TERMS AND CONDITIONS FOR A DOMAIN NAME REGISTRATION

1 Preamble

1.1 VISUAL ONLINE S.A. provides services for the registration of a domain name, which means that VISUAL ONLINE S.A. acts as a Registrar when applying on behalf of a Customer for a domain name registration with a Registry. VISUAL ONLINE S.A. has notably been officially accredited as a Registrar for the top level domain .eu.

1.2 The domain name registration is thus governed by the general terms and conditions of VISUAL ONLINE S.A., as amended from time to time and published on its web site [www.vo.lu], the terms and conditions of the Registry (where applicable, depending on the registered domain name), the list of which are published on VISUAL ONLINE S.A.'s web site, and the following special terms and conditions. All these documents form an integral part of the Agreement entered into between VISUAL ONLINE S.A. and the Customer for the registration of a domain name.

1.3 Regarding the registration of a domain name under the top level domain .eu, the Customer must be aware that VISUAL ONLINE S.A.'s services consist only in submitting the request and information provided by the Customer to the Registry, whereas the Customer must itself send all required « documentary evidence » to the designated validation agent PriceWaterhouseCoopers (for more details, please see the web site of Eurid : [www.eurid.eu])

2 Definitions

2.1 The « Administrative contact » means the representative agent of the Customer which has full powers to act on behalf of the Customer for the execution of the Agreement.

2.2 The «Agreement» means the contractual and legal provisions governing the relationship between the Registrar and the Customer. The Agreement comprises notably the general terms and conditions of the Registrar, the terms and conditions of the Registry and the following special terms and conditions for the domain name registration.

2.3 The «Customer» means the person or entity which submits an application for the registration of a domain name to the Registrar.

2.4 The «Registrar» means VISUAL ONLINE S.A., which, via contract with a Registry, provides domain name registration services.

2.5 The «Registry» means the entity entrusted with the organisation, administration and management of a top level domain (« TLD »), and, for the purpose of this Agreement, the Registry for the TLD name registered by the Customer.

2.6 The « WHOIS database » means the database which purpose it is, according to international standards, to provide accurate and up to date information about the technological and administrative points of contact administering the domain names under the respective TLD.

3 The terms and conditions of the Registry

3.1 The Customer acknowledges that the registration of the domain name will be subject to the approval of the Registry and that the Registrar does not bear any responsibility in case the application for the registration of a given domain name is, for whatever reason, rejected by the Registry. The Registrar may also decide, in its own discretion, not to accept the application for a registration. In these cases, the Customer may be entitled to be refunded part or all of the fees it already paid for the domain name registration, except for the costs and fees covering the services provided by the Registrar for processing the application. The refunding may also consist, at the Registrar's sole discretion, in a credit added to the Customer's DNS-STOCK account.

3.2 The Customer is aware of the fact that the Registry may cancel the domain name registration if it considers that the Customer has infringed its terms and conditions. In this case, the Agreement between the Registrar and the Customer will also be terminated without notice. Any such termination of the Agreement by a decision of the Registry will not entitle the Customer to claim any damages from the Registrar.

3.3 The Customer has to abide to the technical requirements as prescribed by the Registry, which are published by the Registry on its web site and may be, on request, sent to the Customer by e-mail or any other electronic means. The Customer warrants that, before having submitted its application for the registration of a domain name, it has reviewed the Registry's technical requirements and that, in case of an active use of the domain name, it is properly equipped to meet these requirements.

4 Selection of a domain name

4.1 The Customer bears the sole responsibility for the validity of its rights on the domain name it registers with the Registrar. No control to that respect will be exercised by the Registrar. The Registrar does notably not check any conflicts with trade marks, whether registered or not, or with rights to names in other contexts. The Registrar is expressly exempted by the Customer from any and all responsibility for the verification of rights to a name.

4.2 The Customer shall indemnify the Registrar against any claim that the registration of the domain name or the manner in which the domain name is directly or indirectly used infringes the legal rights of any third party and furthermore indemnifies the Registrar against the reasonable costs and expenses, however they may arise, incurred in defending or dealing with such claim.

5 Payment of fees

5.1 The fees for the services rendered by the Registrar must be paid within fifteen (15) calendar days of the date mentioned on the invoice, except where the fees are automatically debited from the Customer's credit card with its express consent.

