

These **General Terms and Conditions** are regulating the relationship and dealings between the **Provider** and its **Customers**.

## 1. Definitions and interpretation

1.1. Bold expressions in these **General Terms and Conditions** have meanings as follows:

**Access** means access to those areas and functions of the **Site** that the **Provider** reserves for **Customers**.

**Access Code** means security measures which the **Provider** has issued to a **Customer** for the purpose of **Access**.

**Binding Instruction** means each individual agreement created between the **Customer** and the **Provider** on each occasion that the **Provider** receives an **Instruction** and forms an agreement to undertake that **Instruction** in accordance with these **General Terms and Conditions**.

**Business Day** means a day that is not a Saturday or Sunday or a public holiday, special holiday or bank holiday in Brussels, Glasgow and any place where any relevant act is to be done or may be done.

**Charges** mean all amounts payable by the **Customer** to the **Provider** for any **Service** provided under a **Binding Instruction**, notably including but not limited to the **Provider's** fees, third party fees or charges, and taxes, duties and levies.

**Confidential Information** means any know-how, trade secrets, source code, software, any and all data provided to the **Provider** through the **Web Platform** or any other means by the **Customer**, and any other confidential information of the **Provider** or the **Customer** including all information marked as confidential or which is by its nature confidential including financial information, business policies, sales data and IP related information which is disclosed by either the **Provider** or the **Customer** to the other as a result of **Access** or **Instruction**.

**Customer** means any professional specifically trained or experienced in the field of Intellectual Property (IP) that orders or intends to order **Services** from the **Provider**. The **Customer** may be referred to as a **Party**.

**Customer's Email Address** means the last valid email address that the **Customer** has advised through the **Web Platform** or other means for the receipt of electronic communications from the **Provider**.

**Force Majeure** means an event beyond the control of the **Provider** or the **Customer**, or a person acting on behalf of either of them, which by its nature could not have been foreseen by such person or, if it could have been foreseen, which was unavoidable, and includes, without limitation, acts of God, storms, floods, riots, fires, sabotage, civil commotion or civil unrest, interference by civil or military authorities, acts of war (declared or undeclared) or armed hostilities or other national or international calamity or one or more acts of terrorism or failure of energy sources or a material failure of national or international telecommunications and/or electronic communications or the world wide web.

**Formal Notice** means a notice in writing signed by a **Senior Executive** or any other person duly authorised to sign on behalf of the **Customer** or **Provider**. A **Formal Notice** must be served (a) on the **Provider**, by sending the **Formal Notice** to the **Provider's** principal office address as advised on the **Site**; or (b) on the **Customer**, by sending the **Formal Notice** to the principal office address of the **Customer** (or, if serving by post on a **Customer** who has notified a separate postal address, at the principal postal address) as notified to the **Provider** through the **Web Platform** or by other means. A **Formal Notice** is deemed to have been served if delivered personally, on the day when delivered; or

if sent by first class or recorded delivery post, on the day which is five (5) **Business Days** after the day of posting unless sent by airmail, in which case on the day which is ten (10) days after the date of posting.

**Insolvency Event** means, in relation to a party that is a natural person, becoming bankrupt, threatening to become bankrupt, or making any voluntary arrangement with creditors; or, in relation to a party that is a partnership, the termination or dissolution of the partnership, some or all of the partners becoming subject to bankruptcy proceedings or being made bankrupt, or the appointment of a judicial factor (or the initiation of proceedings of a similar nature); or, in relation to a party that is a corporation, becoming insolvent, having a receiver or administrative receiver (or similar) appointed over the whole or any part of the corporation's assets, entering into any arrangement or compounds with creditors generally, or where an order is made or resolution passed for the winding up of the corporation (otherwise than in furtherance of a scheme for a solvent amalgamation or reconstruction).

**Instruction** means an instruction given to the **Provider** by a **Customer** requesting the provision of **Services** ("instructed" shall be construed accordingly).

**Provider** means VALIPAT S.p.r.l. a Belgian Company with registered offices located on Rue de Livourne, 7, 1060 Brussels, Belgium, with Company Number 0806.735.439 and its affiliates. The **Provider** may be referred to as a **Party**.

