

**Agreement No. 2023/xxxxx for the administration of
the salary savings plan for the employees of
the European Patent Office**

between

the European Patent Organisation, Bob-van-Benthem-Platz 1, D-80469 München, Germany,
represented by the President of the European Patent Office, António Campinos, hereinafter
referred to as "the **EPO**"

and

....., whose place of business is at
.....,
,(registered in the commercial register under No.),
represented by....., hereinafter referred to as "the **Contractor**".

The EPO and the Contractor are referred to individually as "**Party**" and jointly as the "**Parties**".

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Preamble

The EPO implements an employee's salary savings plan for all employees of the EPO having taken up their duties on or after 1 January 2009 ("Salary Savings Plan").

The mandatory contributions to the Salary Savings Plan will be borne one third by the employees falling under the Salary Savings Plan, as defined in Sec. I of the Implementing Rule to Article 65 (3) of the Service Regulations for permanent and other employees of the European Patent Office, ("Employees") and two thirds by the EPO.

The monthly contributions under the Salary Savings Plan are invested into units of sub-funds of the present investment manager ("Shares"), whereas Employees can choose between three different investment strategies. The Shares will be (i) held in the name of the EPO, and (ii) owned by the EPO.

The Contractor shall also arrange for the disbursement of amounts accrued under the Salary Savings Plan (contributions and investment returns) to the EPO as a deferred salary for its Employees upon termination of their respective employment contracts.

The EPO implements a supervisory committee ("Supervisory Committee") to supervise the Salary Savings Plan. The members of the Supervisory Committee will convene at least twice per year and, inter alia, resolve upon the pre-election of investment strategies, which can be chosen by the Employees.

The object of this Agreement is to lay down the rights and obligations of the EPO and the Contractor in connection with the provision of services for the administration of the Salary Savings Plan by the Contractor.

Now, therefore, the parties agree as follows:

1. Services to be provided by the Contractors

- 1.1 The services shall be carried out exclusively on the basis of the applicable provisions of the EPO's Service Regulations, the Directive on an in-house Supervisory Committee for salary savings plan investment management and administration and Circular No. 317 (Annex 1).
- 1.2 The Contractor shall provide services to the EPO in connection with the administration of the Salary Savings Plan, in accordance with this Agreement and its Annexes.
- 1.3 The administration services include the following services:
 - (a) setting-up and maintaining individual salary savings accounts for each of the plan members
 - (b) record keeping of the accounts (administrating the accounts), e.g. handling of annual applications for amendments to the investment strategy by plan members
 - (c) providing an online IT-platform and a mobile app accessible to the EPO and the plan members including the capital simulation tool

- (d) providing information and supporting material (e.g. brochure, leaflet, information sessions) to plan members in connection with the Salary Savings Plan, in particular through a call centre and a helpdesk
- (e) preparing reports on helpdesk activities and other reports
- (f) supplying the EPO, upon request, with any reasonable additional information in connection with the account administration.

1.4 The activities described in Article 1.3 and further specified in Annexes 2 and 3 to this Agreement are essential contractual obligations of the Contractor.

1.5 The Contractor shall provide the services under this Agreement in the three official languages of the EPO : English, French and German, except where this requirement is waived by the EPO for a specific service by written instruction.

2. Performance

2.1 The EPO shall afford the Contractor any assistance necessary for performing the services under this Agreement. The services shall be performed in close co-operation with the EPO. The EPO shall furnish the Contractor with any data and documentation in its possession which is relevant for the provision of the services. The Contractor's requests for assistance, data and documentation shall be reasonable and commensurate to the professional services to be provided by the Contractor.

2.2 The Contractor is obliged to implement any instructions of the EPO with respect to its services under this Agreement, e.g. instructions regarding changes in the investment strategies, or services. If any of such instructions may result in an increase in costs or fees to be paid to the Contractor, the Contractor shall (i) inform the EPO about such increase in costs or fees and (ii) implement such instructions only if EPO has accepted to bear such additional fees.

2.3 The Contractor shall ensure that the personnel they assign to perform services under this Agreement have the necessary skills and professional knowledge.

2.4 The Contractor has classified the EPO as a private investor and shall process all information addressed to the EPO accordingly.

2.5 The Contractor's personnel shall carry out the services with care, on time and in a professional manner. The Contractor shall ensure that its personnel and any of the subcontractors shall comply with all applicable laws in connection with the provision of services under this Agreement, including but not limited to the obligations under the German Capital Investment Code (*Kapitalanlagegesetzbuch*).

2.6 The Contractor undertakes to co-operate with other contractors employed by the EPO.

3. Representations and warranties

3.1 The Contractor represents and warrants to the EPO that it holds the required licenses, permissions and authorization to provide their services under this Agreement, especially

licenses under the German Banking Act (*Kreditwesengesetz*). The Contractor will inform the EPO without undue delay if any license, permission and/or authorization pursuant to sentence 1 of this paragraph is revoked or suspended or the content or the extent of such required license, permission and/or authorization is amended.

4. Liability

- 4.1 The Contractor shall act in good faith and exercise due professional care in carrying out its duties under this Agreement. Subject to the following sentences of the present paragraph, the Contractor shall indemnify the EPO and keep it indemnified against any and all losses, liabilities, costs, charges or expenses (including the costs of enforcement) arising from the default, bad faith, negligence or fraud of the Contractor or any of their officers or employees, or any other person or entity which the Contractor rely upon for the performance of its duties under this Agreement. When performing its duties under this Agreement, the Contractor shall only be liable for damages caused by wilful misconduct (*Vorsatz*) or gross negligence (*grobe Fahrlässigkeit*). In case of any infringement of essential contractual obligations or damages to life, body or health, the Contractors shall also be liable for normal negligent acts (*einfache Fahrlässigkeit*) or omissions by their statutory representatives and/or vicarious agents.
- 4.2 Compliance with fixed dates or periods agreed by the parties, especially the date fixed for the payment of the deferred salary, shall be considered to be an essential contractual obligation under this Agreement.

5. Penalties

- 5.1 In the case of violations of the following Contractor's obligations under this Agreement, the Contractor shall pay penalties to the EPO in accordance with the following conditions:

- (a) Provision of services related to the following processes: Monthly Investment, Disbursement, Investment Switch, Communication to participants and the operation of the IT-platform

The penalties to be paid by the Contractor to the EPO for any violation of their duties in connection with the process execution and operation of the IT-platform are set out in Annex 2.

- (b) Compliance with the data processing agreement and data protection rules (Article 7.6 and Annex 5 to the Agreement)

The applicable penalty shall be 2% of the relevant yearly contract volume (taking into account all fees payable by the EPO for plan administration) per each and every culpable breach of the aforementioned data protection provisions caused by the Contractor or any of the Subcontractors.

- 5.2 The right of the EPO to claim damages and/or to take recourse to all other remedies, including injunctive relief, shall not be affected by the payment of penalties under this Article, but is expressly accepted and acknowledged.

