name requested will not infringe the rights of any third party and the Customer indemnifies Epix Media in respect of any such infringements.
- (e) The Customer retains ownership of the domain name(s) and is responsible to comply with any obligations (including payment) for the purpose of its renewal and/or to respond to any requests for information sent by the Naming Authority and/or any third party in relation to such domain name.
- (f) Fees charged by third parties for domain name registration and domain name transfers are the responsibility of the Customer and will be passed on to the Customer for payment if they are incurred by Epix Media. Epix Media shall not be liable for the suspension or expiration of any of the Domain services or for any other impact of that suspension or expiration/termination to the Customer caused by the Customer's delay in paying for its renewal or for any other reason and any additional fees or penalties payable shall be the sole liability of the Customer.
- (g) The Customer agrees to indemnify Epix Media, including any incidental costs, against any claims that a domain name applied for, or obtained, violates the Intellectual Property Rights of a third party.
- (h) The Customer warrants that the domain name sought is not a trademark of a third party.

4.5 Website Content

- (a) The Customer shall ensure that the Customer Materials do not infringe any applicable laws, regulations or third party rights (including material which is obscene, indecent, pornographic, seditious, offensive, defamatory, threatening, liable to incite racial hatred or acts of terrorism, menacing, blasphemous or in breach of any third party Intellectual Property Rights) **(Inappropriate Content)**.
- (b) Epix Media shall not grant the Customer access to the Server, unless such access is requested for a specific purpose (such as for the updating of information held on the Customer's website) which is approved by Epix Media, such approval not to be unreasonably withheld.
- (c) The Customer acknowledges that Epix Media has no control over any content placed on the Site by the visitors and does not purport to monitor the content of the Site. Epix Media reserves the right to remove content from the Site where it reasonably suspects such content is Inappropriate Content. Epix Media shall promptly notify the Customer if it becomes aware of any allegation that any content on the Site may be Inappropriate Content.
- (d) The Customer shall indemnify Epix Media against all damages, losses and expenses arising as a result of any action or claim that the Customer Materials or any material placed on the Site by third parties constitute Inappropriate Content.

4.6 Epix Media shall not, under any circumstances, be liable for:

- (a) Any services provided by third parties through Epix Media or otherwise, including Web Hosting Services of the Site or any Third Party Materials used by Epix Media for the purpose of providing the Services.
- (b) Any errors for which Epix Media is not responsible, including but not limited to modification of the Site by a third party and errors contained in Customer Materials or Third Party Materials.
- (c) Any future support on the functionality of the Services. The Services shall be provided to and accepted by the Customer as fully functioning, completed work. Any extra work shall be charged additionally, unless agreed otherwise by Epix Media.
- (d) Any problems developed on the Services as a result of malicious software, spy-ware, viruses and website hacking or any issues arising from the updating of Third Party Materials.

- (e) Non-registration of the Site with search engines where it is not part of the specification agreed with the Customer as well as for guaranteeing listings of the search engines or the success of any search engine positioning.
- (f) Any changes in fees regarding any services (including but not limited to Domain services) offered by third parties through Epix Media or otherwise and any absence or delays in notification in relation to such fee changes.

5. CORPORATE, ANIMATION VIDEO AND TIME-LAPSE VIDEO PRODUCTION

Where the Services include the provision of Video Project Services, the following provisions additionally apply:

5.1 Obligations and Acknowledgements of the Customer

- (a) The Customer shall give Epix Media creative control over the Finished Product.
- (b) The Customer will consult with Epix Media in good faith to agree the Filming Date(s) for the Video Project. The Customer acknowledges that reasonable notice needs to be provided to Epix Media to provide any Services on the Filming Date(s) and that Epix Media is not able to guarantee any Filming Dates the Customer may request but will use reasonable endeavours to accommodate the Customer's requested Filming Date and/or arrange the next earliest available date.
- (c) The Customer will be responsible for paying any costs incurred in relation to such Filming Location (s) unless otherwise agreed with Epix Media.
- (d) The Customer agrees that Epix Media is not liable for any deficiencies in the Final Product caused by filming difficulties with any Filming Location(s), personnel or third party services hired and/or chosen by the Customer or any restrictions or delays in delivering the Draft Product or Final Product caused by matters outside Epix Media's control such as travel delays. Furthermore, the Customer agrees that it shall be liable for any Additional Costs incurred by re-shooting or additional shooting caused by such difficulties or the cancellation or postponement by such service provider(s).