**Quote** means a preliminary calculation of probable **Charges**, based on information communicated by the **Customer** in respect of the **Instruction**.

**Registered User** means a natural person or a group of natural persons nominated by the **Customer** and having **Access** to the **Web Platform** via an **Access Code**.

**Senior Executive** means, in relation to the **Provider**, a director or, in relation to a **Customer**, a director, partner, principal or person of equivalent authority.

**Services** means the IP administrative services and IT functionalities offered by the **Provider**, possibly together with a subcontractor, including services in relation with:

- the grant of European patents, which include:
  - —the validation of European patents,
  - —the translation of claims to be filed in response to Rule 71(3) EPC,
  - —the registration of VALIPAT as address for service in jurisdictions having ratified the London Agreement and
  - —services in relation with Unitary Patents;
- the entry into national and/or regional phase of PCT applications;
- the filing of IP Rights applications in particular during the 12 months Paris Convention priority period;
- the payment of patent annuities and trademark and design renewals;
- the recordal of events affecting IP Rights;
- the automated generation of Power of Attorney forms; and
- the provision of on-demand services related to IP or to IP related software.

**Site** means the [www.valipatenvoy.com](http://www.valipatenvoy.com) and [www.delegateip.com](http://www.delegateip.com) websites operated by the **Provider**.

**Site Terms** means the terms and conditions generally regulating the use of the **Site**. Such **Site Terms** may be accessed through the **Site**.

**Specified Subcontractor** means a subcontractor which is not part of the **Provider's** network of preferred subcontractors but which the **Customer** requests the **Provider** to work with.



**Standard Pricing Policy** means the terms and fees that define the general and standard pricing applied by the **Provider** to its **Customers**. The **Standard Pricing Policy** may evolve over time. Any **Customer** may request from the **Provider** a copy of its **Standard Pricing Policy**.

**Web Platform** means those areas and functions of the **Site** that the **Provider** reserves for **Customers**.

1.2. In these **General Terms and Conditions**, unless the subject or the context requires otherwise:

- a. the singular includes the plural and vice versa;
- b. words importing a gender include all other genders;
- c. a reference to a person includes bodies, corporate, unincorporated associations and partnerships;
- d. a reference to a **Party** includes a reference to the **Party's** successors and permitted assigns;
- e. except where a **Formal Notice** is required, references to "writing" or "written" include email and correspondence through the **Web Platform**;
- f. a provision in favour of two or more persons is for the benefit of them jointly and severally;
- g. a provision binding on two or more persons binds them jointly and severally; and
- h. where the date on or by which any act, matter or thing including, without limitation, the payment of money is to be done is not a **Business Day** then unless otherwise provided in these **General Terms and Conditions**, such act, matter or thing may be done on the next succeeding **Business Day**.

## **2. Application and acceptance**

2.1. Subject only to article 2.4 below, the **Customer** is bound by these **General Terms and Conditions** and agrees that these **General Terms and Conditions** comprise the entire agreement between the **Provider** and the **Customer**, unless a specific **Agreement** has been signed between the **Customer** and the **Provider**. By placing an **Instruction**, the **Customer** shall irrevocably be deemed to have confirmed that it has considered, approved and accepted these **General Terms and Conditions**. If such **Instruction** has been initiated through the **Web Platform**, the **Customer** shall irrevocably be deemed to have also accepted and consented to the **Site Terms**.

2.2. Unless explicitly agreed to the contrary by the **Provider**, these **General Terms and Conditions** apply in place of and prevail over and exclude any terms or conditions:

- a. contained or referred to in an **Instruction** or **Binding Instruction** whether given through the **Site** or otherwise;
- b. which would or might otherwise be implied by custom, practice or course of dealing; or
- c. that may be inferred from any representation appearing on the **Site**.

2.3. In accordance with these **General Terms and Conditions**, the **Provider** shall not be obliged to carry out an **Instruction** unless a **Binding Instruction** is formed pursuant to article 4 of these **General Terms and Conditions**. Each **Binding Instruction** shall be carried out strictly in compliance with these **General Terms and Conditions**.