6. Insurance

- 6.1 The Contractor warrants that at the time of execution of this Agreement it maintains insurance with a reputable insurance company to cover any liability in connection with this Agreement (including without limitation insurance to cover professional negligence, employees fidelity and all risks). During the validity period of this Agreement, the Contractor shall maintain such insurance coverage to protect the EPO against losses due to acts for which any of the Contractor is responsible, which insurance shall provide cover at least equivalent to the Contractor's current insurance. Upon request of the EPO during the term of this Agreement, the Contractor shall disclose the identity of the insurance company and the insurance coverage in effect as of the time of such request.
- 6.2 The above requirements do not apply in part or in its entirety, if such an insurance is not possible in the present context of the domestic legislation. The Contractor will inform the EPO of any significant change which may occur in this context and, in such a case, financial implications resulting from the implementation of this Article will be discussed between the parties involved.

7. Use of information, secrecy obligation and data protection

- 7.1 The Contractor and the EPO shall use all materials, documents, information (save such as is already generally accessible) and data media made available to it by the EPO or by the Contractor respectively solely for the purpose of fulfilling their contractual obligations. In particular, they shall not be authorized to disclose them or make them accessible to third parties without the prior written consent of the EPO or the Contractor respectively. Similar restrictions shall apply to the use of materials, documents, information and data media which the EPO or the Contractor have assembled in a new form or combination under this Agreement, even if individual elements thereof are known to the public. This undertaking shall not apply to information that is or has been made accessible to the public without violation of the contractual obligations.

The EPO and the Contractor undertake to treat in confidence any information about trade secrets or business matters of the Contractor or the EPO which the other Party has disclosed to it for the purposes of this Agreement, and not to provide such information to third parties. This undertaking shall not apply to information that is or has been made accessible to the public without violation of the contractual obligations.

- 7.2 The Contractor and the EPO shall remain bound by the terms of paragraph 1 even after termination or expiry of this Agreement.
- 7.3 The Contractor shall inform the EPO upon request of any action it takes pursuant to paragraph 1 and to take any reasonable precautions required by the EPO. The EPO shall inform the Contractor upon request of any action they take pursuant to paragraph 1 and to take any reasonable precautions required by the Contractor.
- 7.4 The Contractor and the EPO shall transmit information or data or the content of documents submitted for the purposes of the services to be provided under this Agreement or as the

result thereof only to those of their employees who require such knowledge specifically in order to perform their services.

- 7.5 The Contractor and the EPO shall delete or destroy all such materials, documents, information and data media at the order of and within a period set by the EPO or the Contractor respectively, with due allowance for any statutory safekeeping periods.

The Contractor shall be bound to record, process, use or delete personal data only on the instructions of the EPO. Power of disposal over all personal data shall entirely remain with the EPO. At the end of this Agreement, all personal data in whatever form shall be handed over to the EPO or deleted from the Contractor's records, with due allowance for any statutory safekeeping periods and with respect to technical feasibility.

The Data Protection Officer of the EPO shall have the full right to obtain any information from the Contractors regarding the processing of personal data relating to this Agreement.

- 7.6 The Contractor and their employees shall undertake to observe the Rules for the protection of personal data in the European Patent Office (at present, "Implementing rules for Articles 1b and 32a of the Service Regulations for permanent and other employees of the European Patent Office on the protection of personal data", of 16 December 2021, Annex 5, and to observe national and European (in particular Regulation (EU) 2016/679 (General Data Protection Regulation)) data protection regulations.
- 7.7 To ensure that the secrecy obligation is observed at all times, the Contractor and the EPO shall likewise ensure that their staff and any other person they deploy in fulfillment of this Agreement maintain secrecy by placing them under obligations at least as strict as those defined in this Article.
- 7.8 Ownership of all reports, documents and other such work results produced by the Contractor for the EPO shall upon acceptance pass to the EPO, which shall thereby acquire a non-exclusive, unlimited right to the use of these reports, documents and other work results. Use shall extend also but not only to reproduction, publication, dissemination, adaptation and storage on electronic, magnetic or optical media or data carriers and to storage and use in databases or computer programs which are accessible to the EPO and/or third parties. Furthermore, use shall include, but is not limited to, the right to make copies or translations of any reports, documents or other work results to any persons or entities who customarily are responsible for oversight of the operation of the EPO whether or not such entities are legally separate from the EPO or whether or not such persons are employed by the EPO. This shall not affect any statutory or contractual secrecy obligations.

8. Termination

- 8.1 This Agreement shall commence on 1 January 2024. The term for this Agreement shall be three years. The EPO has the option to extend this Agreement by a maximum of four periods of one year, subject to a three-month notice in writing. This Agreement may be terminated by the EPO within the first six months of its duration at any time, subject to at least two months' written notice.

- 8.2 The Contractors may terminate this Agreement subject to at least twelve months' written notice. The EPO may terminate this Agreement subject to at least six months' written notice.
- 8.3 If this Agreement has been terminated, the Contractor shall cooperate with the EPO in order to ensure that the Salary Savings Plan can be continued with other service providers without incurring additional costs for the EPO and/or the Employees except for those defined in Annex 7. The EPO has the right to redeem the Shares without incurring any redemption fees or other costs.

9. Reports/Inspections

- 9.1 In addition to the reporting as specified in this Agreement (in particular, Annex 2) the Contractor shall supply any reasonable additional information requested by the EPO within a reasonable delay, however, only if and so far as such additional information is in the possession of the Contractor.
- 9.2 The Contractor shall permit the EPO, or any of its authorized agents or representatives, upon notice of 15 working days and during regular business hours at the business location where access is sought, reasonable access to the Contractors' records (excluding its own financial book-keeping), including the right to take copies, only insofar as they relate only to the activities of the Contractors under this Agreement. Nothing in this Agreement shall be deemed to grant the EPO access to any records held by the Contractor for third parties. If costs are to be charged, these shall be notified to EPO in advance.

10. Notices

All notices, communications and declarations of will (*Willenserklärungen*) which are made pursuant to or in connection with this Agreement shall be in writing and shall be transmitted to the parties at the following addresses and for the attention of the following persons:

- | | |
|-----------------------------------|--|
| (a) European Patent Office | Bob-van-Benthem-Platz 1,

D-80469 München

For the attention of: Mr/Ms |
| (b) [Name of company] | [Business address]

For the attention of: Mr/Ms |

11. Remuneration / Costs / Invoicing, Payment

- 11.1 The remuneration to be paid by the EPO to the Contractor for the provision of services under this Agreement is set out in Annex 7 to this Agreement. All fees charged by the Contractor are net amounts excluding VAT, if any.
- 11.2 Invoices shall be submitted quarterly only after the services, which are the subject of the invoice have been carried out and accepted.

11.3 Payment will be made in accordance with Article 8 of the General Conditions. The EPO may withhold payment of the amount due to it in respect of claims for damages according to Article 4 and/or penalties according to Article 5 of the present agreement.

12. Amendments

12.1 Amendments to this Agreement shall be invalid unless agreed in writing by authorized representatives of the EPO and the Contractor. This shall also apply to the amendment of this clause requiring the written form itself.

12.2 The EPO shall notify to the Contractor any amendment to Annexes 1, 5 and 6. In this notification the EPO shall set a reasonable time limit for the Contractor to inform the EPO whether they accept such amendments and for implementing any necessary changes to the Salary Savings Plan resulting from such amendments. Within the time limit set by the EPO the Contractor shall provide the EPO with the requested information in writing. If the Contractor do not provide such written information within the time limit set by the EPO or if the EPO considers as unacceptable, in its reasonable discretion, the time estimates provided by the Contractors for amendments, the EPO shall be permitted to terminate this Agreement without notice.