- (e) The Customer acknowledges that whilst Epix Media will make every reasonable effort to use its best position for its cameras to film a Video Project, due to restrictions imposed upon Epix Media on the day(s) of the Shoot this may not always be possible. The Customer further acknowledges and accepts that video coverage could be affected by such restrictions including camera placements imposed by venues, the use of restricted spaces which impacts on the ability to operate the camera in Epix Media's preferred manner, restrictions on the use of a tripod, visual obstruction or camera shake caused by persons or uneven/flexible flooring surfaces, health and safety regulations, legal permissions from venue providers/third parties and other prevailing limitations at the Shoot.
- (f) The Customer agrees that Epix Media is not responsible for camera or equipment failure for reasons beyond Epix Media's reasonable control including media failures, detrimental impact on the footage caused by failures or problems with sound or lighting equipment, or operation where such equipment is not under Epix Media's control. The Customer agrees that Epix Media is not liable for any inability to provide any Services due to damage incurred by the power supply at the Filming Location(s) or the theft of parts or whole of the Filming Equipment. Epix Media reserves the right not to use its own equipment in any situation (for example inclement weather conditions) which may compromise the safety of either Epix Media's equipment or its operators.
- (g) The Customer agrees that Epix Media cannot be held responsible for any detrimental impact on the video and audio sound caused by the refusal (or denial of permission) of any person to wear or use a radio microphone on request or by the failure to use a microphone or PA system when speaking despite such a system being made available to them, or by undertaking to cease using such a system during the Shoot or the inability (in Epix Media's reasonable belief) to use radio microphones caused by signal interferences at the Filming Location. The Customer further agrees that Epix Media cannot be held responsible for any detrimental impact on the video and audio sound caused by such interferences/problems including bad signal reception, loud ambient noise, crying children, stray sounds caused by personal actions, animals, birds, traffic etc., echo or sound deadening properties of the Filming Location, shutter noise from nearby photography cameras, mobile telephones, PA and audio equipment, air-conditioning units, AV projectors and other electronic devices, or the failure of third parties (for example sound engineers, sound desk personnel or audio technicians) to comply with Epix Media's requirements when requested.

- (h) The Customer agrees that Epix Media cannot guarantee video quality in adverse lighting or weather conditions or in rooms generating a strong colour tinge to the light which may not be satisfactorily correctable during Post Production.
- (i) The Customer will give Epix Media a reasonable amount of notice to allow a Crew to be formed.
- (j) The Customer agrees that Epix Media is not liable for any deficiencies in the Final Product caused by actual or perceived deficiencies or imperfections in the physical attributes, wardrobe or performances of the Customer or of persons selected, hired or brought to the Shoot directly by the Customer. Further, Epix Media is not liable to bear the cost of any re-shooting where such re-shooting is due to such conditions.
- (k) The Customer agrees that Epix Media is not liable to bear the cost of any re-shooting where such re-shooting has been caused by adverse weather conditions or such items beyond Epix Media's reasonable control, including but not limited to failure of the Customer or any other persons to attend the Shoot in a timely manner, cancellation or postponement by the Filming Location(s), failure by the Customer to provide any materials or persons required for the Shoot that they have previously undertaken to supply, or failure by the Customer to make Epix Media aware of all requirements during or prior to the Shoot.
- (l) The Customer agrees that Epix Media will not bear any Additional Costs arising from any additional work which is required as a result of the interference of third parties.
- (m) The Customer agrees that any additional work not requested and particularised in the Order before the Shoot or the Production commences may not be undertaken by Epix Media unless the Additional Costs are agreed and paid by the Customer. Such work may include but may not be limited to: digital effects, image editing work, computer generated imagery and effects, audio reworking, remixing or re-mastering, physical blemish and imperfection removal, additional Post Production work over and above any set of changes included within the Project Proposal.
- (n) The Customer agrees that upon completion of the Draft Product which Epix Media deems acceptable for distribution, the Customer will receive a preview copy to view and if necessary send one list of suggested changes which will be considered by Epix Media and where possible, carried out by Epix Media.
- (o) The Customer agrees that the Draft Product is not available for public viewing and any parties connected with the Customer may only view it subject to the express permission of both Epix Media and the Customer.