2.4. No variation or purported variation of these **General Terms and Conditions** contained in any correspondence, document, statement or other communication with the **Customer**, whether written or verbal, shall be binding upon the **Provider** unless signed by a **Senior Executive** of the **Customer** and **Provider**.

2.5. The Provider reserves the right to revise the General Terms and Conditions. Revised General Terms and Conditions come into force on the following day after their publication on the Site. Such General Terms and Conditions may be accessed through the Site.

Each Customer shall periodically visit the Site to review any changes in the General Terms and Conditions. By continuing to use the Provider's Services after any revision comes into force, the Customer agrees to be bound by the revised General Terms and Conditions.

By placing an Instruction via the Provider's Web Platform or by other means, the Customer is bound by the General Terms and Conditions in force on the date of the Instruction.

2.6. By using the Site, the Customer is deemed to have agreed to be contacted by the Provider to discuss the information received via the Site, including Quotes that have not resulted in actual Instructions, and any improvements that the Provider has or is proposing to make to its Services.

### 3. Access

3.1. Access to the Provider's Web Platform and to the Provider's Services is subject to the Provider's formal approval.

Access Codes remain the property of the Provider at all times and the Provider may take any measures in relation to Access and Access Codes that it considers necessary to safeguard the functions and operations of the Site.

The Provider reserves the right to restrict or limit Access to the Web Platform, to refuse processing any Instruction, or to cancel any kind of cooperation at its own discretion in case any breach of the General Terms and Conditions is suspected.

Also, and without prejudice of further remedies, the Provider shall restrict or limit Access to the Web Platform refuse processing any Instruction, or cancel any kind of cooperation for other reasons of whatever nature, notably – but not only – based on a lack of professional qualifications, moral grounds, bad faith, use of a false identity, situations of insolvency, unfair commercial behaviour or antitrust practices or the deliberate insertion into the Site of insidious information likely to affect the provision of the Services.

The same principle is applicable to any other situation which, upon the Provider's reasonable assessment, is likely to affect the Provider's rights or legitimate interests or to the legitimate interests of an affiliated company of the Provider or any involved subcontractor.

3.2. The Customer shall communicate to the Provider one or more email addresses to be associated with each Registered User. A Registered User is entitled to act on behalf of the Customer. The Provider will provide to the Customer with unique Access Codes for each Registered User.

3.3. The Customer acknowledges that any of its Registered Users may have Access and give Instructions on the Customer's behalf until the Provider revokes the Access Code of the Registered User. The Customer shall inform the Provider in writing if the Access Code of any of its Registered User shall be revoked.

3.4. Once the Provider has granted the Customer Access to its Web Platform, the Customer is responsible for all actions carried out by the Registered User or by any other person using the Access Code associated to the Customer's Registered User.

3.5. The Customer must ensure that:

a. any allocated Access Code is kept secure;

b. **Access Codes** are not disclosed to any person other than the person or group of persons nominated by the **Customer** and associated to each **Registered User** without the prior written consent of the **Provider**;

c. no other persons than the person or group of persons nominated by the **Customer** and associated to each **Registered User** has **Access**; and

d. when several **Registered Users** have been created for the same **Customer**, the person or group of persons nominated by the **Customer** and associated to each **Registered User** uses the **Access Code** allocated to them individually on each occasion of **Access**.

3.6. The **Customer** must immediately inform the **Provider** in writing if the **Customer** knows or suspects any breach of its obligations under article 3.5 of these **General Terms and Conditions**.

3.7. Any **Instruction** received from the **Customer** by any means under the identity of the **Customer** shall be deemed valid and shall be binding upon the **Customer**. All **Instructions** placed after the notification pursuant to article 3.6. of these **General Terms and Conditions** shall be deemed invalid and shall be blocked or suspended by the **Provider**.

3.8. The **Customer** agrees that it shall be liable for all **Charges** or other liabilities arising from any **Access** or **Instruction** by its **Registered User(s)**, or by any other person using **Access Codes** issued to the **Customer**, where those **Charges** or other liabilities arose before the **Customer** notified the **Provider** in accordance with article 3.6 of these **General Terms and Conditions**.