12.3 Annexes 2 and 7 may be amended in writing by officers of the parties listed in Annex 8.

12.4 Annex 8 can be amended by each party with respect to the officers of such party by written notice to the other parties to this Agreement.

13. Relation to other Terms and Conditions

13.1 This Agreement is to be read in conjunction with the Annexes 1 to 8, all of which, by reference, are incorporated herein.

13.2 In the event of any deviation of the Annexes from this Agreement, this Agreement shall prevail unless otherwise explicitly specified in this Agreement. In the event of any deviation of the General Conditions (Annex 6) from the other Annexes, the General Conditions shall prevail.

13.3 The terms and conditions of the Contractor do not form part of this Agreement and are not accepted by the EPO, unless they have been separately signed.

14. List of Annexes to this Agreement

The following Annexes form an integral part of this Agreement:

Annexes	Subject
Annex 1	Provisions of the EPO's Service Regulations applicable to the Salary Savings Plan
Annex 2	Process Overview / Service Level Agreements / Description of process flows, reporting obligations, IT Platform, Communication and Help Desk

Annex 3	Technical Conditions of the Tender No. 4183
Annex 4	The Contractor's offer to Tender No. 4183
Annex 5	EPO Data Protection Rules
Annex 6	General Conditions of Contract
Annex 7	Fee schedule
Annex 8	List of authorised officers of the parties

For the European Patent Office

For the Contractor

.....
Name
Position

.....
Name
Position

.....
Place, date

.....
Place, date

Annex 1

to Agreement No. 2023/xxxxx

Provisions of the EPO's Service Regulations applicable to the Salary Savings Plan

Article 65
Payment of remuneration

- (3) Under the conditions laid down in the implementing rule hereto, employees shall participate in a salary savings plan. Where applicable, the portion of remuneration owed as a result of that participation shall in principle be paid on termination of service.

IMPLEMENTING RULE TO ARTICLE 65(3) OF THE SERVICE REGULATIONS FOR PERMANENT AND OTHER EMPLOYEES OF THE EUROPEAN PATENT OFFICE¹

I. Provisions governing participation in the salary savings plan

A. Participants

(1)² Participation in the salary savings plan established by Article 65(3) of the Service Regulations ("the Plan") shall be compulsory for:

- (a) employees and members of the Boards of Appeal and the Enlarged Board of Appeal, within the meaning of Article 1(2), (4) and (7) of the Service Regulations, and
- (b) principal directors of the Office, within the meaning of Article 1(6) of the Service Regulations,

who take up their duties on or after 1 January 2009.

(2) Participation in the Plan shall be compulsory for the President and vice-presidents and for other contract staff at the Office, within the meaning of Article 1(5) and (7) of the Service Regulations, who take up their duties on or after 1 January 2009 only to the extent expressly provided for in their contracts and terms of employment.

(3)³ [The employees referred to in paragraphs 1 and 2 may also, at their express request, make additional voluntary contributions.]⁴

(4) Those who participate in the Plan, on whatever basis, are hereinafter referred to as "participants".

B. Rate of contribution

(1)⁵ The rates for compulsory [and voluntary]⁶ contributions, and the salary to which they relate, shall be established by the President of the Office, on the basis of an actuarial study, after consultation of the General Consultative Committee. The rate for compulsory contributions shall be equal to the difference between the contribution to the pension scheme applicable to employees already in service on 31 December 2008 and that payable under the New Pension Scheme Regulations.

1 Decision of the Administrative Council [CA/D 13/08](#).

2 Amended by decision of the Administrative Council [CA/D 2/18](#).

3 Modified by decision of the Administrative Council [CA/D 3/19](#).

4 Provisions in square brackets suspended by decision of the Administrative Council CA/D 3/19.

5 Modified by decision of the Administrative Council [CA/D 3/19](#).

6 Provisions in square brackets suspended by decision of the Administrative Council CA/D 3/19.

- (2)¹ One-third of the rate for compulsory contributions shall be charged to the employee, two-thirds to the Office.

[Additional voluntary contributions shall be borne entirely by the employee.]²

- (3) Contributions shall be deducted monthly from the participant's salary.

C. Individual salary savings accounts

- (1) An individual salary savings account (hereinafter referred to as an "individual account"), in euro, shall be opened for each participant.
- (2) The individual account shall be credited on a monthly basis with the sum of the contributions paid.
- (3) The sums credited to the individual account shall be invested by the Office, in accordance with a predefined strategy.
- (4) The Office shall offer participants a maximum of three investment strategies, after consultation of the General Consultative Committee³.

The Office shall establish the default investment strategy which is to apply for the first six months of participation.

Thereafter, each participant may choose a different investment strategy from among those offered by the Office, and may change it once per calendar year. The President of the Office shall lay down the procedure for communicating this choice. In the absence of any such communication, the default investment strategy shall apply.

The Office shall bear no responsibility for application of the strategies chosen by each participant or of the default strategy.

- (5) Each year, participants shall receive a statement of their individual account.

D. Settlement of amounts owed

- (1) On termination of service, participants shall be entitled to payment of the balance of their individual account as a lump sum corresponding to the contributions paid into the account, plus or minus investment returns.
- (2) In the event of the participant's death, this entitlement shall pass to the estate.
- (3) The lump sum shall be paid out as final salary. Procedure for this payment shall be laid down by the President of the Office, after consultation of the General Consultative Committee⁴.

1 Modified by decision of the Administrative Council [CA/D 3/19](#).

2 Provisions in square brackets suspended by decision of the Administrative Council [CA/D 3/19](#).

3 Amended by decision of the Administrative Council [CA/D 2/14](#).

4 Amended by decision of the Administrative Council [CA/D 2/14](#).

II. Provisions governing operation of the Plan

A. Plan assets

- (1) The term "Plan assets" shall denote the total of the contributions paid into each individual account as well as the corresponding investment returns.
- (2) The Plan assets shall be the property of the European Patent Organisation, within the meaning of Article 4 of the Protocol on Privileges and Immunities of the European Patent Organisation.
- (3) The Plan assets shall be a special class of asset of the European Patent Organisation designed solely to settle the amounts owed under this implementing rule. They shall be subject to separate management and accounting and may not be combined with any other assets of the Organisation.

B. Plan implementation

- (1) The Office shall make provision for the administration of individual accounts and for asset management, and shall bear the cost thereof. It may outsource some or all of the duties involved.
- (2) The President of the Office shall, after consulting the General Consultative Committee¹, establish a mechanism for supervising Plan administration and management, and shall take all such action as is necessary to apply this implementing rule.

¹ Amended by decision of the Administrative Council [CA/D 2/14](#).

DIRECTIVE ON AN IN-HOUSE SUPERVISORY COMMITTEE FOR SALARY SAVINGS PLAN INVESTMENT MANAGEMENT AND ADMINISTRATION

1. Establishment of an in-house committee

An in-house committee will be established to supervise investment management and administration for the salary savings plan.

2. Composition of the in-house committee

(1) The in-house committee will be presided over by a chairperson appointed by the President of the Office for a renewable term of three years. The President will also appoint a deputy chairperson for a likewise renewable term of three years. In addition to these two external members, the committee will further be composed of the following internal members:

- (a) two Office employees appointed by the President of the Office;
- (b) two Office employees appointed by the Central Staff Committee.