- (p) The Customer agrees to provide video footage, photo gallery images, logos and additional materials as agreed between the parties for the Video Project, for the completion of the Finished Product and do so in a timely manner so as not to adversely impact the Post Production schedule. Furthermore, the Customer warrants that it owns the rights and intellectual property in such materials for the purposes of the Contract and undertakes to indemnify Epix Media in full for any costs, penalties, fines, damages or any other demands in relation to any breaches of data protection and/or third party rights relating to such materials.
- (q) The Customer agrees that in the event that the Finished Product, completed to the satisfaction of Epix Media and as agreed with the Customer, is not acceptable to the Customer, any reworking or remarking subsequently requested to the Video Project shall be subject to Additional Costs.
- (r) The Customer acknowledges that where Epix Media undertakes a Time-lapse Video Project using an unattended camera, Epix Media is not responsible for any detrimental impact on the Video Project due to such events as interrupted power supply, environmental conditions, inclement weather, dust, loss of data connection or the actions of third parties.
- (s) The Customer agrees that where Epix Media and the Customer have agreed in advance a specific duration for the Shoot and this duration is exceeded, whether this is at the request of the Customer or the consequences of actions of the Customer or third parties, Epix Media reserves the right to be paid Additional Costs, such costs being proportionally higher for unsocial hours and work at weekends.
- (t) The Customer agrees that where Epix Media undertakes filming work in conference, workshop or seminar situations and a software demonstration or live online demonstration is being undertaken, Epix Media is not able to guarantee that all the information presented visually can be accurately captured or released and used on the Video Project where such may be subject to copyright and/or privacy laws.
- (u) The Customer agrees that Epix Media is not liable for any impact on the Shoot nor of the Finished Product caused by travel or transport delays beyond the control of the Crew.

5.2 Obligations of Epix Media

- (a) Epix Media shall source a crew suitable, in the reasonable opinion of Epix Media, for the size and scope of the Video Project and reserves the right to change the nominated Crew prior to the Shoot for operational reasons.

- (b) Epix Media will ensure that the Shoot will be covered by Epix Media's Employers Liability Insurance for the Crew and Public Liability Insurance for any individuals directly involved in the Shoot.
- (c) Epix Media will ensure that any music soundtrack included within the Video Project is free from royalty payments (except where such payments have been sanctioned by the Customer) to the best knowledge of Epix Media. The Customer agrees to hold Epix Media harmless where any disputes arise between the music provider and the Customer or Epix Media.

5.3 Charges and Additional Costs

- (a) The Charges will be invoiced pursuant to Clause 7, except where an alternative arrangement has been agreed with the Customer. Epix Media reserves the right to invoice for the Charges in stages, to invoice for a part or whole of the Charges prior to the Shoot and to postpone the Shoot until any Charges due are paid by the Customer.
- (b) Epix Media is not obliged to incur any expenses which may arise for the purpose of providing the Video Project services including but not limited to travel expenses, hire of Filming Equipment or Filming Location(s) and for overseas shoots, accommodation costs, baggage charges, carnet or customs charges unless it has been reimbursed for such costs in advance by the Customer and the Customer agrees that it shall be liable to pay all and any expenses in relation to the Video Project as and when they are incurred.
- (c) Should the Video Project be terminated at any stage, any costs or expenses incurred by Epix Media up to the point of termination are not refundable to the Customer.

5.4 Video Project Duration & deadlines

The delivery of the Finished Product represents the end of Epix Media's obligations under the Contract. Further copies of the video required by the Customer fall outside the scope of the Contract and Epix Media is not obliged to provide them.

5.5 Safety and Conduct

Epix Media has the right to take any measures it sees fit in order to safeguard the Crew and Filming Equipment at all times including but not limited to the right to suspend and/or cancel any Shoot on the Video Project on this basis.

6. CUSTOMER'S OBLIGATIONS

6.1 The Customer shall:

- (a) ensure that the terms of the Order and any information it provides in the Project Proposal are complete and accurate;
- (b) co-operate with Epix Media in all matters relating to the Services and appoint the Customer's Authorised Representative who shall have the authority to contractually bind the Customer on matters relating to the Services;
- (c) provide Epix Media, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by Epix Media;
- (d) promptly provide Epix Media with such information and materials as Epix Media may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;
- (e) prepare the Customer's premises for the supply of the Services;
- (f) obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start;
- (g) keep and maintain Epix Media Materials at the Customer's premises in safe custody at its own risk, maintain Epix Media Materials in good condition until returned to Epix Media, and not dispose of or use Epix Media Materials other than in accordance with Epix Media's written instructions or authorisation.

6.2 If Epix Media's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation **(Customer Default)**:

- (a) Epix Media shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays Epix Media's performance of any of its obligations;
- (b) Epix Media shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Epix Media's failure or delay to perform any of its obligations as set out in this clause 6.2; and

- (c) the Customer shall reimburse Epix Media on written demand for any costs or losses sustained or incurred by Epix Media arising directly or indirectly from the Customer Default.

