



GENERAL CONDITIONS OF CONTRACT

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Definitions

For the purposes of these General Conditions of Contract:

"EPO"	means the European Patent Organisation;
"Office"	means the European Patent Office, which is the executive body of the EPO;
"Bidders"	means the persons or firms submitting tenders or offers;
"Contract"	means the arrangements set out in the Agreement, together with these General Conditions of Contract and all other annexed documents;
"Contractual deliverables"	means the goods and/or services which the Contractor undertakes to provide under the Contract;
"Data"	means all materials, documents and information in whatever form;
"Contractor"	means the person/firm with whom/which the EPO concludes the Contract;
"General Conditions of Contract" or "GCC"	means these General Conditions of Contract, including the Arbitration Agreement, the guarantees (if applicable), the excerpt from the Protocol on Privileges and Immunities, the declaration by the Subcontractor (if applicable) and the Data Processing Agreement (if applicable) attached as annexes;
"Specific Conditions"	means the Contract without the General Conditions of Contract;
"EPC"	means the Convention on the Grant of European Patents of 5 October 1973;
"Personal data"	means any information relating to any identified or identifiable natural person; an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to his or her physical, physiological, genetic, mental, economic, cultural or social identity; personal data which have undergone pseudonymisation but which could be attributed to a natural person by the use of additional information are to be considered to be information relating to an identifiable natural person;
"PPI"	means the Protocol on Privileges and Immunities of the European Patent Organisation of 5 October 1973;
"Processing"	means any operation or set of operations which is performed on data or on sets of data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction;
"Contracting states"	means the states that have ratified or acceded to the EPC.

SECTION I

General provisions

1. Scope

- 1.1 These General Conditions of Contract (GCC) apply unless they are varied, superseded or otherwise rendered inapplicable by virtue of the terms of higher-ranking provisions of the Contract.
- 1.2 Divergent, contrary or supplementary general terms and conditions of the Contractor will form part of the Contract only where and in so far as the EPO has expressly consented to their application in writing (Article 3.1). The need for consent applies in all cases, for example even where the EPO has unreservedly accepted contractual deliverables in the knowledge of the Contractor's general terms and conditions.
- 1.3 Individual arrangements made with the Contractor in specific cases (including ancillary and supplementary agreements and variations) take precedence over these GCC. A written agreement or confirmation issued by the EPO in writing will be authoritative in determining the content of any such arrangement.

2. Calculation of periods

- 2.1 The following applies to any periods specified in the Contract:
 - (a) Periods begin on the day following that on which the event marking their beginning actually occurs. This event may consist of an action or the expiry of a preceding period.
 - (b) Where a period is defined as a year or a number of years, it ends in the relevant year at the end of the same day of the same month as that on which the event occurred. In a year where the month concerned does not include that day, the period ends at the end of the last day of that month.
 - (c) Where a period is defined as a month or a number of months, it ends in the relevant month at the end of the same day as that on which the event occurred. Where the month concerned does not include that day, the period ends at the end of the last day of that month.
 - (d) Where a period is defined as a week or a number of weeks, it ends in the relevant week at the end of the same weekday as that on which the event occurred.
- 2.2 Where the last day of a period is a Saturday, Sunday or public holiday, the period ends at the end of the next working day.

3. Written form

- 3.1 Where it has been contractually agreed that a declaration must be issued in writing, such written form is a requirement for validity. This requirement is met by use of a simple letter or fax but not by use of e-mail or other means of transmission by telecommunication.
- 3.2 Legally relevant declarations and notifications addressed by the Contractor to the EPO (in particular, the setting of periods, reminders, notices of termination and other constitutive declarations such as avoidance or rescission) must be issued in writing.

4. Subcontracting

- 4.1 Unless otherwise provided in the Specific Conditions, the Contractor must perform the contractual deliverables personally or as part of his own business. Subcontracting – even of only part of the performance due – is permissible only with the EPO's written consent.
- 4.2 Where the Contractor intends to delegate the performance of all or some of the contractual deliverables, he must, in good time but no later than two weeks before the performance in question is scheduled to start, notify the EPO in writing of the name and address of the selected Subcontractor and of the performance to be subcontracted and request the EPO's consent. Together with this request, the Contractor must submit a declaration by the Subcontractor, in the form stipulated in Annex D. Should the EPO grant its consent, the terms of the agreement with the Subcontractor must be such as to ensure that the Subcontractor's performance is of a quality or standard equal to that which the Contractor himself has undertaken to provide to the EPO under the Contract and that the Subcontractor will comply with the obligations under Articles 6 and 12. The Subcontractor must render the subcontracted performance as part of his normal line of business. He must be competent, capable and reliable. At the EPO's request, the Contractor must produce appropriate evidence of these qualities.
- 4.3 As security, the Contractor hereby assigns to the EPO, which hereby accepts such assignment, his rights against the selected Subcontractor in connection with the contractual deliverables. This assignment does not result in postponement or any other limitation of the Contractor's obligations. Nor may the Contractor cite the EPO's rights against the Subcontractor as a substitute for his own performance of those obligations. The Contractor is nevertheless authorised to assert all rights and claims under agreements with subcontractors in his own name until the EPO revokes such authorisation. The EPO may revoke authorisation if the Contractor defaults on performance of a contractual deliverable and/or one of the parties has issued a declaration with a view to terminating the Contract.
- 4.4 Where processing of personal data on behalf of the EPO is to be carried out by a Subcontractor, the Contractor must conclude with that Subcontractor a data processing agreement no less stringent than that he has concluded with the EPO in accordance with Article 6.9 and Annex E. In such cases, the Contractor's request under Article 4.2 must include a copy of his data processing agreement with the Subcontractor.
- 4.5 At the EPO's request, the Contractor must provide it with a sealed envelope containing photocopies of the agreements concluded with subcontractors, including all annexes, and other important correspondence exchanged with them in connection with the contractual deliverables. The EPO may open this envelope if it has revoked authorisation under Article 4.3. The Contractor bears the photocopying costs. The Contractor cannot counter his obligation to provide this information by exercising a right to withhold it, unless the legal basis he cites for such exercise is recognised by the EPO or has been upheld by a final court decision.

4.6 The Contractor is in any event fully liable for performance of the Contract.

4.7 If the Contractor breaches an obligation under this Article 4, the EPO may rescind the Contract if it has already set the Contractor a reasonable period for performance to no avail or – where a negative obligation is breached – warned the Contractor to no avail. No period need be set or warning issued if, having regard to the interests of both parties, the circumstances justify immediate rescission by the EPO or where the Contractor's breach is such that the EPO cannot reasonably be expected to adhere to the Contract. This is without prejudice to the EPO's right to claim damages.

5. Multiple Contractors

Where two or more Contractors are parties to one Contract, each of them is jointly and severally liable for the performance of the Contract.

6. Use of and liability for data, duty of confidentiality

6.1 The Contractor's use of all data supplied to him by the EPO is restricted exclusively to the purpose of performing his obligations under the Contract. In particular, the Contractor is not authorised to disclose such data or to make it available to any third party without the EPO's prior written consent.

6.2 The use of any data arranged by the EPO or the Contractor in an original form or compilation in accordance with the Contract is subject to the same restrictions, even if the individual elements of such form or compilation are publicly available.

6.3 The Contractor is liable to the EPO for the safekeeping of all data within the meaning of Article 6.1 and 6.2. He must also ensure that such data can be accessed only by persons requiring it for the purpose of performing the Contract.

6.4 At the EPO's request, the Contractor must inform it without delay of all measures taken by him to comply with Article 6.1 to 6.3 and take any such precautions as the EPO may require.

6.5 To ensure that confidentiality is strictly observed, the Contractor must similarly bind to confidentiality all persons deployed to draw up the bid or the Contract or to perform the Contract and impose on them conditions at least as stringent as those laid down in this article.