5.2 The fees cover the services provided by the Registrar according to this Agreement and will not, in any case, be refunded to the Customer, except in case of wrong or excess payment by the Customer. The Registrar will thus for instance not be obliged to refund any fees if the Customer cannot actively use its domain name because it does not meet the technical requirements prescribed by the Registry, or in case of early termination of the Agreement (see section 8).

6   Representations and warranties by the Customer

The Customer notably represents and warrants that :

(a)   all statements made during the registration process and the term of this Agreement are complete and accurate ;

(b)   neither the registration nor the direct or indirect use of the domain name by the Customer or any of its agents or affiliates infringes or otherwise violates the rights of a third party ;

(c)   the domain name is not contrary to public order or morality ;

(d)   the domain name is not registered for an unlawful purpose ; and

(e)   the domain name is not contrary to the provisions of the terms and conditions issued by the Registry.

7   Amendments to the Agreement

7.1   The Customer acknowledges the right of the Registrar to amend the Agreement from time to time. Any such amendments will be posted on the web site of the Registrar, which will be subject to regular update, and notified to the Customer by e-mail or any other electronic means.

7.2   Any such amendments, including to the prices of the services provided by the Registrar, will be deemed to have been accepted by the Customer unless it terminates the Agreement with a ten (10) days notice received by the Registrar during a time period of thirty (30) days after the amendments have been made public on the web site of the Registrar and notified by e-mail or any other electronic means to the Customer.

7.3   The Customer furthermore acknowlegdes that it will be validly bound by any amendments made by the Registry to its terms and conditions.

8   Term and termination

8.1   The term of the Agreement is the same as the term of the domain name registration as fixed by the Registry in its terms and conditions. The lenght of the registration period as well as the conditions for its renewal are thus defined in the Registry's terms and conditions. By applying for a domain name registration, the Customer acknowledges to have verified the corresponding registration period. The Customer must thus ensure that the Registrar receives in due time the payment for each registration period, any eventual notice it receives from the Registrar for that purpose being meant as a simple reminder. The Registrar may not be held liable in a case a domain name registration has not been renewed because the Customer failed to pay the related fees in due time.

8.2   The Agreement will remain in full force for the whole term of the selected domain name registration according to the terms and conditions of the Registry. In case of early termination, the Customer's obligations will remain in full force, notably regarding the payment of all outstanding fees under the Agreement.

8.3   The Customer furthermore acknowledges that a Registry may have the right in some cases, as provided in its terms and conditions, and notably in case the Customer has violated its obligations under the Registry's terms and conditions, to put the domain name registration on hold, which means that the Customer may not actively use that domain name which remains however registered in its name.

8.4   The Registrar has the right to terminate the Agreement if the Customer violates any provision of the Agreement, and notably in case :

(a)   the Customer does not pay the fees for the registration of the domain name when their are due ; and

(b)   the Customer fails to meet the technical requirements as precribed by the Registry.

8.5   Even though the Registrar has the right to terminate the domain name registration without notice, it may decide to send a prior registered letter to the Customer with a 15 (fifteen) days notice. Such a notice may for instance be sent in case the Agreement should be terminated because the Customer has failed to pay the outstanding fees.

8.6   The Registrar shall also have the right, instead of terminating the Agreement, to register the domain name with itself designated as its holder. Such a transfer will not exempt the Customer from its obligations under the Agreement. The Customer expressly agrees that such a transfer may be operated by the Registrar, at its own discretion, if it considers that the Customer has violated any provision of the Agreement. Such a transfer shall not be interpreted as a waiver of the Registrar's right to terminate the Agreement.

9   Data protection

9.1   The Customer agrees to provide current, complete and accurate information as requested for the registration process, and maintain and update this information as needed. The Registrar will notably have the right to terminate the Agreement in case inaccurate information has been submitted by the Customer or the Customer has failed to inform the Registrar within fifteen (15) days of any change to that information.

9.2   The information provided by the Customer will be made publicly available in the Registry's WHOIS database. The Registrar acknowledges that the WHOIS database shall contain information about the holder of the domain name that is relevant and not excessive in relation to the purpose of the data base.

9.3   All information is provided by the Customer to the Registrar with the Customer's consent to its publication in the WHOIS database, it being submitted that all this information is necessary in relation to the purpose of the database.

10   Transfer to another Registrar

10.1   The transfer of a domain name to another Registrar is subject to the Customer's prior express consent. Should the Registrar not receive such a confirmation within the time period specified in the e-mail sent for that purpose to the Customer, then the requested transfer will automatically be cancelled.