3.9. After being duly notified, the **Provider** shall take all reasonable steps to provide a new **Access Code**, in the shortest possible timeframe, to the **Customer**. The **Customer** shall comply with all reasonable requests from the **Provider**, including answering questionnaires and carrying out security checks or audits as requested by the **Provider**. The **Customer** shall not be entitled to a new **Access Code** before the **Provider's** requests are reasonably satisfied.

#### **4. Instructions for Services**

4.1. **Instructions** shall be given to the **Provider** in English language and shall be either submitted through the **Web Platform** or sent to info@valipatenvoy.com. **Instructions** sent or issued by any other means may not be accepted or treated diligently.

4.2. Notwithstanding the **Provider's** acknowledgement of receipt of an **Instruction**, and irrespective of whether the **Instruction** is given through the **Web Platform** or any other means, a **Binding Instruction** will not be formed and the **Provider** will not be obliged to begin to perform the **Instruction** or to perform the **Instruction** at all and shall not bear any liability in this respect, until the **Provider** confirms its acceptance of the **Instruction** by a formal confirmation email sent to the **Customer's Email Address**. An automatic email sent from the **Provider's Web Platform** shall not constitute, nor be construed as a formal acceptance, unless it expressly stipulates the **Provider's** formal acceptance of the **Customer's Instruction**.

4.3. For the application of the provisions of these **General Terms and Conditions**, any **Customer** request encompassing instructions related to multiple **Services** and/or jurisdictions and/or IP rights is considered as a single **Instruction**.

#### **5. Matters not part of the Services**

5.1. Unless expressly agreed by the **Provider** in writing, and notwithstanding any contrary term included in an **Instruction**, the **Provider** shall not be responsible for any matter described generally in this article and all such matters are specifically excluded from forming part of the **Services** offered by the **Provider** to the **Customer**:

- a. The **Provider** shall not be obliged to issue reminders in respect of any requirement to renew any IP right either on a periodic or bespoke basis.
- b. Notwithstanding the fact that the **Provider** shall make available to the **Customer** an electronic copy of any official notification it has received in connection with a **Binding Instruction**, the **Provider** shall not be obliged to receive, store on behalf of or forward to the **Customer** the original of such notification.
- c. The **Provider's** responsibilities shall be limited to, and cease upon, the fulfilment of the **Binding Instruction**. The further management and/or processing of any related IP right(s) falls under the responsibility of the **Customer**.

## **6. Customer's obligations concerning Instructions**

6.1. The **Customer** shall act towards the **Provider** in good faith and shall:

- a. send to the **Provider** in English language all information and documents necessary to enable the **Provider** to provide the **Services** within a deadline specified in any accompanying message;
- b. whenever a translation is required and the **Customer** does not ask to the **Provider** to have it prepared by a subcontractor, send to the **Provider** a true and literal translation in the required specific language;
- c. inform the **Provider** promptly of any change in the address and/or any change of status and/or any change of ownership in relation to the IP right(s) related to an **Instruction**;
- d. ensure that all information provided to the **Provider** is complete, up-to-date and accurate in all respects;
- e. cooperate fully with the **Provider** in all matters relating to the **Instructions**;
- f. proceed with the payment of the **Provider's** invoices in accordance with article 9 of these **General Terms and Conditions**; and
- g. communicate to the **Provider** if any Specified Subcontractor shall be involved.

6.2. The **Customer** shall be solely responsible to ensure that any documents which require to be executed or notarised are duly executed or notarised as the case may be and returned to the **Provider** within a reasonable time frame for the **Provider** to meet its obligations under article 7 of these **General Terms and Conditions**.

6.3. It shall be the sole responsibility of the **Customer** to ensure that any documents which require to be legalised, either by apostille or consular means, are legalised and/or granted the necessary apostille when returned to the **Provider** and in sufficient amount of time for the **Provider** to meet its obligations under article 7 of these **General Terms and Conditions**.

6.4. The **Customer** undertakes to accept the **Provider's Standard Pricing Policy**.

6.5. The **Customer** undertakes to accept the following **Provider's** cancellation policy:

- a. the **Customer** may cancel a **Binding Instruction** at any time until the related **Services** are completed;
- b. partial refund shall apply depending on the degree of processing.