6.6 The EPO may require that the Contractor return, delete or destroy at his expense and risk all data referred to in Article 6.1 within a reasonable period to be set by it. The same applies to data referred to in Article 6.2. In exercising this right, the EPO must take account of any legitimate interests of the Contractor. If the Contractor wrongly fails to comply with the EPO's request to return, delete or destroy data by expiry of the reasonable period set by it, he is liable for any resulting damage.

6.7 The EPO undertakes to treat as confidential and not to disclose to any third party information concerning the Contractor's trade secrets or business affairs disclosed by him for the purposes of the Contract.

6.8 The obligations under this Article 6 do not apply to data which is or becomes available to the general public other than as a result of a breach of contractual obligations or which the Contractor is ordered to

disclose by a court or administrative or executive authority, provided he informs the EPO without delay of such order and gives it an opportunity to contest the need for disclosure or apply for an appropriate order to maintain confidentiality.

6.9 The Contractor must ensure that personal data is processed in accordance with all applicable laws and regulations, in particular Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation). Where the Contractor is to process personal data on behalf of the EPO, such processing will be governed by and carried out in accordance with the Data Processing Agreement (Annex E), which forms an integral part of the Contract and is to be signed in as many originals as there are parties to the Contract.

6.10 Without prejudice to applicable national provisions on data protection, both the EPO and the Contractor remain bound by the provisions of Article 6.1, 6.2 and 6.7 for a period of five years after the Contract has been terminated or has otherwise ended.

7. Sustainability requirements

7.1 The Contractor is obliged to observe and comply with the statutory provisions and internationally recognised standards for respecting human rights and protecting the environment, and to address them appropriately along the supply chain. This includes in particular Convention No. 187 of the International Labour Organization (ILO) – Promotional Framework for Occupational Safety and Health; Convention No. 182 on Worst Forms of Child Labour, 1999; Convention No. 138 of the ILO – Minimum Age Convention; as well as UN Sustainable Development Goal (SDG) No. 5 on gender equality; SDG 6 on clean water and sanitation; SDG 7 on affordable and clean energy; SDG 8 on decent work and economic growth; SDG 12 on responsible consumption and production; and SDG 13 on climate action.

7.2 The Contractor shall also take appropriate measures to reduce emissions that pose a threat to the environment and health, including greenhouse gas emissions.

7.3 At the request of the EPO, the Contractor is obliged to provide the EPO with information on the measures taken to fulfil the obligations set out in Articles 7.1 and 7.2 in compliance with the applicable data protection laws and to document the implementation of the measures accordingly. The contractor is not obliged to grant access to business secrets.

7.4 The EPO shall endeavour to assist the Contractor in complying with the obligations set out in Article 7.1.

8. Fixing of prices

8.1 Unless otherwise provided in the Specific Conditions, prices are in euro (EUR).

8.2 Prices must include all taxes (except turnover tax), duties and other charges relating to the contractual deliverables, as well as all costs associated with their packaging, insurance and transportation to the place of performance (including customs clearance; see Article 11.2), as stipulated in the Specific Conditions.

8.3 The Contractor must afford the EPO all necessary assistance to ensure that it is exempt from, or reimbursed for, the taxes, duties and charges referred to in Articles 4 and 5 PPI (Annex C). To this end, the Contractor must comply with the instructions given to him by the EPO and provide in due time the information which it requires.

9. Payment, set-off and security retention

9.1 The Contractor's invoices must be issued in the language of the Contract and quote the reference number of the Contract and (where applicable) of the order. They must contain a detailed and verifiable account. Any turnover tax must be shown separately.

9.2 Where the contractual deliverables involve the production of a work or are otherwise subject to acceptance, the invoice may be submitted only after their acceptance. Invoices for other contractual deliverables must be submitted after delivery or other performance, unless the Contractor has also undertaken to provide certain ancillary services (e.g. installation of goods), in which case the invoice may be submitted only after those ancillary services have also been performed.

9.3 The EPO makes payments within 30 (thirty) calendar days of full delivery and performance and receipt of a duly issued invoice which is in accordance with Article 9.1 and 9.2. Payment is considered to be made on time if the EPO's payment order reaches its bank within this period.

9.4 In cases of a contract of sale or a contract for works, the EPO may, if so agreed elsewhere (e.g. in the Specific Conditions), withhold payment of up to 5% of the remuneration including turnover tax (gross remuneration) as a defects liability bond pending expiry of the limitation period for claims relating to defects (Article 17.2). The Contractor may redeem this bond by providing a defects liability guarantee in accordance with Article 11.

9.5 The Contractor may only set off claims which are undisputed or have been upheld by a final court decision. This does not include claims of the Contractor which arise from the same contract.

9.6 Where the Contractor exercises a right to refuse performance or right of retention, the EPO may counter such exercise by providing security (also in the form of a guarantee) to cover the claimed amount. The Contractor must bear the costs of providing such security if his exercise of the right to refuse performance or right of retention proves to have been unjustified.

10. Changes in Contractor's circumstances

10.1 The Contractor must inform the EPO without delay in writing of any changes in the persons authorised to represent him with legally binding effect, or in his name, address or legal domicile. If he fails to comply with this obligation, he cannot invoke the change in circumstances within the meaning of the preceding sentence in his dealings with the EPO.

10.2 The Contractor must also inform the EPO without delay in writing if:

- (a) he ceases trading or making payments, he or a creditor requests the opening of insolvency

proceedings or comparable statutory proceedings, such proceedings are opened or the request for their opening is refused owing to lack of funds, or he finds himself in a comparable situation under the laws of the country in which he is domiciled;

- (b) he becomes, or is at risk of becoming, insolvent or is over-indebted;
- (c) his financial circumstances deteriorate to such an extent that due performance of the Contract can no longer be expected;
- (d) if he or one of his statutory representatives is convicted of conduct casting doubt on his professional reliability;
- (e) as a result of a merger or acquisition or for any other reason, there is a change in the ownership, partnership or membership structure or in the legal form of the Contractor;
- (f) where the Contractor is a consortium, joint venture or similar entity, there is a change in its partnership or membership.

10.3 If the Contractor is a consortium, joint venture or a similar entity, any changes in partnership or membership, in particular the departure or joining of partners or members, also require the EPO's consent for reasons relating to the law of procurement. The EPO may not withhold its consent unreasonably.

11. Place of performance and passing of risk; transport and delivery

11.1 Contractual deliverables are to be delivered to or performed at the place specified in the Contract. Unless otherwise agreed, the place of performance of both parties' obligations is the EPO's seat. The risk of accidental loss or depreciation of contractual deliverables is transferred to the EPO only on handover at the place of performance or, if acceptance has been agreed, on acceptance.

11.2 All contractual deliverables are to be delivered duty paid (DDP) (Incoterms 2020). Where they are imported for the EPO, however, the Contractor need not pay duties or charges (including turnover tax) if the EPO is exempt from payment of such duties or charges (see Articles 4 and 5 PPI, Annex C).

11.3 The Contractor is in all cases liable for any loss or damage suffered during the transportation of contractual deliverables despatched by him, until such time as they have been delivered to the EPO.

11.4 The Contractor must enclose a schedule of contents with every consignment of contractual deliverables. If the Specific Conditions explicitly so require, contractual deliverables must be stamped or branded with a distinguishing mark and/or reference.

11.5 The Contractor must inform the EPO without delay of any dispute concerning Articles 5, 8 or 10 PPI (Annex C).

12. Guarantee

12.1 If contractually agreed, the Contractor must provide at his own expense, as security for due performance of his contractual obligations, including the obligation to pay a contractual penalty, a guarantee for the amount to be secured, issued by an established credit institute of good standing registered in a contracting state, in the form of the model guarantee in Annex B1 or – where the guarantee is provided to redeem a defects liability

bond under the Specific Conditions or Article 8.4 – the model guarantee in Annex B2.