6.3 The Customer shall not, without the prior written consent of Epix Media, at any time from the date of the Contract to the expiry of six months after the completion of the Services, solicit or entice away from Epix Media or employ or attempt to employ or engage in any other way, any person who is, or has been, engaged as an employee or sub-contractor of Epix Media.

7. CHARGES AND PAYMENT

7.1 The Charges for the Services may be provided on a time and materials basis in which case clause 7.2 shall apply or they may be provided on a fixed price basis, in which case clause 7.3 will apply. Clauses 7.4- 7.7 shall apply in either case.

7.2 Where the Services are provided on a time and materials basis:

- (a) the Charges shall be calculated in accordance with Epix Media's daily fee rates, as set out in the Order;
- (b) Epix Media's daily fee rates for each individual are calculated on the basis of an eight-hour day from 9.00 am to 5.30 pm worked on Business Days;
- (c) Epix Media shall be entitled to charge an overtime rate of 50 per cent of the daily fee rate on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in clause 7.2(b); and
- (d) Epix Media shall be entitled to charge the Customer for any expenses reasonably incurred by the persons whom Epix Media engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by Epix Media for the performance of the Services, and for the cost of any materials.
- (e) Epix Media reserves the right to increase its daily fee rates, provided that such charges cannot be increased more than once in any 6 month period. Epix Media will give the Customer written notice of any such increase 1(one) month before the proposed date of the increase. If such increase is not acceptable to the Customer, it shall notify Epix Media in writing within 2 (two) weeks of the date of Epix Media's notice and Epix Media shall have the right without limiting its other rights or remedies to terminate the Contract by giving 2 (two) weeks' written notice to the Customer.

- (f) Epix Media shall invoice the Customer monthly in arrears.
- (g) The Customer shall pay each invoice submitted by Epix Media within the time stipulated in the said invoice, in full and in cleared funds to a bank account nominated in writing by Epix Media.
- (h) Time for payment shall be of the essence of the Contract.

7.3 Where the Services are provided for a fixed price:

- (a) The total price for the Services shall be the amount set out in the Order;
- (b) The total price for the Services shall be paid to Epix Media as follows:
 - (i) 50% of the total price is due immediately from the Commencement Date; and
 - (ii) The remaining 50% of the total price of the Services shall become due on completion of the Services in accordance with 3.9.
- (c) The Customer shall pay each invoice submitted by Epix Media within the time stipulated in the said invoice, in full and in cleared funds to a bank account nominated in writing by Epix Media.
- (d) Time for payment shall be of the essence of the Contract.
- (e) Any fixed price excludes any disbursements and or expenses and or Additional Costs reasonably incurred by Epix Media and/or on behalf of the Customer for the purpose of providing the Services and/or the cost of any materials or services provided by third parties required by Epix Media for the supply of the Services and Epix Media shall invoice the Customer for such expenses additionally.

7.4 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (VAT). Where any taxable supply for VAT purposes is made under the Contract by Epix Media to the Customer, the Customer shall, on receipt of a valid VAT invoice from Epix Media, pay to Epix Media such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.

7.5 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). Epix Media may at any time, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by Epix Media to the Customer.

- 7.6 The Customer shall pay all amounts under the Contract by BACS. Any other methods of payment shall not be acceptable unless agreed in advance by Epix Media in writing.
- 7.7 Where sums due hereunder are not disputed in good faith and are not paid in full by the due date:
- (a) Epix Media may, without limiting its other rights, charge interest on such sums at the rate of 3% per cent per annum above National Westminster Bank's base rate from time to time;
 - (b) Interest will accrue on a daily basis and apply from the due date for payment until actual payment in full, whether before or after judgment;
 - (c) Epix Media may suspend all Services until payment has been made in full.
- 7.8 Time for payment shall be of the essence of the Contract.
- 7.9 All payments payable to Epix Media under the Contract shall become due immediately on termination of the Contract, despite any other provision. This condition is without prejudice to any right to claim for interest under the law, or any such right under the Contract.

8. INTELLECTUAL PROPERTY RIGHTS

- 8.1 All Intellectual Property Rights in or arising out of or in connection with the Services (excluding the Third Party Materials and Customer Materials) shall be owned by Epix Media and Epix Media hereby grants the Customer a non-exclusive licence of such Intellectual Property Rights for the purpose of operating the Services, unless otherwise agreed to in writing by Epix Media and the Customer.
- 8.2 The Customer acknowledges that, in respect of any Third Party Materials and third party Intellectual Property Rights, the Customer's use of any such Intellectual Property Rights is conditional on Epix Media obtaining a written licence from the relevant licensor on such terms as will entitle Epix Media to license such rights to the Customer.
- 8.3 All Epix Media Materials are the exclusive property of Epix Media.