## **7. Provider's obligations concerning Services**

7.1. The **Provider** may execute the **Services** ordered by the **Customer** by itself, or through any subcontractor that the **Provider** deems competent to handle the implementation of the **Services**, or through any **Specified Subcontractor**.

7.2. The **Provider** shall provide the **Services** to the **Customer** in good faith and in doing so shall:

a. exercise reasonable skills and care using suitably skilled and appropriately experienced personnel and subcontractors;

b. use all reasonable endeavours to comply with any reasonable timescales stipulated in an **Instruction**;

c. act through **Specified Subcontractors** as and when instructed by the **Customer**;

d. notify of - and provide with - (whenever possible) any required document(s) which must be submitted by the **Customer** to the **Provider**, either through the **Web Platform** or by any other means, in order for the **Provider** to carry out a **Binding Instruction**;

e. inform the **Customer** within a reasonable time frame of becoming aware that further information or documentation is required from the **Customer**, or that some additional step is required, in order to perform a **Binding Instruction**;

f. make available to the **Customer** data extracted from official patents and/or trademark registers; and

g. make available to the **Customer** documents or forms related to **Instructions**, such as, for instance, **Power of Attorney** forms or official filing receipts.

## 8. Quotes and Charges

8.1. The **Customer** may obtain either through the **Web Platform** or by any other means a **Quote** as part of an upcoming **Instruction** or a **Binding Instruction**. **Quotes** are based either on the **Provider's Standard Pricing Policy** applicable on the date of creation of the **Quote** or on any specific terms contractually agreed upon with the **Customer**.

8.2. A **Quote** remains unchanged for the period mentioned on the **Quote** itself, if any period is mentioned, and is subject to possible disclaimers or assumptions listed in the **Quote**.

8.3. A **Quote** shall be final unless:

- Official fees have evolved between the **Quote** creation date and the date of implementing the **Instructions**. In that case, the official fees in force on the date of implementing the **Instructions** in any given jurisdiction apply.
- Situations recited in possible disclaimers or assumptions in the **Quote** occur;
- The **Customer** does not act within the period of validity of the **Quote** or within deadlines as mentioned in these **General Terms and Conditions** or specified in the disclaimers or assumptions or in the accompanying message to the **Quote**;
- Requested documents are not submitted as requested by the **Provider** as late submission of certain documents may result in additional fees and/or loss of rights;
- There is an error in the **Binding Instruction** and this error is recognized by both the **Customer** and the **Provider**;
- Additional **Services** shall be undertaken by the **Provider** which are outside the scope of the **Binding Instruction**, including any **Quote** disclaimer or assumption;
- There is a change in the **Binding Instruction** such as, inter alia, a change of subcontractor due to a conflict of interest or any other reason;
- Corresponding invoice is not paid within the prescribed payment term.

8.4. Exchange rates applied by the **Provider** are built into its systems for producing **Quotes**, including into its **Web Platform**, and may be updated at any time by the **Provider** at its discretion. **Quotes** provided for the same **Services** may therefore be different at different times depending on the evolution of exchange rates. However, the exchange rate applied to any **Quote** is frozen for the period mentioned on the **Quote** itself.

## 9. Invoicing and payment terms

9.1. The **Provider** issues invoices for the fulfilment of a **Binding Instruction** in accordance with the **Standard Pricing Policy** and/or in anticipation of the provision of **Services** associated to a **Quote**, the latter being applicable especially in the event of anticipated payment.

9.2 **Binding Instructions** placed close to any official deadline may be subject to urgency fees according to the **Standard Pricing Policy**.

9.3. The applicable terms of payment are stipulated on invoices issued by the **Provider**, namely:

- Payment by the deduction of funds from a **Customer's** deposit account, or, where no deposit account exists;
- Within thirty (30) days of the date of invoice by bank transfer to the **Provider's** bank account stated on the invoice, unless otherwise agreed in writing between the **Customer** and the **Provider**.