- 12.2 The guarantee provided under Article 12.1 must in all cases be directly enforceable, unconditional, irrevocable and issued for an indefinite period and the guarantor credit institute must waive the defences under Sections 770 and 771 of the German Civil Code (BGB) (pleas of voidability and set-off – set-off of a claim which is uncontested or has been upheld by a final court decision being permitted as an exception – and plea of non-exhausted remedies) and the right to lodge the guarantee with a court. The guarantee must be subject to German law. Provision must be made for arbitration proceedings in Munich in the event of disputes arising from or in relation to the guarantee.
- 12.3 At the Contractor's request, the EPO must return to him or the guarantor any guarantee deeds provided to it as soon as it is established that the EPO can no longer invoke any of the rights secured by the guarantee.

13. Contractor's staff

- 13.1 The Contractor must take out adequate public liability insurance covering the risks of damage to property or personal injury caused by his staff or any other person acting on his behalf in or in connection with performing their activities for the EPO. At the EPO's request, the Contractor must produce proof of such insurance.
- 13.2 The Contractor must pay at least the applicable minimum or collectively agreed wage and produce proof of this at the EPO's request.
- 13.3 The Contractor's staff and any person acting on his behalf must, while on the EPO's premises, comply with the rules and safety and security regulations applicable there, as well as with all other rules on public safety, security and order and any other rules laid down in the Specific Conditions. At the Contractor's request, the EPO must issue him with the rules and safety and security regulations applicable in each case.

14. Assignment

- 14.1 The Contract may not be assigned in whole or in part without the express prior written consent of the EPO.
- 14.2 Without prejudice to Section 354a of the German Commercial Code (HGB), the Contractor may not assign or pledge any claims against the EPO without its prior written consent.
- 14.3 If, despite the lack of EPO consent, an assignment is valid by virtue of Section 354a of the German Commercial Code (HGB), the EPO may continue to make payments to the Contractor, thereby releasing itself from any obligations towards the assignee.

SECTION II

Defaults, liability and right of termination

15. Dates, periods and delay

- 15.1 The dates or periods agreed in the Specific Conditions for performance of the contractual deliverables are binding and their observance is particularly important to the EPO.
- 15.2 If at any time it seems likely that dates will be missed or periods exceeded, the Contractor must notify the EPO

immediately in writing, explaining the reasons for the delay and proposing a new fixed date or an alternative period. Although the Contractor's failure to observe the original dates or periods will continue to constitute default despite any agreement as to an extension, he will additionally be required to observe the newly agreed dates and periods. If the contractual deliverable in question has not been performed by the newly agreed date or within the newly agreed period, the EPO may, on expiry of another reasonable grace period, rescind the Contract in whole or in part. The EPO also reserves the right to claim damages.

- 15.3 The above provisions apply without prejudice to any statutory provisions on delayed performance.

16. Handover and acceptance

- 16.1 Where the Contractor hands over contractual deliverables to the EPO, he must first examine them for the correct quantity, defects and, where applicable, the planned deployment of staff, and, if need be, make the required corrections.
- 16.2 Contractual deliverables involving the production of a work are subject to acceptance, the procedure for which may be set out in more detail in the Specific Conditions. Other contractual deliverables are subject to acceptance if the Specific Conditions so provide.
- 16.3 If acceptance is refused, the EPO must inform the Contractor accordingly, giving reasons, and may set another date for acceptance, which is to be regarded as setting a new deadline for the purposes of the contractual and statutory provisions. Should the conditions for acceptance still not be met on this new date, the EPO is no longer obliged to accept the contractual deliverables. It may then rescind the Contract in whole or in part without giving any further advance notice and without prejudice to its rights to claim damages.

17. Liability for defects

- 17.1 In addition to any other warranties, the Contractor warrants that all contractual deliverables are free from defects. Without prejudice to the Specific Conditions, there is a defect, for example, if the contractual deliverables lack one or more of the agreed properties, if they are unsuitable for the use specified in the Contract, for their ordinary purpose or for regular use, or if a different item has been delivered or an insufficient quantity has been supplied.
- 17.2 Unless a longer period is provided for by statute or in the Specific Conditions, claims for defects are subject to a limitation period of 24 (twenty-four) months commencing on the date of handover. In the event of delivery in stages, the limitation period commences on the date of handover of the final delivery. The limitation period for replacements commences on the day of their handover. Where the contractual deliverables are subject to acceptance either by virtue of statute or under a contractual agreement, acceptance must be read in place of handover for the purposes of this Article 17.2.

Where the Contractor remedies defects in accordance with his warranty obligations, the limitation period is extended by a period of time equal to that elapsing between the date on which the Contractor is notified of

the defect and the date on which the remedied contractual deliverables are handed over or accepted.

- 17.3 The Contractor bears all expenses necessarily incurred in curing performance, in particular the costs of transport, travel, labour and materials. Where the EPO, in keeping with the nature and intended use of an item found to be defective, has integrated that item into or fitted it to another, the Contractor must as part of the cure reimburse the EPO for the expenses necessarily incurred in removing the defective item and installing or fitting the remedied item or its defect-free replacement. The Contractor bears the aforementioned expenses even if it transpires that there was in fact no defect. The foregoing is without prejudice to the EPO's liability for damages for unjustifiably requiring that a defect be remedied; however, it will be so liable only if it realised or failed through gross negligence to realise that there was no defect.
- 17.4 If the contractual deliverables are found to be defective and the defects are not remedied by repair or replacement within a reasonable period set by the EPO, the EPO may, at its discretion and without prejudice to its statutory rights:
- (a) require that the Contractor remedy the defect or produce or deliver afresh (cure), or
 - (b) keep the defective contractual deliverables and require that the contract price be reduced by an amount equal to the difference which would have existed at the time the Contract was concluded between the value in the defective state and the value in the non-defective state, or
 - (c) rescind the Contract without setting another new period for performance and, where possible, return the defective contractual deliverables to the Contractor at his expense.
- 17.5 In the case of contracts for the production of a work, the EPO, in addition to Article 17.4, may require that the Contractor reimburse it for the costs necessarily incurred by it or a third party in remedying the defect and also that the Contractor pay an advance on these costs.
- 17.6 The EPO is not obliged to give the Contractor an opportunity to cure performance if this would result in failure to observe a binding date or period under Article 15.1 and it has, in the Specific Conditions, tied its continued interest in performance to the timeliness of performance or if there are exceptional circumstances in which, having regard to both parties' interests, the EPO cannot reasonably be expected to accept a cure.
- 17.7 As an international organisation, the EPO is not subject to the commercial duty of inspection and objection under Section 377 of the German Commercial Code (HGB). It will nevertheless check incoming goods by way of an inspection of their outward appearance and, if appropriate, may perform additional random checks at its discretion. In all cases, inspections of incoming goods are restricted to manifest defects. The EPO will inform the Contractor of any defects identified, generally within two weeks of their discovery.
- 17.8 If, in the particular circumstances, the Contractor makes a written offer of a completion date which will delay the performance of contractual deliverables only insignificantly and such delay is acceptable to the EPO,

defect-free performance will be the only remedy initially available to the EPO.

- 17.9 If damage is sustained as a result of defective performance, the EPO may claim compensation and/or damages in accordance with the relevant statutory provisions.

18. Contractual penalty

- 18.1 Where performance of the contractual deliverables is delayed, the Contractor is liable to pay a contractual penalty at a rate of 0.2% per working day of such delay but subject to a maximum of 5% of the net price of the delayed part of the contractual deliverables. The EPO may claim payment of the penalty in addition to performance and as a minimum amount of statutory damages payable by the Contractor, without prejudice to its right to claim further damages. After having accepted delayed performance, the EPO remains entitled to claim the penalty until the final payment has been made. These provisions are without prejudice to any divergent or more extensive provisions in the Specific Conditions.

- 18.2 The foregoing provisions are without prejudice to the EPO's right to terminate the Contract in accordance with Article 20.

19. Liability

- 19.1 The Contractor is liable to compensate the EPO in accordance with the statutory provisions for all damage or expenses it incurs as a result of a culpable breach by him of his contractual obligations.

- 19.2 The EPO is liable only for damage caused to the Contractor by an intentional or grossly negligent breach of duty by its employees, statutory representatives or auxiliary persons employed to perform duties under the Contract. Where a claim for damages against the EPO is based on simple negligence on the part of the EPO (including the persons listed above), it is liable only for

- (a) death, personal injury or damage to health or,
- (b) where the duty breached is an essential contractual obligation on compliance with which the Contractor is usually and legitimately entitled to rely as a precondition for due performance of the Contract, foreseeable damage typical of such contracts.

