

# TERMS AND CONDITIONS OF SUPPLY OF COMPUTER PATENT ANNUITIES LIMITED PARTNERSHIP

## 1. APPLICATION

- 1.1 These conditions shall govern and be incorporated into every contract made by Computer Patent Annuities Limited Partnership ("**us**", "**we**" and cognate terms) or on our behalf with clients ("**you**") for the provision of intellectual property related professional services ("**Services**") and shall subject to condition 1.2 below prevail over any terms or conditions contained or referred to in any documents submitted by you or previously submitted by us or in correspondence or elsewhere.
- 1.2 The details of the Services that we shall provide to you are set out in our operating procedures (the "**Operating Procedures**"). Neither the Services nor the Operating Procedures may be changed without the written agreement of both you and us.
- 1.3 Acceptance by you of, or instructions by you to perform, Services shall constitute unqualified acceptance of these conditions.
- 1.4 A variation of these conditions is valid only if it is in writing and signed by or on behalf of us.
- 1.5 No failure to enforce or delay in enforcing any of these conditions shall operate as a waiver of any of them and no partial or single exercise shall prevent any other or future exercise of that or any other right.

## 2. COMMUNICATIONS

- 2.1 A contract shall arise between us on whichever is the earlier of our actual receipt of your instructions to act or a renewal reminder issued by us and our acting upon your instructions.
- 2.2 Our acceptance of any oral instructions from you shall be effective only when such instructions have been confirmed in writing by letter or facsimile transmission. Electronic instructions will be accepted only if by the CPA Direct System to which separate conditions apply, or by an electronic interface approved by us.

## 3. INSTRUCTIONS

- 3.1 A condition to our acting on your behalf will be that you respond promptly, clearly and completely to any request we may make for instructions, information, technical data, documents and payment of fees.
- 3.2 Without prejudice to the need for you to respond promptly, if we need your response by a specific deadline we will endeavour to say so when seeking instructions. If you miss a deadline or send us insufficiently clear or timely or incomplete instructions we shall have no liability for any loss which may arise and we shall not be under any obligation to take any steps to preserve or to protect your rights further. Nevertheless, if at our sole discretion we take any

such steps, then you shall indemnify us for all fees, cost of work done, overheads and disbursements incurred, each of which may include premia and/or special charges to reflect urgency and disruption.

3.3 You agree that we may rely and act upon instructions from your authorised agent whose details you have supplied to us until we receive your written signed instructions to the contrary.

3.4 Subject to these conditions we will proceed on the basis that our duty to you is to do what we consider is necessary properly to protect and preserve your rights.

#### 4. **AGENTS AND OTHER SUB-CONTRACTORS**

In order to provide the Services we may need to instruct local agents practising in the jurisdiction of each relevant registry or other independent specialist providers.

#### 5. **FEES**

5.1 Our basic fees in relation to Services that comprise the provision of renewal of intellectual property rights registrations will usually comprise at least two components:

(a) a fee (the "**Administration Charge**") which may be expressed as a periodic portfolio management fee or a fee for each renewal transaction. The level of Administration Charge will have been set in the light of various variables, assumptions, bases and expectations including, but not limited to, any secure initial contract period during which your relevant portfolio of interests will be entrusted to us, the size and composition of such portfolio and the number and likely frequency and/or complexity of renewals expected to be produced; and

(b) a "**Country Charge**" which is set out in a tariff, a current copy of which is available on request.

5.2 In addition to our fees there will also be payable the charges made by the relevant registries ("**Official Fees**") in each jurisdiction and which vary from time to time.

5.3 Any sums of money that may at any time require to be converted from one currency into the currency in which we have agreed to invoice you will be so converted at our rates from time to time.

5.4 All charges are subject to variation in the light of changes to underlying charges and/or for correction of errors.

5.5 On each occasion upon which we send you a reminder in relation to the renewal of a particular intellectual property right we give you our best estimate of the likely total aggregate fee likely to be payable in respect thereof (including the Administration Charge, the Country Charge and the Official Fee) on the basis that the transaction proceeds in an expected and standard manner. Your instruction to us to proceed (whether express or, if otherwise so agreed, by failure to instruct us not to proceed) shall constitute your acceptance of, and agreement to pay such fee and, if applicable, to pay later after they have arisen and been

invoiced any supplements thereto that may arise or become appropriate in the light of any unexpected work, change of circumstances or further expenses becoming necessary. We shall submit to you an invoice for the amount of such estimate after your instruction or deemed instruction to us to proceed.

- 5.6 VAT and any other relevant tax or duty payable, if any, by you on our supply of Services shall be added to all fees.
- 5.7 You acknowledge that it is our policy not to pay accumulated annuities or back fees arising in certain countries at the time of grant or acceptance of an application, and it is your responsibility to arrange payment of such fees directly with your associate.