9.4. Invoice payment-related costs applied by financial institutions are shared between the **Customer** and the **Provider**. In the event of a different payment instruction, the **Customer** shall reimburse the **Provider** for the costs difference.

9.5. Unless otherwise agreed in writing between the **Customer** and the **Provider**, any **Instruction** to the **Provider** is binding upon the **Customer**, whether the **Customer** is the beneficiary of the **Services**, the representative of, or intermediary for, a third party. If an invoice is addressed to a third party at the **Customer's** request, the **Customer** remains jointly and severally responsible for its payment and, if necessary, shall immediately pay it on behalf of this third party upon receipt of a corresponding request from the **Provider**.

## 10. Termination

10.1. Without affecting any provision of the **Standard Pricing Policy**, in the event that the **Customer** has not respected their commitments or obligations under these **General Terms and Conditions**, including if the **Customer** is subject to an **Insolvency Event**, the relations between the **Provider** and the **Customer** may be terminated by the **Provider** after the serving a **Formal Notice** and without affecting the **Provider's** right to claim compensation. If the **Formal Notice** does not mention in any other reasonable termination deadline considering the circumstances and the **Services** concerned, termination would occur at the latest within one (1) month from serving the **Formal Notice**.

10.2. In the event of termination, each Party has the right to require immediate payment of the entire outstanding amount of all invoices, regardless of their due date.

10.3. Moreover, if there is a change in the situation of the **Customer**, such as – but not exclusively – death, bankruptcy, dissolution, failure, or modification to the **Customer's** business, or any other circumstances which could allow one to anticipate the **Customer's** insolvency, the **Provider** has the right to require immediate payment of the entire outstanding amount of all invoices, regardless of their due date, or to require an undertaking that the **Customer** will fulfil their obligations under the terms of payment approved by the **Provider**, and/or to suspend or cancel the execution of any relation, contract or **Instruction** with immediate effect.

## 11. Privacy

11.1. The **Provider** processes personal data from the **Customer** and on behalf of the **Customer** for the purpose of communicating with the **Controller** or implementing the **Services**.

11.2. If the **Provider** transfers personal data to a contractor (an IP firm), this is exclusively for the purpose of the execution of the **Services**. In this regard, the **Provider** needs to be considered as a controller in the framework of data protection legislation. The contractor (an IP firm) is considered as a separate controller since it determines by itself the purpose and the means for the processing of the personal data.

11.3. The contractor (an IP firm) guarantees that, when processing this personal data, it will strictly comply with the Belgian and European privacy and data protection legislation, including the European General Data Protection Regulation 2016/679 of 27 April 2016. The **Provider** trusts that the contractor immediately erases any personal data once the **Services** have been delivered. In addition, IP firms are generally bound by professional conduct rules. To the extent that the contractor still further processes such personal data after the execution of the **Services**, such processing would be performed under the sole responsibility of the contractor, without any possible liability for the **Provider**.

11.4. For any further information in connection with the processing of personal data, the **Customer** may refer to the **Provider's** privacy statement available from the **Provider's** website.

## 12. Limitation of liability

12.1. The **Provider** does not act in the capacity of either an attorney or a legal consultant and neither manages IP rights on behalf of the **Customer**, nor advises the **Customer**, and shall not bear any liability associated to such activities or their consequences.

12.2. The **Provider** does not guarantee the full accuracy and up-to-date nature of any legal information provided on the **Site**. Any legal information available on the **Site** shall be interpreted as general information which may or may not reflect the accurate legal, procedural and/or policy developments of any jurisdiction and/or IP-related issue:

- the **Provider** cannot be held responsible for any circumstance of whatever nature that may be encountered by the **Customer** after generating a document or form via the **Web Platform** and throughout its use;
- the **Provider** is not responsible for any changes, inter alia, legal reforms, administrative or formal requirements or evolving practices that may occur in any jurisdiction.

12.3. The **Provider's** responsibility is limited to the **Services** as defined in these **General Terms and Conditions**. The **Services** are offered on an “as is” basis and without any particular warranty unless expressly provided otherwise.