20. Termination for serious cause

Any contractual party may terminate the Contract in writing without advance notice for serious cause. The EPO has serious cause, in particular, where:

- (a) the Contractor ceases trading;
- (b) the Contractor's financial circumstances deteriorate to such an extent that due performance of the Contract can no longer be expected;
- (c) the Contractor becomes, or is at risk of becoming, insolvent or is over-indebted;
- (d) the opening of insolvency proceedings or comparable statutory proceedings with respect to the Contractor's assets is refused owing to lack of funds or the Contractor finds himself in a comparable situation under the laws of the country in which he is domiciled;
- (e) the Contractor or one of his statutory representatives is convicted of conduct casting doubt on his professional reliability;

- (f) as a result of a merger or acquisition or for any other reason, there is a change in the ownership, partnership or membership structure or in the legal form of the Contractor and the EPO therefore cannot reasonably be expected to adhere to the Contract until expiry of the contractually agreed term or standard period of notice;
- (g) the Contractor seriously or repeatedly breaches the obligations set out in Article 7.1;
- (h) provision for a right to terminate without notice for serious cause is made elsewhere in the Contract;
- (i) in light of all the specific circumstances and having regard to both parties' interests, the EPO cannot reasonably be expected to adhere to the contract until expiry of the contractually agreed term or standard period of notice.

21. General right of termination

Without prejudice to Section 648 German Civil Code (BGB) and unless otherwise expressly provided, the EPO may terminate contracts involving ongoing obligations on the part of the Contractor by giving, without the need to state reasons, three months' written notice ending on the last day of the third month.

SECTION III Title, rights of third parties, applicable law and disputes

22. Title

The Contractor warrants that the contractual deliverables are unencumbered by any third party's proprietary rights. Unless otherwise provided in the Specific Conditions, title to contractual deliverables passes to the EPO when they are handed over to it.

23. Rights of third parties

- 23.1 The Contractor warrants that the import, possession, use and onward sale of contractual deliverables is not precluded by any industrial property rights (in particular, patents, utility models, designs and models or trade marks), copyright or other rights held by third parties. Where, under the Specific Conditions, the EPO acquires the contractual deliverables only for certain countries, this warranty is limited to those countries. If no provision is made in the Specific Conditions as to the countries for which the contractual deliverables are acquired, the warranty applies to at least the Contracting states.
- 23.2 If the EPO is sued by a third party for infringement of any right within the meaning of Article 23.1, the Contractor must indemnify the EPO against all claims made by that third party and compensate the EPO for all costs and damage arising in connection with such suit. The Contractor must endeavour to support the EPO to the best of his ability in conducting its defence against any such suit. Without prejudice to any more extensive rights, the EPO may also acquire from the third party at the Contractor's expense the right to import, possess, use and/or sell the contractual deliverables as per usual market conditions. At the EPO's request, the Contractor will assist it to the best of his ability in acquiring such rights. The duty to indemnify against and compensate costs and damage

does not apply if the Contractor is not responsible for the claim made by the third party against the EPO. He is in any event responsible for the claim to the extent that its cause falls within his sphere of influence and/or organisation and/or he himself is liable to the third party.

24. Applicable law and disputes

- 24.1 The Contract is governed by German contract law. The United Nations Convention on Contracts for the International Sale of Goods is not applicable.
- 24.2 Where the EPO does not waive its immunity from national jurisdiction under Article 3(1) PPI (Annex C), any dispute arising from or in connection with the Contract will be settled in accordance with the Arbitration Agreement (Annex A), which forms an integral part of the Contract and is to be signed in as many originals as there are parties to the Contract.
- 24.3 Where the EPO waives its immunity from national jurisdiction under Article 3(1) PPI (Annex C), the sole legal venue for any dispute arising from or in connection with the Contract is Munich.

25. Miscellaneous

- 25.1 The Contract constitutes the entire agreement between the parties. There are no oral agreements or understandings. Any amendment or addition to the Contract, particularly amendments affecting the price, must be in writing. Any waiver of the requirement of written form must likewise be in writing.
- 25.2 The Contract must be drawn up in English, French or German. All communications between the parties must be in the language of the Contract.
- 25.3 Should a clause of the Contract be or become invalid, the remainder of the Contract remains in force.

The invalid clause must be replaced by a valid clause coming closest to achieving the object and purpose of the invalid clause.
- 25.4 If the Contract contains any gaps or ambiguities, it is to be interpreted in the light of its object and purpose.

ARBITRATION AGREEMENT

1. Jurisdiction of the arbitration tribunal

- 1.1 All claims by the parties in connection with the Contract to which this Arbitration Agreement is annexed are to be ruled on by an arbitration tribunal.
- 1.2 The arbitration tribunal also rules on the validity and effect of any counterclaims reasonably connected with the dispute or the Contract.

2. Applicable law

- 2.1 The arbitration tribunal rules on the merits of claims in accordance with German substantive law, taking account of the European Patent Organisation's special status as an intergovernmental organisation.
- 2.2 In addition to the provisions of this Arbitration Agreement, the arbitration tribunal also applies the provisions of Book Ten "Arbitration Procedure" of the German Code of Civil Procedure (ZPO).

3. Venue and language

- 3.1 Arbitration proceedings are held in Munich. Hearings before the arbitration tribunal take place in Munich.
- 3.2 Arbitration proceedings are conducted in one of the official languages of the European Patent Organisation, to be selected by the arbitration tribunal.

4. Rules governing the procedure

- 4.1 The arbitration tribunal may request that the parties submit documents and name and cite witnesses. The arbitration tribunal cannot order measures against a party to enforce such a request. When evaluating the evidence, however, it may, in the proper exercise of its discretion, take into account any failure to meet the request.
- 4.2 The arbitration tribunal is competent to rule on interim or precautionary measures. The grant of interim relief by national courts is excluded.
- 4.3 The chairman of the arbitration tribunal conducts the arbitration proceedings. He is authorised to issue orders to this end without involving the other arbitrators.
- 4.4 Arbitration proceedings are not public. Their subject-matter is to be treated confidentially by the parties and the arbitrators.
- 4.5 The arbitration tribunal must thoroughly examine, at one hearing at least, the claims made by the parties, unless they state in writing that they wish to dispense with such a hearing. If a party dispenses in writing with a hearing and the other party fails to respond even after being requested to do so within a specified period by the arbitration tribunal, the arbitration tribunal may decide to proceed without a hearing.
- 4.6 If a party fails to comment within a period set by the arbitration tribunal or fails to appear at a hearing (failure to

appear), the arbitration tribunal may continue the proceedings and reach a decision on the basis of the information on the facts and law already available to it. This does not apply if the claimant fails to file the request for arbitration within the period set for that purpose, in which case the arbitration tribunal closes the proceedings.

- 4.7 The parties may be represented before the arbitration tribunal by lawyers or other persons of their choice.

5. Settlement

- 5.1 The arbitration tribunal will try to reach a settlement between the parties in due course.
- 5.2 A settlement is concluded in the form of an arbitration award with an agreed wording.

6. Costs

- 6.1 The arbitration tribunal rules on the costs of the arbitration proceedings in accordance with Sections 91 ff of the German Code of Civil Procedure (ZPO). It exercises its discretion when fixing the value of the claim.
- 6.2 When making its award, the arbitration tribunal determines, where appropriate, the amount of the costs and necessary expenses to be paid by a party. The costs and necessary expenses to be paid for a representative of a party are calculated in accordance with the German Act on Attorneys' Fees (RVG) as applicable to representation in proceedings before a civil court of first instance.
- 6.3 The arbitrators are paid a fee plus expenses in line with those paid to a legal practitioner in accordance with the RVG as applicable to representation in proceedings before a civil court of first instance. The chairman of the arbitration tribunal is paid 130% of that amount.
- 6.4 Once the last arbitrator has been appointed, the chairman of the arbitration tribunal may require the parties to pay a reasonable advance on the arbitrators' fees and expenses. The parties pay equal proportions of the advance. If a party fails to pay the advance required by the tribunal despite having been issued with a reminder, the other party may pay the advance himself/itself.