10.2   The Registrar will not take into account any transfer request in case :

(a)   all outstanding fees owed to the Registrar have not yet been settled by the Customer ;

(b)   the transfer request is received within eight (8) days prior to the expiry of the domain name ; or

(c)   the domain name has expired.

10.3   The Customer must also comply with all the provisions and formalities eventually prescribed by the Registry for the transfer of the domain name to another Registrar.

11 Transfer of the domain name

11.1 In order to transfer a domain name to another holder, the Customer must comply with all the formalities prescribed by the Registry in its terms and conditions.

11.2 The Registrar may validly refuse to execute the transfer of the domain name as long as it has not received the written consent of the new holder to all the provisions of this Agreement and been provided with all the relevant information required for the domain name registration.

11.3 The previous holder will not be entitled to the refund of any fees and the Registrar has also the right to validly block a requested transfer in case any fees remain due.

11.4 Except if otherwise provided by the Registry, the licensed use of the domain name by another person than the Customer will not be considered by the Registrar as a transfer of the domain name so that the Customer will remain bound by all its obligations under this Agreement.

12 The Administrative contact of the Customer

12.1 For the purpose of this Agreement, the Customer must designate an Administrative contact and indicate a corresponding e-mail address to which all notifications will be validly made by the Registrar. The Administrative contact is deemed to have been vested with full powers by the Customer to represent it towards the Registrar.

12.2 As long as the Registrar has not received any communication to the contrary by a due representative of the Customer, all notifications made by the Registrar under this Agreement to the designated Administrative contact and the e-mail address indicated by the Customer will be deemed to have been validly executed by the Registrar. The Registrar may thus notably not be held liable for a notification which has not been received by the Customer because the Customer failed to inform the Registrar about any change to that contact information. The omission by the Customer to update the information about the Administrative contact will be interpreted by the Customer as a material breach of the Agreement entitling it, according to sections 8 and 9, to terminate the Agreement.

13 Limitation of liability

13.1 The Registrar will not be liable for any fault, error or negligence by the Registry which would occur during the processing of the application and which would for instance lead to a prior registration of the same domain name by another person. In this case, the Customer, by submitting its application for the registration of a domain name to the Registrar, expressly waives any such claim directed against the Registrar.

13.2 The Registrar may furthermore not be held liable in case of any suspension of the domain name registration decided by the Registry or in case of an interruption of service due to technical problems occurring with the Registry.

13.3 The Registrar will in any case, except in case of gross negligence or wilful misconduct, not be liable for any loss of use, profit or interruption of business, or any indirect, special, incidental or consequential damages of any kind regardless of the form of action whether in contract, tort (including negligence), or otherwise, to the Customer or any other person, even if the Registrar has been advised of the possibility of such damages.

13.4 The Registrar's liability will in any case be limited to 200 percent of the amount of the fees paid by the Customer for the registration period of the relevant domain name during which the incident occured.

14 Force majeure

In case the Registrar or the Customer is affected by a force majeure, it shall be excused from the performance of its obligations under the Agreement to the extent that the performance of such obligations is prevented by such force majeure, provided that the other party has been informed thereof by written notice within 6 days of the occurrence of the event constituting a force majeure (e.g. natural disaster, war, terrorism). The Registrar and the Customer shall consult with a view to taking such steps as may be appropriate to mitigate the effects of such force majeure. The Registrar may terminate the Agreement in case the effects of the force majeure continue for more than thirty (30) days.

15 Severability

If any term or provision of this Agreement is declared invalid or unenforceable, that term or provision will be construed consistent with applicable laws as nearly as possible to reflect the original intentions of the parties, and the remaining terms and provisions will remain in full force and effect.

16 Governing law and competent jurisdiction

This Agreement shall be governed by and interpreted and enforced in accordance with the laws of the Grand-Duchy of Luxembourg. Any action relating to this Agreement must be brought before the Courts of the District of Luxembourg-City in the Grand-Duchy of Luxembourg.

17 Dispute Resolution

17.1 The Registrar will in no case intervene in any dispute between persons claiming rights on a registered domain name. The Registrar will thus for instance not suspend the registration of a domain name in case it receives any notification to that respect, except for a final Court decision or a Court decision with provisional effects.

17.2 As the Registry's terms and conditions form an integral part of this Agreement, the Customer acknowledges that it will have to comply with its Dispute Resolution Policy, if such a policy is prescribed by the Registry.