12.4. Failure to answer a question concerning an **Instruction** or **Binding Instruction** within the deadline defined by the **Provider**, or non-compliance by the **Customer** of the provisions of these **General Terms and Conditions** and notably article 6 thereof, entitles the **Provider** to immediately suspend the execution of the **Instruction** or **Binding Instruction** or to cancel the **Instruction** or **Binding Instruction** with immediate effect and shall result in excluding the **Provider's** liability, whether in contract or in tort, for any consequence – including loss of rights or titles – and for any type of damages, resulting directly or indirectly from such a failure.

12.5. The **Provider** cannot be held responsible for any loss of rights nor any other direct or indirect consequences, if they have not been kept properly informed, in writing, about any changes impacting the **Customer** and/or IP rights for which **Services** have been requested by the **Customer**.

12.6. The **Provider** cannot be held responsible for any loss of rights nor any other direct or indirect consequences when the **Instructions** are placed less than six (6) business days before an official deadline.

12.7. The **Provider** has no liability or responsibility for the accuracy, authenticity, completeness or relevancy of any data provided as made available from any official IP right register, nor for the use of the data submitted by the **Customer** for the implementation of any **Binding Instruction**.

12.8. The **Provider** has no liability or responsibility for any action undertaken by a **Specified Subcontractor**.

12.9. Any claim by the **Customer** shall be against the **Provider**, and never against any individual acting for or on behalf of the **Provider** such as, for instance, a director, an officer or an employee.

12.10. Except in the case of fraud imputable to the **Provider**, the responsibility for any possible damage suffered by the **Customer**, in particular in the event of loss of an IP right, for which the **Provider** could be directly or indirectly held responsible, will be limited to €1,000,000 (one million Euros) per **Binding Instruction** within the meaning of article 4 of these General Terms and Conditions, even in the event of serious fault by the **Provider**.

### **13. Force Majeure**

13.1. Neither the **Provider** nor the **Customer** shall be liable to the other for any delay or failure to perform an obligation imposed by these **General Terms and Conditions** to the extent that such delay or failure is due to **Force Majeure** and the **Customer** and the **Provider** agree that the time for performance of any obligation affected by **Force Majeure** shall be extended accordingly.

13.2. If either of the **Provider** or the **Customer** cannot timely perform an obligation or a **Binding Instruction** as a result of **Force Majeure** then the **Party** unable to perform must, as long as the **Force Majeure** does not prevent it:

a. notify the other **Party** in writing as soon as reasonably possible on becoming aware of the **Force Majeure**; and

b. use all reasonable endeavours to mitigate the effect of the **Force Majeure** on the performance of the obligation or a **Binding Instruction**.

13.3. If a **Force Majeure** prevents an obligation or a **Binding Instruction** from being executed for a period of one (1) month from the date on which the obligation or a **Binding Instruction** was required to be executed, or would normally be expected to be executed, the **Provider** and the **Customer** shall discuss the circumstances and implement such alternative arrangements as the parties may agree are fair and reasonable.

### **14. Confidentiality**

14.1. Each of the **Provider** and the **Customer** undertake to hold any **Confidential Information** received from the other **Party**, or in its possession which relates to the other **Party** as a result of **Access** or an **Instruction** or the formation of any **Binding Instructions** or through an attempt to resolve a dispute under article 18 of these **General Terms and Conditions**, in strict confidence and secrecy and shall not use, disclose, publish or otherwise make available to any third party, other than its professional advisers who have undertaken to be bound by the terms of these **General Terms and Conditions**, any such information save as is strictly necessary for the proper performance of its obligations under these **General Terms and Conditions**. This obligation shall subsist for as long as the **Customer** has **Access** and for a period of five (5) years thereafter.

14.2. The obligations of confidentiality under article 14.1 above do not extend to information that is:

a. rightfully in the receiving **Party's** possession or known to it prior to receipt of the **Confidential Information**; or

- b. publicly known at the time of its disclosure or being made available to the receiving Party other than through a breach resulting from either Party's undertaking; or
- c. legally acquired from a third party by the Party to whom the Confidential Information is disclosed; or
- d. required by law, regulation or order of a competent authority (including any regulatory or governmental body or securities exchange) to be disclosed.