7. Appointment of arbitrators by a court

Where a court selects an arbitrator in accordance with Section 1035 III, IV of the German Code of Civil Procedure (ZPO) or another legal provision, it must bear in mind that, pursuant to Section 1035 V of that Code, the arbitrator should preferably be a judge or legal practitioner with experience in the relevant legal and specialist (particularly technical) field.

European Patent Organisation

.....
 Authorised person's signature

.....
 Name and position (in block capitals)

.....
 Place, date

.....
 Authorised person's signature

.....
 Name and position (in block capitals)

.....
 Place, date

FORM
GUARANTEE
(Performance)*

This guarantee is provided by:(name of credit institute),
which has its office at ("the Credit Institute")

Whereas:

(a) The European Patent Organisation, which has its seat at Bob-van-Benthem-Platz 1, 80469 Munich, Germany,
hereinafter referred to as "the EPO",
and, whose address is at,
hereinafter referred to as "the Contractor",
wish to conclude a contract for No.: /.....
(hereinafter called "the Contract").

(b) The EPO requires from the Contractor a guarantee as security for due performance of his contractual obligations
under the Contract.

- 1. We, the Credit Institute, hereby issue the EPO with a directly enforceable, unconditional and irrevocable guarantee
of due performance of the Contract by the Contractor. We waive all the defences and rights available to us under
Sections 770 and 771 of the German Civil Code (BGB) (pleas of voidability and set-off; plea of non-exhausted remedies).
This waiver of the right to enter a plea of set-off does not apply where the claims eligible for set-off are uncontested or
have been upheld by a final court decision. We also waive the right to lodge the guarantee with a court.
2. This guarantee is for a maximum amount of**EUR.....
(in words:..... euros).
3. This guarantee is issued for an indefinite period but will expire when all EPO claims against the Contractor under the
Contract have become time-barred or on return of this deed of guarantee.
4. This guarantee is subject to German law.
5. Where the EPO does not waive its immunity from jurisdiction (Article 3(1) of the Protocol on Privileges and Immunities of
the European Patent Organisation of 5 October 1973), disputes arising from or in connection with this guarantee are to
be settled by arbitration in accordance with the German Code of Civil Procedure, the venue for arbitration proceedings
being Munich.

Where the EPO waives its immunity from jurisdiction, the sole venue for judicial proceedings is Munich.

Name of Credit Institute Signature

Place, date Position

* Bidders taking part in an invitation to tender are not required to complete this form and submit it with their bid. If a guarantee is required, it
must be submitted by the successful bidder before the Contract is signed.

** An amount (see Specific Conditions) denominated either in the currency of the Contract or in a freely convertible currency acceptable to the
EPO.

FORM
GUARANTEE
(Defects liability)*

This guarantee is provided by:(name of credit institute),
which has its office at ("the Credit Institute")

Whereas:

(a) The European Patent Organisation, which has its seat at Bob-van-Benthem-Platz 1, 80469 Munich, Germany,
hereinafter referred to as "the EPO",
and, whose address is at,
hereinafter referred to as "the Contractor",
wish to conclude a contract for No.: /.....
(hereinafter called "the Contract").

(b) The EPO requires from the Contractor a guarantee as security for claims relating to defects.

1. We, the Credit Institute, hereby issue the EPO with a directly enforceable, unconditional and irrevocable guarantee
covering any claims which the EPO may be entitled to assert under the Contract in relation to defects, in particular defects
discovered on or after handover and/or acceptance, including claims relating to damages, any EPO claims relating to
measures taken by the Contractor by way of a cure which likewise prove defective and claims relating to the refund of
overpayments (including interest). We waive all the defences and rights available to us under Sections 770 and 771 of
the German Civil Code (BGB) (pleas of voidability and set-off; plea of non-exhausted remedies). The waiver of the right
to enter a plea of set-off does not apply where the claims eligible for set-off are uncontested or have been upheld by a
final court decision. We also waive the right to lodge the guarantee with a court.

The claims under this guarantee will not become time-barred before the guaranteed claims. This is without prejudice to
Section 768(2) BGB, under which the guarantor is not deprived of rights or defences because the principal debtor has
waived them.

2. This guarantee is for a maximum amount of**EUR.....
(in words:..... euros).

3. This guarantee is issued for an indefinite period but will expire when all EPO claims against the Contractor under the
Contract become time-barred or on return of this deed of guarantee.

4. This guarantee is subject to German law.

5. Where the EPO does not waive its immunity from jurisdiction (Article 3(1) of the Protocol on Privileges and Immunities of
the European Patent Organisation of 5 October 1973), disputes arising from or in connection with this guarantee are to
be settled by arbitration in accordance with the German Code of Civil Procedure, the venue for arbitration proceedings
being Munich.

Where the EPO waives its immunity from jurisdiction, the sole venue for judicial proceedings is Munich.

Name of Credit Institute Signature

Place, date Position

* Bidders taking part in an invitation to tender are not required to complete this form and submit it with their bid. If a guarantee is required, it
must be submitted by the successful bidder before the Contract is signed.

** An amount (see Specific Conditions) denominated either in the currency of the Contract or in a freely convertible currency acceptable to the
EPO.

EXCERPT FROM THE PROTOCOL ON PRIVILEGES AND IMMUNITIES

Article 3

- (1) Within the scope of its official activities the Organisation shall have immunity from jurisdiction and execution, except
 - (a) to the extent that the Organisation shall have expressly waived such immunity in a particular case;
 - (b) in the case of a civil action brought by a third party for damage resulting from an accident caused by a motor vehicle belonging to, or operated on behalf of the Organisation, or in respect of a motor traffic offence involving such a vehicle;
 - (c) ...
- (2) The property and assets of the Organisation, wherever situated, shall be immune from any form of requisition, confiscation, expropriation and sequestration.
- (3) The property and assets of the Organisation shall also be immune from any form of administrative or provisional judicial constraint, except in so far as may be temporarily necessary in connection with the prevention of, and investigation into, accidents involving motor vehicles belonging to or operated on behalf of the Organisation.
- (4) The official activities of the Organisation shall, for the purposes of this Protocol, be such as are strictly necessary for its administrative and technical operation, as set out in the Convention.

Article 4

- (1) Within the scope of its official activities the Organisation and its property and income shall be exempt from all direct taxes.

- (2) Where substantial purchases for the exercise of its official activities, and in the price of which taxes or duties are included, are made by the Organisation, appropriate measures shall, whenever possible, be taken by the Contracting States to remit or reimburse to the Organisation the amount of such taxes or duties.
- (3) No exemption shall be accorded in respect of duties and taxes which are no more than charges for public utility services.

Article 5

Goods imported or exported by the Organisation for the exercise of its official activities shall be exempt from duties and charges on import or export other than fees or taxes representing services rendered, and from all prohibitions and restrictions on import or export.

Article 8

The transmission of publications and other information material by or to the Organisation shall not be restricted in any way.

Article 10

- (1) With regard to its official communications and the transfer of all its documents, the Organisation shall in each Contracting State enjoy the most favourable treatment accorded by that State to any other international organisation.
- (2) No censorship shall be applied to official communications of the Organisation by whatever means of communication.

DECLARATION BY THE SUBCONTRACTOR**Article 4.2 of the General Conditions of Contract**

*To be signed and submitted before the Subcontractor
begins performance of the contractual deliverables*

I. By subcontractors who are not companies

I, the undersigned, declare that:

- (a) I am not insolvent, am not the subject of insolvency proceedings, have not ceased trading and am not in any comparable situation under the laws of the country in which I am domiciled;
- (b) I am not the subject of a request for the opening of insolvency proceedings (nor have I made such a request myself) and no comparable proceedings under the law of the country in which I am domiciled have been opened;
- (c) I have not been convicted of an offence that casts doubt on my professional reliability, nor are any proceedings potentially leading to such a conviction pending against me;
- (d) I have not failed to meet my obligations with regard to payment of taxes or levies under the laws of the country in which I am domiciled.