(2) Alternate members will be appointed in accordance with the same procedure for members mentioned under 1(a) and 1(b).

(3) The in-house committee may call in experts or advisers on a regular or occasional basis.

(4) Members and alternate members of the in-house committee will be appointed for a minimum duration of one year, tacitly renewable for the same minimum duration. A member or alternate member whose service terminates for one of the reasons set out in Article 50 ServRegs or who resigns from their office will be replaced for the remaining term of their office in accordance with the procedure under 1(a) and 1(b).

3. Meetings

(1) Meetings of the in-house committee will be convened by the chairperson.

(2) Each member of the in-house committee will have a vote. The chairperson and deputy chairperson will vote only on procedural matters.

(3) The in-house committee will hold two ordinary meetings per year; it will also convene for an extraordinary meeting on the initiative of the chairperson or of half its members.

4. Duties of the in-house committee

The in-house committee will supervise investment management and administration for the salary savings plan. It will advise the President of the Office and may issue recommendations.

It may call upon the salary savings plan investment manager and administrator to send representatives to in-house committee meetings.

It will discuss investment performance and future investment strategy together with the investment manager and may request the salary savings plan administrator to adapt their services to the Office's needs.

5. Entry into force

This directive enters into force on 1 May 2022.

António Campinos
President of the European Patent Office

Circular No. 317

(16 July 2009, 19 December 2019, 2 June 2020, 24 January 2022)

**applying Article 65(3) of the Service Regulations
and its implementing rule****1b****Investment strategies and procedures for the
salary savings plan:****Article 1 – Introduction**

At its 115th meeting in October 2008, the Administrative Council adopted the salary savings plan (SSP) as a complement to the New Pension Scheme applicable to employees taking up their duties on or after 1 January 2009.

In accordance with section I.C(4) of the Implementing Rule to Article 65(3) of the Service Regulations, the Office offers SSP participants the three investment strategies described in section 2 below.

Participants may choose to change their investment strategy once per calendar year. The procedure for communicating this choice is laid down in section 3 below.

The procedure for payment of the SSP lump sum on termination of service is set out in section 4 below.

The investment risk is borne by the participants.

Article 2 – Investment strategies

The Office offers the following three investment strategies through investment manager Fidelity International. More detailed information on the funds is available via the SSP portal provided by [...] at [...] and in the annex.

(1) Strategy no. 1: Life-cycle strategy as default option

The life-cycle strategy is the core strategy of the SSP and is initially applied by default to all new participants. There are several life-cycle funds covering a range of target dates spread out at five-year intervals. Also referred to as age-based or target-date investment, the life-cycle strategy is aimed at long-term growth while minimising the portfolio's volatility as the target date approaches.

(2) Strategy no. 2: Conservative multi-asset strategy

The conservative multi-asset strategy is based on a conservative portfolio with a maximum of 20% equity. It is designed to generate moderate long-term capital growth through investment in a range of global assets providing exposure to equities, bonds, commodities, property and cash. The aim is to achieve a return on investment above the average return on government bonds, based on a conservative risk profile.

(3) Strategy no. 3: Cash strategy

The cash strategy is based on a Euro Cash Fund. This fund avoids high volatility as it follows a very conservative and steady approach, with no exposure to investments which have higher volatility and risk/return profiles than short-term cash positions. This makes it a low-risk option well suited to short periods of investment with a relatively low expected return but therefore less interesting for long-term investments.

Article 3 – Procedure for communicating a change in investment strategy

For the first six months of employment at the Office, the life-cycle strategy is compulsory and cannot be changed. After that, SSP participants can choose to change the strategy for investment of both their existing savings and their future contributions once per calendar year. They will be reminded of this possibility towards the end of the initial six-month period. They can make the change via the online portal at [...].

Participants may choose one of the three currently available investment strategies. If they choose strategy No. 1, they may select any one of the available target-date funds.

If they change their strategy on or before the 15th of the month, the change will be applied to their savings by the 20th of that month. If the change is made after the 15th, it will take effect by the 20th of the following month. The same goes for their future contributions: a change made on or before the 15th of the month will be applied as from the contribution paid that month; a change made later in the month will be processed in the following month.

For participants who do not opt to change their investment strategy after the initial six month period, the default life-cycle strategy will continue to apply. However, the option of switching to a different strategy will remain open to them indefinitely.

Article 4 – Procedure for payment of SSP lump sum on termination of service

The provisional amount accumulated by a participant in their individual salary savings account, after deduction of any social security contributions, is calculated during their last month of service. This provisional amount (or a portion of it) is then paid out as a lump sum with their last salary.

The individual account will be cleared in the month following termination of service. The final amount of the SSP lump sum will be calculated on the basis of the share value observed at the latest on the fifth working day of that month. If the final amount is higher than the provisional amount, the balance will be paid out to the former employee; if it is lower, the former employee must repay the difference within one month of the date of notification of the final calculation.

Article 5 – Entry into force

This circular enters into force on 1 July 2021.

Munich, 24.01.2022.

The President of the European Patent Office
António Campinos

1b

ANNEX

Overview of funds available under the Salary Savings Plan as at 1 July 2021.

Fund name	ISIN
1. Life-cycle strategy	
Target TM 2020 (Euro) Fd P-ACC-Euro	LU0393654644
Target TM 2025 (Euro) Fd P-ACC-Euro	LU0393654727
Target TM 2030 (Euro) Fd P-ACC-Euro	LU0393654990
Target TM 2035 (Euro) Fd P-ACC-Euro	LU0393655021
Target TM 2040 (Euro) Fd P-ACC-Euro	LU0393655294
Target TM 2045 (Euro) Fd P-ACC-Euro	LU1025014462
Target TM 2050 (Euro) Fd P-ACC-Euro	LU1025014892
Target TM 2055 (Euro) Fd P-ACC-Euro	LU2218680135
Target TM 2060 (Euro) Fd P-ACC-Euro	LU2218680648
2. Conservative multi-asset strategy	
Fidelity Demografiefonds Konservativ	DE000A0RHF92
Conservative Multi Asset Portfolio (80% Bonds 20% Equities): FF Euro Bond Fund - Y- ACC - EUR (80%) + FF World Fund - Y - ACC - EUR (20%)	LU0346390197 + LU0318941662
3. Cash strategy	
Fidelity Funds - Euro Cash Y Acc Euro	LU0346390353

This annex will be updated regularly.

**Process Overview / Service Level Agreements / Description of process flows,
reporting obligations, IT Platform, Communication and Help Desk**

[Will be added upon award of contract]

Annex 3

to Agreement No. 2023/xxxxx

Technical Conditions of the Tender No. 4183

[Will be added upon award of contract]

Annex 4

to Agreement No. 2023/xxxxx

The Contractor's offer to Tender No. 4183

[Will be added upon award of contract]

Annex 5

to Agreement No. 2023/xxxxx

EPO Data Protection Rules

LEGAL FRAMEWORK FOR THE PROTECTION OF PERSONAL DATA AT THE EPO

IMPLEMENTING RULES FOR ARTICLES 1B AND 32A OF THE SERVICE REGULATIONS FOR PERMANENT AND OTHER EMPLOYEES OF THE EUROPEAN PATENT OFFICE ON THE PROTECTION OF PERSONAL DATA^{1/2}

These Implementing Rules set out the principles and detailed provisions governing the processing of personal data under Articles 1b and 32a of the Service Regulations.