## 6. **PAYMENT**

- 6.1 Unless otherwise agreed, payment of invoices shall be made in full within 30 days from the date that our invoice is issued. Time shall be of the essence of payment. We may suspend the supply of Services to you where any amounts are overdue under any contract until all such amounts have been paid.
- 6.2 If in our opinion your creditworthiness deteriorates before completion of performance of our Services we may require full or partial payment of all or any fees prior to performance or the provision of security by you in a form acceptable to us.
- 6.3 We shall be entitled to offset any amount owing to us from you against any amount owed to you by us.

## 7. **CONFIDENTIALITY**

Each of you and we undertake to the other that it will not during the term of this agreement or at any time thereafter use, divulge or communicate to any person, except its professional representatives or advisers or as may be required by law or any legal or regulatory authority or pursuant to performance of its obligations under a contract made pursuant hereto, any confidential information relating to the other's business, financial or other affairs which is not in the public domain concerning the other party which may have, or may in future, come to its knowledge under the provisions hereof and each of you and we shall use reasonable endeavours to prevent the publication or disclosure of any such information. This provision shall not apply to information already known to the receiving party prior to its receipt hereunder or which subsequently comes into the public domain or its knowledge other than as a result of a breach hereof.

## 8. **RECORDS**

- 8.1 We will maintain records in connection with all matters in respect of which we provide the Services to you. Any file which we may open in connection with the Services shall be and shall remain our property at all times. When we have completed the contract for the Services in respect of any matter we may destroy any related file at any time after the expiry of one year.
- 8.2 If you wish to have access to any of our files after we have ceased to act for you then, provided that such file has not already been destroyed pursuant to condition 8.1 above, we shall be entitled to require you to make payment of any

monies then still due from you to us and in addition to charge you a reasonable fee for the work involved in giving you such access.

## 9. **TERMINATION**

9.1 Unless otherwise agreed, either you or we may terminate our provision of the Services by giving to the other not less than one year's notice in writing expiring at any time.

9.2 On or at any time after the occurrence of any of the events in condition 9.3, we may suspend further performance of Services for you and/or terminate any contract with you with immediate effect by written notice to you.

9.3 The events are:

- (a) you being in breach of an obligation under a contract with us;
- (b) you passing a resolution for your winding up or a court of competent jurisdiction making an order for your winding up or dissolution;
- (c) your entering administration, the making of an administration order in relation to you or the appointment of a receiver over, or an encumbrancer taking possession of or selling, any of your assets;
- (d) your making an arrangement or composition with your creditors generally or applying to a court of competent jurisdiction for protection from your creditors.

9.4 Upon any termination, any of your indebtedness to us shall become immediately due and payable and we shall be under no further obligation to provide any Services to you.

## 10. **FORCE MAJEURE**

10.1 Where a Force Majeure Event takes place we shall use our reasonable endeavours to carry out the Services.

10.2 Notwithstanding 10.1 above, if we are prevented, hindered or delayed from or in supplying any Services in accordance with these conditions by a Force Majeure Event we shall notify you as soon as reasonably possible and we may, at our option:

- (a) suspend performance while the Force Majeure Event continues;
- (b) apportion available resources between our clients as we decide;
- (c) terminate any contract so affected with immediate effect by written notice to you;

and we shall not be liable for any loss or damage suffered by you as a result.

10.3 In this condition "**Force Majeure Event**" means an event or circumstance beyond our reasonable control including, without limitation, strikes, lockouts and other industrial disputes relating to our workforce.

11. **ASSIGNMENT**

You may not assign or transfer, or purport to assign or transfer, any of your rights or obligations under a contract without our prior written consent. We may assign, transfer and/or subcontract the whole or any part or part of this contract without notice to you.

12. **GOVERNING LAW**

These conditions and any contract made under them shall be governed by and construed in accordance with Jersey law and the courts of Jersey shall have exclusive jurisdiction.

13. **NOTICE AND COMMUNICATIONS**

Any notice, demand or other communication given or made under or in connection with the matters contemplated by these conditions shall be in writing and shall be delivered personally or sent by fax or prepaid air mail (to in our case our registered office from time to time marked for the attention of the Secretary) and shall be deemed to have been duly given or made as follows:

- (a) if personally delivered, upon delivery at the address of the relevant party;
- (b) if sent by air mail, 5 days after the date of posting; and
- (c) if sent by fax, when despatched;

provided that if, in accordance with the above provision, any such notice, demand or other communication would otherwise be deemed to be given or made after 5.00 p.m. such notice, demand or other communication shall be deemed to be given or made at 9.00 a.m. on the next usual business day in the place of receipt.