.....
Place

.....
Date

.....
Signature

II. By subcontracting companies

I, the undersigned, duly authorised representative of.....
(insert company name), declare that the company for and on behalf of which I sign

- (a) is not insolvent or in liquidation, is not the subject of insolvency proceedings, has not ceased trading and is not in any comparable situation under the laws of its country of domicile;
- (b) is not the subject of a request for the opening of insolvency proceedings (nor has it made such a request itself) and no comparable proceedings under the law of its country of domicile have been opened;
- (c) has not been convicted of a breach of its commercial obligations, nor are any proceedings potentially leading to such a conviction pending against it;
- (d) has not failed to meet its obligations with regard to payment of taxes or levies under the laws of its country of domicile.

Number in the commercial or similar register
(where applicable)

.....

.....
Place

.....
Date

For and on behalf of

.....
Company name

.....
Authorised person's signature

DATA PROCESSING AGREEMENT

The EPO and the Contractor hereby agree as follows:

Preamble

Under the Contract, the Contractor (in the following also referred to as the “Data Processor”) is to process personal data collected and/or held by the EPO (“**EPO data**”) on behalf of the EPO (in the following also referred to as the “Data Controller”). With reference to Article 6.9 of the General Conditions of Contract, the parties therefore enter into this Data Processing Agreement with effect as of the date of signature set out below.

Definitions

Defined terms have the meaning given to them in the EPO General Conditions of Contract, unless otherwise stated below. For the purposes of this Data Processing Agreement, the definitions included in the EPO Implementing Rules for Articles 1b and 32a of the Service Regulations for Permanent and other Employees of the EPO (hereinafter “Data Protection Rules” or “DPR”) shall apply:

“Data Processing Agreement”	means the arrangements set out in this Data Processing Agreement, together with all annexed or referenced documents;
“Agreed territory (of processing)”	<ul style="list-style-type: none"> i) European Economic Area (EEA); ii) Andorra, Argentina, Canada (commercial organisations), Faroe Islands, Guernsey, Israel, Isle of Man, Japan, Jersey, New Zealand, Republic of Korea, Switzerland, the United Kingdom under the GDPR and the LED and Uruguay and other countries recognised by the President of the European Patent Office as ensuring an adequate level of protection of personal data under the EPO legal framework;
“Data Protection Regulations”	<ul style="list-style-type: none"> i) EPO data protection framework, including the Data Protection Rules; ii) the data protection laws and regulations applicable to the Data Processor in the Agreed Territory of processing which provide an adequate level of protection under the EPO data protection framework, including but not limited to Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (EU General Data Protection Regulation);
“EPO data protection framework”	the data protection legal framework applicable to the EPO i.e. Articles 1b and 32a of the Service Regulations for permanent and other employees of the European Patent Office, and the implementing rules therefore, namely the EPO Data Protection Rules and ancillary legal instruments i.e. a) further rules, administrative instructions and decisions adopted by the President of the Office (notably the Decision of the President of the European Patent Office dated 13 December 2021 concerning the processing of personal data in patent-grant and related proceedings) and b) administrative

instructions adopted by the President of the Boards of Appeal in the context of the powers under Articles 10(2)(a), (e), (f) and (h), 11(3) and (5) and 48(1) of the European Patent Convention (EPC) which have been delegated to him or her by the President of the Office in so far as they relate to the Boards of Appeal Unit and its staff, including the members and Chairs of the Boards of Appeal and of the Enlarged Board of Appeal (Act of Delegation);

“Special categories of personal data”

personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, genetic data, or biometric data for the purpose of uniquely identifying a natural person, data concerning health or a person’s sex life or sexual orientation, or data relating to criminal convictions and offences;

“Transfer of EPO data”

means disclosure, dissemination of or otherwise making available, including by granting access, of personal data to a person or an entity outside the European Patent Organisation which is not a national intellectual property office, or a public authority of a contracting state to the European Patent Convention under the conditions laid down in the EPO Data Protection Regulation, or a private entity located in the European Economic Area;

“Data Exporter”

means the Party to this Data Processing Agreement transferring, directly or indirectly, EPO data to an entity located outside the Agreed territory of processing;

“Data Importer”

means the entity located outside the Agreed territory of processing, receiving EPO data, directly or indirectly, via Party to this Data Processing Agreement.

1. Scope and the Data Processor's general obligations

- 1.1 This Data Processing Agreement specifies the Parties' rights and obligations in the context of the processing of EPO data by the Data Processor on behalf of the EPO.
- 1.2. This Data Processing Agreement forms an integral part of the Contract entered into between the EPO and the Contractor.
- 1.3 Each Party is responsible for complying with the level of protection resulting from its Data Protection Regulation in relation to personal data, being recognised that the Data Processor is subject to the data protection laws and regulations applicable to the Data Processor in the Agreed territory of processing, whereas the EPO is subject to the EPO data protection framework.
- 1.4 As an overarching obligation, the Data Processor must ensure that the processing of personal data is carried out in accordance with all applicable laws and regulations.

2. Right of the EPO to issue instructions

- 2.1 The Data Processor may process EPO data only on behalf of and in accordance with the documented instructions of the EPO, unless they are required to perform any other processing activity under mandatory rules of the law applicable to them. In such cases, they must inform the EPO of that legal requirement before processing, unless that law prohibits such information on important grounds of public interest. The EPO remains responsible for ensuring that the processing of personal data it instructs the Data Processor to carry out is lawful, although nothing in this Data Processing Agreement relieves the Data Processor or any of their subcontractors of their own direct responsibilities and liabilities under the applicable Data Protection Regulation.
- 2.2 The Data Processor may process EPO data only to the extent and for the purposes specified in **Schedule 1** to this Data Processing Agreement and only in relation to the types of personal data and categories of individuals concerned likewise specified there. The Data Processor must not process EPO data for any purpose other than those permitted under this Data Processing Agreement unless the exception, subject to the relevant conditions as referred to in Article 2.1, applies.
- 2.3 Processing is to be carried out for the term of the Agreement referred to in Article 1.2. However, the EPO may terminate this Data Processing Agreement at any time without notice in the case of a serious breach of its terms by the Data Processor or if the Data Processor is unable or unwilling to carry out an instruction from the EPO or refuses, contrary to this Data Processing Agreement, to allow the EPO access to their business premises or to the relevant data processing facilities, files and documents.
- 2.4 The EPO reserves the right to issue instructions about the type, extent, purpose and means of the processing of EPO data at any time and the Data Processor undertakes to follow such instructions. The Data Processor shall immediately inform the EPO if they are unable to follow those instructions. The EPO may require the correction, partial or complete irreversible erasure, restriction, return or making available of EPO data both during the term of this Data Processing Agreement and after its termination.
- 2.5 Where the processing involves Special categories of personal data, the Data Processor shall apply the specific restrictions and/or additional safeguards described in **Schedule 2**.

3. Obligations as to persons engaged in processing EPO data

- 3.1 The Data Processor must impose on all persons engaged in processing EPO data an obligation to treat it as confidential or ensure that they are under an appropriate statutory obligation of confidentiality.
- 3.2 The Data Processor must ensure that all persons acting on their authority who have access to EPO data process such data only as per EPO's instructions.
- 3.3 The Data Processor must provide the EPO with the contact details of their organisation's data protection officer prior to the conclusion of this Data Processing Agreement. The Data Processor must also notify the EPO immediately if a new person is appointed to act as data protection officer. If the Data Processor's organisation has not appointed a data protection officer because it is not required to do so under the applicable law, the Data Processor must notify the EPO of this in writing prior to the conclusion of this Data Processing Agreement.
- 3.4 For any data protection matters, the Parties shall involve their respective data protection officers and specific contact points identified in this Data Processing Agreement.