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I. General provisions

Article 1 Purpose

- (1) The purpose of these Rules is to support the implementation of Articles 1b and 32a of the Service Regulations by establishing the legal framework necessary to ensure that the fundamental rights of natural persons to privacy and to the protection of their personal data processed by the Office are observed and to provide for accountability in this regard.
- (2) These Rules will be supplemented by
 - a. further rules, administrative instructions and decisions adopted by the President of the Office,
 - 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), and
 - c. operational documents issued by the Data Protection Officer, which will specify more detailed requirements and procedures for the processing of personal data.

1 Decision of the Administrative Council [CA/D 5/21](#).

2 Decision of the President of the European Patent Office of 16 December 2021.

Article 2

1. Where the President adopted internal administrative instructions such as circulars, which directly or indirectly refer to the Guidelines for the Protection of Personal Data in the European Patent Office, these internal administrative instructions shall as of 1 January 2022 be interpreted to refer to Articles 1b and 32a of the Service Regulations for permanent and other employees of the European Patent Office and the DPR.

Article 2

Field of application

- (1) These Rules apply to the Office's processing of personal data wholly or partly by automated means and to its processing other than by automated means of personal data which form or are intended to form part of a filing system.
- (2) These Rules apply to all persons covered by Article 1 of the Service Regulations.
- (3) These Rules also apply to all natural persons not covered by paragraph 2 whose personal data are processed by the Office.
- (4) These Rules do not apply to the processing of personal data of deceased persons, of personal data which concerns legal persons or of anonymous information.
- (5) Files or sets of files, including their cover pages, which are not structured according to specific criteria do not fall within the scope of these Rules.
- (6) Articles 49 to 52 do not apply to the processing of personal data by the Boards of Appeal in their judicial capacity. An independent oversight mechanism for the Boards of Appeal shall be established to ensure compliance with these Rules.

Article 3

Definitions

For the purposes of these Rules:

- a. "**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.
- b. "**processing**" of personal data means any operation or set of operations which is performed on personal data or on sets of personal 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.
- c. "**restriction of processing**" means the marking of stored personal data with the aim of limiting their processing in the future, including programming measures to permanently prevent access to such data.

- d. **"profiling"** means any form of automated processing of personal data consisting of the use of personal data to evaluate certain personal aspects relating to a natural person, in particular to analyse or predict aspects concerning that natural person's performance at work, economic situation, health, personal preferences, interests, reliability, behaviour, location or movements.
- e. **"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.
- f. **"filing system"** means any structured set of personal data which are accessible according to specific criteria, whether centralised, decentralised or dispersed on a functional or geographical basis.
- g. **"controller"** means the entity, namely the European Patent Office, which, alone or jointly with others, determines the purposes and means of the processing of personal data.
- h. **"delegated controller"** means the operational unit, represented by its head, ensuring that all processing operations involving personal data that are performed within the operational unit comply with these Rules. The person representing the unit shall be a manager at senior level, normally at least a principal director.
- i. **"operational unit"** means an organisational unit of the Office performing tasks and/or activities within the Office and defining the purpose, rationale and business needs of a processing operation.
- j. **"processor"** means a natural or legal person, public authority, agency or any other entity which processes personal data on behalf of the controller.
- k. **"recipient"** means a natural or legal person, public authority, agency or any other entity to which personal data are disclosed, whether a third party or not. However, public authorities which may receive personal data within the framework of a particular inquiry in accordance with the Protocol on Privileges and Immunities of the European Patent Organisation are not to be regarded as recipients; the processing of those data by those public authorities shall be in compliance with the data protection rules applicable in view of the purposes of the processing.
- l. **"third party"** means any natural or legal person, public authority, agency or body other than the data subject, the controller, the processor and the persons who, under the direct authority of the controller or the processor, are authorised to process personal data.
- m. **"consent"** of the data subject means any freely given, specific, informed and unambiguous indication of the data subject's wishes by which the data

subject, by a statement or by a clear affirmative action, signifies agreement to processing of personal data relating to him or her.

- n. **"personal data breach"** means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed.
- o. **"genetic data"** means personal data relating to the inherited or acquired genetic characteristics of a natural person which give unique information about the physiology or the health of that natural person and which result, in particular, from an analysis of a biological sample from that natural person.
- p. **"biometric data"** means personal data resulting from specific technical processing relating to the physical, physiological or behavioural characteristics of a natural person which allow or confirm the unique identification of that natural person, such as facial images or dactyloscopic data. The processing of photographs should not systematically be considered to be processing of special categories of personal data as they are covered by the definition of biometric data only when processed through specific technical means allowing the unique identification or authentication of a natural person.
- q. **"personal data concerning health"** means personal data related to the physical or mental health of a natural person, including the provision of healthcare services, which reveal information about his or her health status.
- r. **"anonymous information"** means information which does not relate to an identified or identifiable natural person or to personal data rendered anonymous in such a manner that the data subject is not or no longer identifiable.
- s. **"transmission of personal data"** means disclosure, dissemination of or otherwise making available, including by granting access, of personal data to a party within the European Patent Organisation or to a national industrial property office or other public authority of a contracting state to the European Patent Convention under the conditions laid down in Article 8.
- t. **"transfer of personal 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 neither a national industrial property office nor a public authority of a contracting state to the European Patent Convention under the conditions laid down in Article 9.
- u. **"third country"** means a country which is not a contracting state to the European Patent Convention.
- v. **"erasure of data"** means the obliteration of stored data in such a way that reconstruction is not possible.
- w. **"data subject"** means any identified or identifiable natural person, irrespective of whether that person is an employee of the Office or not; to determine

whether a natural person is identifiable, account should be taken of all the means reasonably likely to be used, such as singling out, either by the controller or by another person, to identify the natural person directly or indirectly.

- x. **"employee"** means every person covered by Article 1 of the Service Regulations.
- y. **"legal provisions of the European Patent Organisation"** means the European Patent Convention or its constituent parts, international agreements and other legal arrangements concluded by the President of the Office, rules and instruments enacted by the Administrative Council, as well as circulars, communiqués and all other legal provisions adopted or issued by the President of the Office or by the President of the Boards of Appeal.
- z. **"information society service"** means any service provided at a distance, by electronic means and at the individual request of a recipient of services.