- 8.4 The Customer represents and warrants to Epix Media and unconditionally guarantees that any Customer Materials provided to Epix Media for the Services are owned exclusively by the Customer, or that the Customer has permission from the rightful owner to use such material, and will indemnify Epix Media and its sub-contractors from any claim, liability or suit arising from the use of such elements or materials furnished by the Customer.

9. DATA PROTECTION

- (a) Epix Media warrants that, to the extent it processes any Personal Data on behalf of the Customer:
- (i) It shall only act on instructions from the Customer; and
 - (ii) It has in place appropriate technical and organisational security measures against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data.
- (b) The Customer shall indemnify Epix Media against all damages, losses and expenses arising as a result of any action or claim from any unlawful use of Personal Data provided by the Customer to Epix Media for the purpose of the Services.

10. CONFIDENTIALITY

A party (**receiving party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (**disclosing party**), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 10 shall survive termination of the Contract.

11. LIMITATION OF LIABILITY

- 11.1 Nothing in these Conditions shall limit or exclude Epix Media's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - (b) fraud or fraudulent misrepresentation; or
 - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 11.2 Subject to clause 11.1:
- (a) Epix Media shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
 - (b) Epix Media's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the total price paid for the Services.
- 11.3 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 11.4 This clause 11 shall survive termination of the Contract.

12. TERMINATION

- 12.1 Without limiting its other rights or remedies, either party may terminate the Contract by giving the other party one months' written notice.
- 12.2 Without limiting its other rights or remedies, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- (a) the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing to do so;

- (b) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- (c) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (e) the other party (being an individual) is the subject of a bankruptcy petition or order;
- (f) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (g) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
- (h) the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (j) any event occurs or proceeding is taken with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 12.2(b) to clause 12.2(i) (inclusive);

- (k) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business;
- (l) the other party's financial position deteriorates to such an extent that in Epix Media's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
- (m) the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

12.3 Without limiting its other rights or remedies, Epix Media may terminate the Contract with immediate effect by giving written notice to the Customer if:

- (a) the Customer fails to pay any amount due under this Contract on the due date for payment and fails to pay all outstanding amounts within 14 Business days after being notified in writing to do so; or
- (b) the Customer repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract; or
- (c) the Customer defames, libels, abuses, harasses, threatens or otherwise causes emotional distress or violates any rights of Epix Media, including any of its employees or third parties connected.

12.4 Without limiting its other rights or remedies, Epix Media may suspend provision of the Services under the Contract or any other contract between the Customer and Epix Media if the Customer becomes subject to any of the events listed in clause 12.2(b) to clause 12.2(m), or Epix Media reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

13. CONSEQUENCES OF TERMINATION

On termination of the Contract for any reason:

- (a) the Customer shall immediately pay to Epix Media all of Epix Media's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, Epix Media shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) the Customer shall return all of Epix Media Materials and any Deliverables which have not been fully paid for;

- (c) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- (d) clauses which expressly or by implication survive termination shall continue in full force and effect.

14. FORCE MAJEURE

- 14.1 For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of Epix Media including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of Epix Media or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.
- 14.2 Epix Media shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- 14.3 If the Force Majeure Event prevents Epix Media from providing any of the Services for more than 4 weeks, Epix Media shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

15. GENERAL

- 15.1 **Assignment and other dealings.**
- (a) Epix Media may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
 - (b) The Customer shall not, without the prior written consent of Epix Media, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract.

15.2 **Publicity.** The Customer grants Epix Media the right to display (at tradeshows, in collateral or via electronic distribution) any works provided within the Services for Epix Media's marketing, educational and promotional purposes as examples of its creative portfolio. All other media releases, public announcements and public disclosures by either party relating to the Services shall be co-ordinated with the other party and approved jointly by the parties prior to release.

15.3 **Notices.**

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or e-mail.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 15.3(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

15.4 **Severance.**

- (a) If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- (b) If one party gives notice to the other of the possibility that any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

- 15.5 **Waiver.** A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 15.6 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.
- 15.7 **Third parties.** A person who is not a party to the Contract shall not have any rights to enforce its terms under the Contracts (Rights of Third Parties) Act 1999 or otherwise.
- 15.8 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by Epix Media.
- 15.9 **Governing law.** This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.
- 15.10 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).