4. Security of processing

- 4.1 Taking into account the state of the art, the Data Processor must take all appropriate IT security, technical and organisational measures necessary to ensure that personal data are protected to a level appropriate to the risk to the rights and freedoms of the individuals concerned, including those required to secure personal data against accidental destruction or loss and against unauthorised access, alteration or dissemination. The Data Processor shall adopt clear policies defining its internal plan of action for the management of incidents.
- 4.2 The Data Processor must limit the number of persons with authorised access to the personal data processed under this Data Processing Agreement to the minimum necessary to manage the data. Additionally, they must also guarantee that internal policies are made available to such authorised staff, to ensure their correct application.
- 4.3 The Data Processor shall ensure the ongoing confidentiality, integrity, availability and resilience of its processing systems and services by implementing security measures in line with industry standard encryption and up to date encryption software.
- 4.4 In case of pseudonymisation, the additional information for attributing the personal data to a specific data subject shall, where possible, remain under the exclusive control of the EPO.
- 4.5 In particular, the Data Processor must establish the IT security, technical and organisational measures specified in **Schedule 2** before beginning the processing of EPO data, maintain those measures throughout the term of this Data Processing Agreement and ensure that the processing of EPO data is carried out in accordance with them at all times.

5. Engagement of subprocessors

- 5.1 At the time of signature of this Data Processing Agreement, the EPO has expressly authorised the Data Processor's subcontractors or affiliates ("subprocessors") indicated in **Schedule 3** to carry out the processing of EPO data.
- 5.2 Should the Data Processor wish to engage a new subprocessor, the Data Processor must, in good time but no later than thirty days before the processing of personal data by the new subprocessor is scheduled to start, notify the EPO in writing of the name and address of the subprocessor and a description of the processing to be performed by them, and request the EPO's written authorisation. The subprocessor must be competent, capable and reliable. At the EPO's request, the Data Processor must produce appropriate evidence of these qualities.
- 5.3 Should the EPO authorise the Data Processor to engage a new subprocessor, the terms of the Data Processor's agreement with the subprocessor must be such as to ensure that the subprocessor's processing of personal data meets the requirements laid down in this Data Processing Agreement. In particular, the Data Processor must conclude with the subprocessor an agreement no less stringent than this Data Processing Agreement and present it to the EPO upon request. The appropriate safeguards with each subprocessor must be described in **Schedule 3** of this Data Processing Agreement. The Data Processor shall remain fully liable towards the EPO for ensuring the subprocessor's compliance with the Data Processor's obligations under this Data Processing Agreement. The Data Processor shall notify the EPO of any failure by the subprocessor to fulfil its obligations under the agreement between the Data Processor and their subprocessors.

5.4 The Data Processor must verify that their subprocessors have taken appropriate IT security, technical and organisational measures within the meaning of Article 4.1 and that these measures are implemented in such a way that the processing of EPO data is carried out in accordance with this Data Processing Agreement.

5.5 The EPO must be granted direct rights to request evidence from and audit any subprocessor in accordance with Article 8.

6. The Data Processor's obligations to provide assistance

6.1 If the EPO is obliged under the EPO Data Protection Rules to provide an individual ("data subject") with information about the processing of their personal data, the Data Processor must provide the EPO at its request with all reasonable assistance in making this information available.

6.2 Should a data subject contact the Data Processor directly to request the exercise of the data subject's rights as laid down in the Data Protection Regulations, the Data Processor must forward this request or claim to the EPO without undue delay and, on instruction by the EPO, comply with it to the extent so instructed. The Data Processor must insofar as possible assist the EPO in taking IT security, technical and organisational measures to fulfil its obligations to respond to such requests or claims from data subjects.

6.3 If the processing in relation to this Data Processing Agreement is likely to result in a high risk to the freedoms of natural persons by virtue of its context, nature, scope or purpose as defined in the Data Protection Regulations, the Data Processor shall, to the best of their capacity, assist the Data Controller in preparing a data protection impact assessment (DPIA).

6.4 The Data Processor must notify the EPO without undue delay but no later than 72h after becoming aware of any breach of the security of EPO data regardless of its origin and, in particular, of any incident that leads to the accidental or unlawful destruction, loss, alteration or unauthorised disclosure of or access to EPO data. This also applies to serious operational faults, to any suspected infringement of the provisions of this Data Processing Agreement or applicable data protection rules or to any other irregularities in the processing of EPO data. The notification must describe at least:

- the nature of the breach of the security of EPO data, indicating, where possible, the categories and approximate number of data subjects concerned and the categories and approximate number of personal data records concerned;
- the likely consequences of the breach; and
- the measures taken or proposed by the Data Processor to remedy the breach and, where appropriate, measures to mitigate their potential adverse effects.

Where, and in so far as, it is not possible to provide all information at the same time, the initial notification shall contain the information then available and further information shall, as it becomes available, subsequently be provided without undue delay.

The Data Processor must immediately take appropriate measures to secure the EPO data and in consultation with the EPO, limit any possible adverse effect on the data subjects as well as indicate future preventive measures to be applied in order to avoid the recurrence of breaches.

6.5 The Data Processor must assist the EPO in any other way reasonably requested by it in ensuring compliance with its obligations under the applicable Data Protection Regulation.

7. Deletion and return of EPO data

- 7.1 Once the Agreement referred to in Article 1.2 or this Data Processing Agreement ends, the Data Processor must, as instructed by the EPO, either completely and irreversibly delete all EPO data processed on EPO's behalf and provide proof in writing, or return in a readable and agreed format to the EPO all EPO data, including any copies thereof, unless applicable laws prohibit return or deletion of some or all of the personal data.
- 7.2 In these cases, the Data Processor warrants that they will continue to ensure compliance with this Data Processing Agreement and will only process EPO's data to the extent and for as long as required under the respective domestic law.
- 7.3 The Data Processor must inform the EPO in writing of that legal requirement prior to the processing, unless that law prohibits such information to be provided on important grounds of public interest.
- 7.4 This is without prejudice to the obligation set for the Data Processor forth in Article 2.1 to notify the EPO throughout the duration of the contract if it has reason to believe that it is or has become subject to laws or practices not in line with the requirements under this Data Processing Agreement, including any requirements to disclose personal data or measures authorising access by public authorities, which shall not be disclosed or given access to personal data unless authorised by the EPO.

8. Evidence and audits

- 8.1 The Data Processor must ensure and regularly verify that the processing of EPO data is in accordance with this Data Processing Agreement and with the EPO's instructions. The Data Processor must duly document the performance of their obligations under this Data Processing Agreement and promptly provide the EPO with suitable written evidence at its request. In particular, the data processor shall keep appropriate documentation on the processing activities carried out on behalf of the EPO.
- 8.2 The EPO or third parties appointed by it may verify that the Data Processor's IT security, technical and organisational measures fulfil the requirements in this Data Processing Agreement before the Data Processor begins the processing and at regular intervals during the term of this Data Processing Agreement. For this purpose, the EPO or third parties appointed by it may, at the choice of the EPO and at the Data Processor's expense, ask the Data Processor to produce a self-assessment, request the Data Processor to provide certification issued by a competent certification body or, after giving due advance notice and no later than a week beforehand, visit the Data Processor's premises during normal business hours and without disrupting his business operations to obtain evidence in person. In particularly urgent cases, advance notice may be dispensed with. For this purpose, the Data Processor must grant the EPO or third parties appointed by it access to the relevant data processing facilities, files and documents and provide any other assistance required.
- 8.3 The Data Processor shall make the information referred to in paragraph 8.2, including the results of any audits, available to the EPO, including the EPO Data Protection Board or the appointed arbitrators at their request.