II. General rules on the lawfulness of processing personal data

Article 4

Principles relating to processing of personal data

- (1) The controller ensures that the principles set out in this Article are observed. In particular, the controller is responsible for, and shall be able to demonstrate, compliance with paragraph 2 ("accountability"). The controller shall ensure that the processing of personal data, including the reasons for it and the means used, is appropriately documented. To this end, the controller shall follow a structured and risk-based approach to designing and documenting processing operations. The controller shall also be able to demonstrate to data subjects at all times that the documented commitments and conditions are observed when processing operations are carried out. Due regard shall be had to the organisational autonomy of the Boards of Appeal Unit and to the judicial independence of the Boards of Appeal.
- (2) Personal data shall be:
 - a. processed lawfully, fairly and in a manner transparent to the data subject ("lawfulness, fairness and transparency"); the data subject shall be informed of the existence of the processing operation and its purposes, and the controller shall provide the data subject with any further information necessary to ensure fair and transparent processing, taking into account the specific circumstances and context in which the personal data are processed;
 - b. collected for specified, explicit and legitimate purposes and not further processed in a way that is incompatible with these purposes ("purpose limitation");
 - c. adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed ("data minimisation");

- d. accurate and, where necessary, kept up to date; every reasonable step shall be taken to ensure that personal data which are inaccurate or incomplete, having regard to the purposes for which they were collected or for which they are further processed, are erased or rectified without delay ("accuracy");
 - e. kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data were collected or for which they are further processed ("storage limitation");
 - f. processed in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures ("integrity and confidentiality").
- (3) As a general rule, personal data shall be collected from the data subject wherever possible.

Article 5 **Lawfulness of processing**

Processing of personal data is lawful only if and to the extent that at least one of the following applies:

- a. processing is necessary for the performance of a task carried out in the exercise of the official activities of the European Patent Organisation or in the legitimate exercise of the official authority vested in the controller, which includes the processing necessary for the Office's management and functioning, or
- b. processing is necessary for compliance with a legal obligation to which the controller is subject, or
- c. processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract,
- d. or d. the data subject has given explicit consent to the processing of his or her personal data for one or more specific purposes, or
- e. processing is necessary in order to protect the vital interests of the data subject or of another natural person.

Article 6 **Processing for another compatible purpose**

- (1) Without prejudice to Articles 4, 5 and 12, the controller may process personal data for a purpose other than that for which the personal data were collected only if such other purpose is compatible with the purpose for which the personal data were initially collected. In such a case, no legal basis separate from that which allowed the collection of the personal data is required. The legal basis for the initial collection and processing of personal data provided by the applicable legal provisions of the European Patent Organisation may

also serve as a legal basis for further processing. However, data may not be further processed in a way that is unexpected, inappropriate or objectionable for the data subject.

- (2) Personal data may also be processed for purposes other than those for which they have been collected, if such processing can be based on the data subject's explicit consent or applicable legal provisions of the European Patent Organisation which constitute a necessary and proportionate measure in a democratic society to safeguard the objectives referred to in Article 25.
- (3) Where the processing for a purpose other than that for which the personal data have been collected is not based on the data subject's explicit consent or on applicable legal provisions of the European Patent Organisation, the controller shall, in order to ascertain whether processing for another purpose is compatible with the purposes for which the personal data were initially collected, take into account, inter alia:
 - a. any link between the purposes for which the personal data were collected and the purpose of the intended further processing;
 - b. the context in which the personal data were collected, in particular regarding the relationship between data subjects and the controller;
 - c. the nature of the personal data, in particular whether special categories of personal data are processed pursuant to Article 11 or whether personal data related to criminal convictions and offences are processed pursuant to Article 12;
 - d. the possible consequences of the intended further processing for data subjects;
 - e. the existence of appropriate safeguards, which may include encryption or pseudonymisation.

Article 7 **Conditions for consent**

- (1) Where processing is based on consent, the controller shall be able to demonstrate that the data subject has consented to processing of his or her personal data.
- (2) Consent shall be given by a clear and affirmative act establishing a freely given, specific, informed and unambiguous indication of the data subject's agreement to the processing of personal data relating to him or her, for example in the form of a written statement, including one made by electronic means, or an oral statement.
- (3) Consent shall cover all processing activities carried out for the same purpose or purposes. When the processing has multiple purposes, consent shall be given for each one of them.
- (4) For consent to be informed, the data subject shall be aware at least of the identity of the controller and the purposes of the processing for which the personal data are intended. Consent cannot be regarded as freely given

- if the data subject has no genuine or free choice or is unable to refuse or withdraw consent without detriment.
- (5) The data subject shall have the right to withdraw consent at any time without affecting the lawfulness of processing based on consent before its withdrawal. Prior to giving consent, the data subject shall be informed of this. It shall be as easy to withdraw as to give consent. In order to ensure that consent is freely given, consent cannot provide a valid legal ground for the processing of personal data in a specific case where there is a clear imbalance between the data subject and the controller and it is therefore unlikely in view of all the circumstances of that specific situation that consent was freely given.
 - (6) If the data subject's consent is given in the context of a written declaration which also concerns other matters, the request for consent shall be presented in a manner which is clearly distinguishable from the other matters, in an intelligible and easily accessible form, using clear and plain language. Any part of such a declaration which constitutes an infringement of these Rules will not be binding.
 - (7) When assessing whether consent is freely given, utmost account shall be taken of whether, inter alia, the performance of a contract, including the provision of a service, is conditional on consent to the processing of personal data that is not necessary for the performance of that contract.
 - (8) Where Article 5(d) applies in relation to the offer of information society services directly to a child, the processing of the child's personal data is lawful where the child is at least 13 years old. Where the child is below the age of 13, such processing is lawful only if and to the extent that consent is given or authorised by the holder of parental responsibility over the child. The controller shall make reasonable efforts to verify in such cases that consent is given or authorised by the holder of parental responsibility over the child, taking into consideration available technology.

Article 8

Transmission of personal data to public authorities within the territory of the contracting states and to a national industrial property office of a contracting state

- (1) Without prejudice to Articles 4, 5, 6, 11 and 12, personal data may be transmitted from the Office to a recipient outside the Office but within the territory of the contracting states only if the recipient is a public authority and the data are necessary for the performance of tasks within the recipient's competence and where the transmission is compatible with the tasks and the functioning of the Office.
- (2) Without prejudice to Articles 4, 5, 6, 11 and 12, personal data may be transmitted by the Office to a national industrial property office of a contracting state if the data are necessary for the performance of tasks within the recipient's competence or for the exercise of the official authority vested

in it and processing is necessary to carry out tasks in the exercise of the official activities of the European Patent Organisation or in the legitimate exercise of the official authority vested in the controller, which includes the processing necessary for the Office's management and functioning.

- (3) The recipient shall provide evidence that it is necessary to have the data transmitted for a specific purpose deriving from the Office's obligations of co-operation with the contracting states. The controller, where there is any reason to assume that the data subject's legitimate interests might be prejudiced, shall establish that it is proportionate to transmit the personal data for that specific purpose, after having demonstrably weighed up the various competing interests.
- (4) Where the controller initiates a transmission under paragraph 1 or 2, it shall demonstrate that the transmission of personal data is necessary for and proportionate to the purposes of the transmission by applying the criteria laid down in those paragraphs.
- (5) Without prejudice to Articles 4, 5, 6, 11 and 12, where the processing is to be carried out by a private entity engaged on behalf of the controller, personal data may be transmitted from the Office within the territory of the European Economic Area only if in compliance with these Rules and under the conditions set forth in Articles 30 and 31 of these Rules.