## **15. Severability**

15.1. In the event that one or more provisions of these General Terms and Conditions shall be, or shall be deemed to be invalid, void, unenforceable or illegal, the validity and enforceability of the other provisions of these General Terms and Conditions shall not be affected thereby.

15.2. Similarly, if one or more provisions of these General Terms and Conditions shall be, or shall be deemed to be invalid, void, unenforceable or illegal, in a specific jurisdiction, such provision or provisions would remain in full force and effect in any other jurisdiction.

15.3. In both cases described in articles 15.1 and 15.2, the Customer and the Provider hereto agree to implement such valid and enforceable provision or provisions, which correspond as closely as possible to the commercial intent of the Customer and the Provider. The same shall apply in the event that these General Terms and Conditions contain any gaps.

15.4. Article 15 of these General Terms and Conditions has no effect if the severance alters the basic nature of these General Terms and Conditions or is contrary to public policy.

## **16. Waiver**

16.1. Any waiver of any right set out in these General Terms and Conditions is only effective if given in writing and, in the case of the Provider, by a Senior Executive, and applies only to the person to whom the waiver is addressed and to the circumstances for which it is given and shall not prevent the person who has given the waiver from subsequently relying on the provision it has waived in relation to other circumstances.

16.2. A failure by either the Provider or the Customer to exercise or enforce any rights conferred upon them by these General Terms and Conditions shall not be deemed to be a waiver of those rights or operate so as to bar the exercise or enforcement thereof at any subsequent time or times.

16.3. No single or partial exercise of any right or remedy under these General Terms and Conditions shall preclude or restrict the further exercise of the right or remedy or other rights or remedies.

## **17. Assignment**

17.1. The Customer may not assign any right or obligation arising under these General Terms and Conditions unless the Provider consents in writing, which consent the Provider may grant or withhold in its absolute discretion.

17.2. The Provider may assign any rights or obligations arising under any Binding Instruction without the consent of the Customer.

## **18. Disputes**

18.1. Compliance with this article is a condition precedent to the entitlement of the Provider or the Customer to commence legal proceedings in relation to any dispute with the other except that nothing in this article 18 shall prevent either the Provider or the Customer from seeking urgent interlocutory relief.

18.2. If either the **Provider** or the **Customer** considers that a dispute has arisen, it shall give **Formal Notice** to the other. The **Formal Notice** must set out reasonable particulars of the dispute.

18.3. Promptly after the receipt of a **Formal Notice** of a dispute, the authorised representative of each of the **Provider** and the **Customer** must meet to discuss the dispute and negotiate in good faith to resolve the dispute without resorting to legal proceedings.

18.4. If the dispute is not resolved in accordance with article 18.3 within ten (10) **Business Days** of receipt of the **Formal Notice** of the dispute, the **Party** serving the **Formal Notice** may request that the dispute be escalated to a **Senior Executive**.

18.5. The **Senior Executives** from both **Parties** must negotiate in good faith to resolve the dispute without resorting to any legal proceedings, or attempt to agree on a process to resolve all or at least part of the dispute without resorting to any legal proceedings including, without limitation, by mediation, conciliation, executive appraisal or independent expert determination. Each of the **Provider** and the **Customer** must bear its own costs of resolving a dispute under this article and must bear equally the costs of any expert or other person jointly appointed by them to resolve or attempt to resolve a dispute.

18.6. If the dispute has not been resolved or a process to resolve the dispute has not been agreed within fifteen (15) **Business Days** from the date of escalation of the dispute under article 18.4 of these **General Terms and Conditions**, then the dispute shall be finally settled under the CEPANI Rules of Arbitration. Three arbitrators will be appointed in accordance with those Rules (each of the **Parties** appoints one arbitrator, the third will be appointed as chairman together by the two arbitrators already appointed). The seat of the Arbitration shall be Brussels, Belgium. The Arbitration shall be conducted in the English language. Each of the **Customer** and the **Provider** confirm that Belgian law shall apply to all aspects of a dispute including, without limitation, any non-contractual rights and obligations arising out of or in connection with any matter under these **General Terms and Conditions**.