9. Information duties, indemnity, no right of retention

- 9.1 Should EPO data become subject to a search, seizure, attachment or confiscation order or should the Data Processor lose the power of control over EPO data during liquidation or insolvency proceedings or as a result of comparable events or measures instigated by third parties, the Data Processor must inform the responsible authorities and persons of the privileges and immunities of the EPO, as laid down in the Protocol on Privileges and Immunities of the European Patent Organisation. The Data Processor shall inform the EPO without delay of any such measure or reasonable risk thereof. The Data Processor must also notify all those involved in the circumstances in question without delay that any personal data affected is solely the property of the EPO, which has the sole right to them, and that the EPO is immune from national jurisdiction under Article 3(1) PPI.
- 9.2 The Data Processor is liable to fully indemnify and compensate the EPO at its first request for any damage or expenses it incurs as a result of a breach by them or any of their subprocessors of their contractual obligations under this Data Processing Agreement or of applicable Data Protection Regulation, including but not limited to any compensation paid to a data subject.

10. Transfers

- 10.1 All processing of EPO data by the Data Processor and/or their subprocessors must take place in the Agreed territory of processing unless otherwise agreed by the Parties and shall only take place in accordance with this Article and **Schedule 4**.
- 10.2 A transfer of EPO data can only take place if the Data Importer ensures and is able to demonstrate that robust security measures to protect data in transit and at rest are in place.
- 10.3 Transfer of EPO data is permissible only if in compliance with the Data Protection Regulations, in particular the EPO data protection framework. The Data Processor must not change the location of the transfer, beyond the location already mentioned in **Schedule 4**, without prior written authorisation from the EPO.
- 10.4 Under the EPO data protection framework, in the absence of an adequate level of protection in the country of the Data Importer, and if derogations for specific situations as set out in the EPO data protection framework are not applicable, both the Data Exporter and the Data Importer shall provide appropriate safeguards, and shall be able to demonstrate that enforceable data subject rights and effective legal remedies for data subjects are available in the country of the Data Importer, or in a territory or one or more sector(s) within that country.
- 10.5 EPO data transferred may be processed only for the purpose for which they have been transferred, as established and in accordance with the safeguards and measures established in **Schedule 4**. The Data Processor shall provide evidence that it is necessary to have the data transferred for a specific purpose at request of the EPO.

European Patent Organisation

.....

.....
Authorised person's signature

.....
Authorised person's signature

.....
Name and position (in block capitals)

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Name and position (in block capitals)

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Place, date

.....
Place, date

Schedule 1

Personal data

Scope and purpose(s) of the planned processing of personal data

Scope and purpose(s) of the processing of personal data by the Data Processor on behalf of the EPO:

[●●please describe the purpose(s) for which personal data are to be processed by the Data Processor. If different purposes are applicable for the processing of different categories of personal data and/or data subjects, please describe them separately, i.e. in different tables.●●]

Purpose [●●●●]

Description of purpose

Data subjects

Categories of personal data

Purpose [●●●●]

Description of purpose

Data subjects

Categories of personal data

Schedule 2

Data Processor's IT security, technical and organisational measures

Description of the technical and organisational measures implemented by the Data Processor (including any relevant certifications) to ensure an appropriate level of security, taking into account the nature, scope, context and purpose of the processing, and the risks for the rights and freedoms of natural persons

[●●The technical and organisational measures must be described in specific (and not generic) terms.]

- 1. Alternative 1: Data Processor to insert the text of its available IT security, technical and organisational measures documentation here. Note that hyperlinks to external documents (web-sites) are not acceptable.*
- 2. Alternative 2: Data Processor to provide the description of its IT security, technical and organisational measures under the below headings and relevant to the planned processing, as applicable●●.]*

Confidentiality

Physical entry controls

[●●Data Processor to add IT security, technical or organisational measures to deny unauthorised persons physical entry to computer installations which process personal data●●.]

Removal controls

[●●Data Processor to add IT security, technical or organisational measures to prevent persons deployed to process personal data from removing data carriers without authorisation●●.]

Access controls

[●●Data Processor to add IT security, technical or organisational measures to ensure that the persons authorised to use a computer system are prevented from accessing personal data not covered by their authorisation ●●.]

Storage controls

[●●Data Processor to add IT security, technical or organisational measures to prevent unauthorised input of personal data and unauthorised reading, alteration or erasure of already stored personal data●●.]

User controls

[●●Data Processor to add IT security, technical or organisational measures to prevent unauthorised persons from using computer systems from or to which personal data are transmitted●●.]

Separation controls

[●●Data Processor to add IT security, technical or organisational measures to ensure that personal data collected for different purposes are processed separately●●.]

Pseudonymisation

[●●Data Processor to add IT security, technical or organisational measures to ensure that pseudonymisation is applied when processing personal data wherever possible and wherever the effort involved is in proportion to the

aims of that measure. "Pseudonymisation" means the processing of personal data in such a manner that the personal data can no longer be attributed to a specific data subject without the use of additional information, provided that such additional information is kept separately and is subject to technical and organisational measures to ensure that the personal data are not attributed to an identified or identifiable natural person.●●]

Integrity

Transmission controls

[●●Data Processor to add IT security, technical or organisational measures to ensure that it is possible to check and establish which recipients personal data can be transmitted to by automated means●●]

Input controls

[●●Data Processor to add IT security, technical or organisational measures to ensure that it is possible to check and establish retrospectively what personal data have been inputted into computer systems, at what time and by whom●●]

Conveyance controls

[●●Data Processor to add IT security, technical or organisational measures to ensure that personal data cannot be read, altered or erased without authorisation during their transmission or during conveyance of carriers they are stored on●●]

Data processing controls

[●●Data Processor to add IT security, technical or organisational measures to ensure that personal data are processed by the Data Processor only in accordance with the EPO's instructions ●●]

Availability and resilience

[●●Data Processor to add IT security, technical or organisational measures regarding data back-up (physical/logical), redundancy, etc., including measures to restore the availability of and access to personal data as quickly as possible in the event of a physical or technical incident●●]

Process for regularly testing, and evaluating the effectiveness of IT security, technical and organisational measures for ensuring the security of the processing

[●●●●]

Additional safeguards in relation to the processing of Special categories of personal data

[●●Data Processor to add additional safeguards in relation to the processing of Special categories of personal data e.g. end-to-end encryption at rest and in transit ●●]

Schedule 3

Data Processor's subprocessor(s) and respective applicable contractual safeguards or transfer mechanism

Subprocessor 

Identity

Entity Location

Location of processing

Purpose(s)

Categories of personal data processed

Contractual safeguards or transfer mechanism (e.g. DPA, SCCs, BCRs, located in the Agreed territory of processing)

Subprocessor 

Identity

Entity Location

Location of processing

Purpose(s)

Categories of personal data processed

Contractual safeguards or transfer mechanism (e.g. DPA, SCCs, BCRs, located in the Agreed territory of processing)

Schedule 4

Description of EPO data transfer

The categories of data subjects whose personal data are to be transferred are:

- [●●Please insert any individuals/categories of individuals●●]

The following categories of personal data are to be transferred:

- [●●Please insert types/categories of personal data●●]

Special categories of personal data transferred (if applicable) and applied restrictions or safeguards that fully take into consideration the nature of the data and the risks involved, such as for instance strict purpose limitation, access restrictions (including access only for staff having followed specialised training), keeping a record of access to the data, restrictions for onward transfers or additional security measures including but not limited to pseudonimisation, end-to-end encryption of data at rest and in transit.

The frequency of the transfer (namely, whether the data are transferred on a one-off or continuous basis) is:

- [●●Please insert the frequency of the transfer●●]

Purpose(s) of the data transfer and further processing:

- [●●Please describe the purposes for which personal data are to be transferred and further processed●●]

The period for which the personal data will be retained, or, if that is not possible, the criteria used to determine that period:

- [●●please describe the retention period or the criteria thereof●●]

For transfers to (sub) processors, also specify subject matter, nature and duration of the processing:

- [●●if applicable, please specify the scope, purpose(s) and duration of the transfer to (sub) processors●●]

Competent Supervisory Authority or Oversight Mechanism of the Data Importer:

- [●●Please identify the competent Supervisory Authority or Oversight Mechanism the Data Importer is subject to●●]

Additional safeguards or supplementary measures corresponding to the risk arising from the sensitivity and/or volume of the data transfer:

- [●●If applicable, please specify the additional IT security and technical, contractual or organisational measures●●]