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Article 9 **Transfer of personal data**

- (1) Transfers of personal data shall take place only if in compliance with these Rules, including the conditions laid down in this Article and/or Article 10. This also applies to transfers of data intended for processing after transfer to a third country or to an international organisation, and to onward transfers of personal data from a third country or an international organisation to another third country or to another international organisation. All provisions in this Article and/or Article 10 shall be applied in order to ensure that the level of protection of natural persons guaranteed by these Rules is not undermined.
- (2) The transfer of personal data to recipients outside the European Patent Office which are not covered by Article 8(1), (2) and (5) is permissible only if an adequate level of protection is ensured in the country of the recipient, or in a territory or one or more sectors within that country, or within the receiving international organisation and the data are transferred solely to allow tasks within the competence of the controller to be carried out.
- (3) In cases of doubt, the President of the Office decides, after consulting the Data Protection Officer and the Data Protection Board, whether the protection afforded by the country or international organisation in question can be considered adequate.
- (4) Transfers outside the European Patent Office to recipients which are not covered by Article 8(1) and (2) may be carried out to public authorities or bodies in third countries, or to international organisations with corresponding

duties or functions on the basis of provisions to be inserted into administrative arrangements, such as a memorandum of understanding, providing for enforceable and effective rights for data subjects.

- (5) In the absence of an adequate level of protection pursuant to paragraphs 1 and 3, the controller or processor may transfer personal data to recipients outside the European Patent Office only if the controller or processor has provided appropriate safeguards, and on condition that enforceable data subject rights and effective legal remedies for data subjects are available. Such appropriate safeguards may be provided for by appropriate contractual clauses drafted after consultation of the Data Protection Board or by appropriate certification mechanisms.
- (6) Personal data transferred under this Article may be processed or used only for the purpose for which they have been transferred. They shall be deleted as soon as that purpose has been achieved. The recipient shall be advised of this and obliged to act accordingly by contract or agreement. The recipient shall provide evidence that it is necessary to have the data transferred for a specific purpose. The controller, where there is any reason to assume that the data subject's legitimate interests might be prejudiced, shall establish that it is proportionate to transfer the personal data for that specific purpose after having demonstrably weighed up the various competing interests.
- (7) Where the controller initiates a transfer of personal data under this Article, it shall demonstrate that this transfer is necessary for and proportionate to the purposes of the transfer by applying the criteria laid down in this Article.

Article 10 **Derogations for specific situations**

- (1) In the absence of an adequate level of protection in the country of the recipient, or of appropriate safeguards under Article 9, the transfer of personal data to recipients outside the European Patent Office which are not a national industrial property office of a contracting state is permissible only exceptionally where:
 - a. the data subject has explicitly consented to the proposed transfer, after having been informed of the possible risks of such transfers for the data subject due to the absence of an adequate level of protection and appropriate safeguards;
 - b. the transfer is necessary for the performance of a contract between the data subject and the controller or the implementation of pre-contractual measures taken at the data subject's request;
 - c. the transfer is necessary for the conclusion or performance of a contract concluded in the interest of the data subject between the controller and another natural or legal person;
 - d. the transfer is necessary for the performance of a task in the exercise of the official activities of the European Patent Organisation or in the legitimate exercise of the official authority vested in the controller, which includes the processing necessary for the Office's management and

- functioning, or to perform obligations arising from its duty of co-operation with the contracting states;
- e. the data transfer is necessary for the establishment, exercise or defence of legal claims and their transmission is not precluded by agreements under international law or other applicable legal provisions of the European Patent Organisation;
 - f. the transfer is necessary in order to protect the vital interests of the data subject or of other persons, where the data subject is physically or legally incapable of giving explicit consent; or
 - g. the transfer is made from a register which, according to the legal provisions of the European Patent Organisation, is intended to provide information to the public and which is open to consultation either by the public in general or by any person who can demonstrate a legitimate interest, to the extent that the conditions laid down for such consultation are fulfilled in the particular case.
- (2) Provision should be made in specific situations for the possibility of transfers in certain circumstances where the data subject has given his or her explicit consent and where the transfer is occasional and necessary in relation to a contract or a legal claim, regardless of whether in a judicial procedure or whether in an administrative or any out-of-court procedure. Provision should also be made for the possibility of transfers where required to perform obligations arising from the Office's duty of co-operation with the contracting states or where the transfer is made from a register established by the legal provisions of the European Patent Organisation and intended for consultation by the public or persons having a legitimate interest. In the latter case, such a transfer should not involve the entirety of the personal data or entire categories of the data contained in the register, unless authorised by legal provisions of the European Patent Organisation, and, when the register is intended for consultation by persons having a legitimate interest, the transfer should be made only at the request of those persons or, if they are to be the recipients, taking into full account the interests and fundamental rights of the data subject.
- (3) Paragraph 1(a), (b) and (c) does not apply to tasks carried out by the European Patent Office in the exercise of its official activities.
 - (4) What constitutes a task carried out in the exercise of the official activities of the European Patent Office or in the legitimate exercise of the official authority vested in the controller, which includes the processing necessary for the Office's management and functioning, or an obligation arising from the Office's duty of co-operation with the contracting states referred to in paragraph 1(d) is to be established on the basis of the European Patent Convention and/or other applicable legal provisions of the European Patent Organisation.
 - (5) A transfer pursuant to paragraph 1(g) shall not involve the entirety of the personal data or entire categories of the personal data contained in the register, unless authorised by the applicable legal provisions of the European Patent Organisation. Where the register is intended for consultation

by persons having a legitimate interest, the transfer may be made only at the request of those persons or if they are to be the recipients, taking into full account the interests and fundamental rights of the data subject.

- (6) These derogations shall apply in particular to data transfers required and necessary in the exercise of the official activities of the European Patent Organisation or the legitimate exercise of the official authority vested in the controller, which includes the processing necessary for the Office's management and functioning, or in reason of obligations deriving from its duty of co-operation with the contracting states, for example in cases of international data exchange between the Office and national bodies, tax or customs administrations, financial supervisory authorities and services competent for social security matters or for public health, for example in the case of contact tracing for contagious diseases. A transfer of personal data is also to be regarded as lawful where it is necessary to protect an interest which is essential for the data subject's or another person's vital interests, including physical integrity or life, if the data subject is incapable of giving explicit consent. In the absence of an adequacy decision within the meaning of Article 9(2), the President of the Office may, in accordance with Article 9(4), and for important reasons relating to the legitimate exercise of the official authority vested in the Office, which includes the processing necessary for its management and functioning, or in reason of obligations deriving from its duty of co-operation with the contracting states, expressly set limits to the transfer of specific categories of data to a third country or an international organisation.

Article 11 **Processing of special categories of personal data**

- (1) The processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs or trade-union membership, of genetic data or biometric data for the purpose of uniquely identifying a natural person and of data concerning health or data concerning a natural person's sex life or sexual orientation is prohibited.
- (2) Paragraph 1 does not apply where one of the following applies:
- a. the data subject has given explicit consent to the processing of those data for one or more specified purposes.
 - b. processing is necessary for the purposes of carrying out the obligations and exercising specific rights of the controller or of the data subject in the field of employment and social security law in so far as it is authorised by legal provisions of the European Patent Organisation providing for appropriate safeguards for the fundamental rights and the interests of the data subject.
 - c. processing is necessary to protect the vital interests of the data subject or of another person where the data subject is physically or legally incapable of giving explicit consent.
 - d. processing relates to personal data which have been manifestly made public by the data subject.

- e. the processing is necessary for the establishment, exercise or defence of legal claims.
 - f. the processing is necessary for a specific purpose relating to the performance of a task carried out in the exercise of the official activities of the European Patent Organisation or in the legitimate exercise of the official authority vested in the controller, which includes the processing substantially necessary for the management and functioning of the Office, having regard to the principle of proportionality, or in reason of obligations arising from its duty of co-operation with the contracting states. This processing shall be based on a legal instrument which is proportionate to the aim pursued, respects the essence of the right to data protection and provides for suitable and specific measures to safeguard the fundamental rights and the interests of the data subject.
 - g. the processing is necessary for reasons of public interest in the area of public health, such as protecting against serious cross-border threats to health or ensuring high standards of quality and safety of healthcare, on the basis of national law which provides for suitable and specific measures to safeguard the rights and freedoms of the data subject, in particular professional secrecy.
- (3) Paragraph 1 does not apply where processing of the special categories of data is required for the purposes of preventive or occupational medicine, the assessment of an employee's working capacity, medical diagnosis, the provision of health or social care or treatment, the management of health or social care systems and services or medical examinations and opinions provided for in the Service Regulations or other legal provisions of the European Patent Organisation and where those data are processed by a health professional subject to the obligation of professional secrecy or by another person subject to an equivalent obligation of secrecy.

Article 12

Processing of personal data relating to criminal convictions and offences

- (1) Processing of data relating to criminal offences, criminal convictions or security measures based on Article 5(a) may be carried out only after consultation of the Data Protection Board or when the processing is covered by legal provisions of the European Patent Organisation providing for appropriate safeguards for the rights and freedoms of data subjects.
- (2) Suspicions regarding offences shall also be included in the concept of "offences", since the processing of data relating to matters which have not led to convictions requires protection equal to that afforded to criminal convictions.
- (3) The term "security measures" under this Article refers to measures taken against individuals in the context of a criminal (or administrative) procedure, such as forced admission to a psychiatric hospital or asset freezes.

Article 13

Processing which does not require identification

- (1) If the purposes for which the controller processes personal data do not or no longer require the identification of a data subject by the controller, the controller shall not be obliged to maintain, acquire or process additional information in order to identify the data subject for the sole purpose of complying with these Rules.
- (2) Where, in cases referred to in paragraph 1, the controller is able to demonstrate that it is not in a position to identify the data subject, the controller shall inform the data subject accordingly, if possible. In such cases, Articles 18 to 22 shall not apply except where the data subject, for the purpose of exercising his or her rights under those articles, provides additional information enabling his or her identification. The controller shall not refuse to take additional information provided by the data subject in order to support the exercise of his or her rights.

Article 14

Safeguards relating to processing for archiving purposes in the legitimate exercise of the official authority vested in the controller, scientific or historical research purposes or statistical purposes

Processing for archiving purposes in the legitimate exercise of the official authority vested in the controller, scientific or historical research purposes or statistical purposes, shall be subject to appropriate safeguards, in accordance with these Rules, for the rights and freedoms of the data subject. Those safeguards shall ensure that technical and organisational measures are in place in particular in order to ensure respect for the principle of data minimisation. Those measures may include pseudonymisation provided that those purposes can be fulfilled in that manner. Where those purposes can be fulfilled by further processing which does not permit or no longer permits the identification of data subjects, those purposes shall be fulfilled in that manner.

III. Rights of the data subject

Article 15

Transparency and modalities for the exercise of the rights of the data subject

- (1) The controller shall take appropriate measures to provide the data subject with any information referred to in Articles 16 and 17 and any communication referred to in Articles 18 to 24 and Article 34 relating to processing of personal data in a concise, transparent, intelligible and easily accessible form, using clear and plain language. The information is to be provided in writing or by other means, including, where appropriate, electronic means. When requested by the data subject, the information may be provided orally, provided that the identity of the data subject is proven by other means.

- (2) The controller shall facilitate the exercise of data subject rights under Articles 18 to 24. The controller shall provide data subjects with information on measures taken on a request under Articles 18 to 24 without undue delay and in any event within one month of receipt of the request. The controller, acting in consultation with the Data Protection Officer, may extend that period by two further months where necessary in view of the complexity and number of requests. If such an extension of the standard time limit is needed, the controller shall duly notify the data subject of the extension and the reasons for the delay within one month of the Office's receipt of the request. Where the data subject makes the request by electronic means, the information shall be provided by electronic means where possible, unless otherwise requested by the data subject.
- (3) If the controller does not take action on the request of the data subject, the controller shall inform the data subject without delay and at the latest within one month of receipt of the request of the reasons for not taking action and of the possibility of filing a request for review and seeking legal redress under Articles 49 and 50.
- (4) Information provided under Articles 16 and 17 and any communication issued and actions taken under Articles 18 to 24 and 34 shall be free of charge. Where requests from a data subject are manifestly unfounded or excessive, in particular because of their repetitive character, the controller may refuse to act on the request.
- (5) Where the controller has reasonable doubts concerning the identity of the natural person making a request under Articles 18 to 24, the controller may request the provision of additional information necessary to confirm the identity of the data subject.
- (6) The information to be provided to data subjects pursuant to Articles 16 and 17 may be provided in combination with standardised icons in order to give in an easily visible, intelligible and clearly legible manner a meaningful overview of the intended processing. Where the icons are presented electronically, they shall be machine-readable.

Article 16

Information to be provided where personal data are collected from the data subject

- (1) Where personal data relating to a data subject are collected from the data subject, the controller shall, at the time when personal data are obtained, provide the data subject with all of the following information:
 - a. the identity and the contact details of the controller;
 - b. the contact details of the Data Protection Officer;
 - c. the purposes of the processing for which the personal data are intended as well as the legal basis for the processing;
 - d. the recipients or categories of recipients of the personal data, if any;

- e. where applicable, the fact that the controller intends to transfer personal data to recipients under Article 9 and reference to the appropriate or suitable safeguards and the means by which to obtain a copy of them or where they have been made available.
- (2) In addition to the information referred to in paragraph 1, the controller shall, at the time when personal data are obtained, provide the data subject with the following further information necessary to ensure fair and transparent processing:
- a. the period for which the personal data will be stored or, if that is not possible, the criteria used to determine that period;
 - b. the existence of the right to request from the controller access to and rectification or erasure of personal data or restriction of processing concerning the data subject or, where applicable, the right to object to processing or the right to data portability;
 - c. where the processing is based on Article 5(d) or Article 11(2)(a), the existence of the right to withdraw consent at any time, without affecting the lawfulness of processing based on consent before its withdrawal;
 - d. the right to request review by the delegated controller under Article 49 and the right to seek legal redress under Article 50;
 - e. whether the provision of personal data is a statutory or contractual requirement, or a requirement necessary to enter into a contract, as well as whether the data subject is obliged to provide the personal data and the possible consequences of a failure to provide such data;
 - f. the existence of automated decision-making, including profiling, referred to in Article 24(1) and (4) and, at least in those cases, meaningful information about the logic involved, as well as the significance and the envisaged consequences of such processing for the data subject.
- (3) Where the delegated controller intends to further process the personal data for a purpose other than that for which the personal data were collected, the delegated controller shall provide the data subject with information on that other purpose and with any relevant further information referred to in paragraph 2 prior to that further processing.
- (4) Paragraphs 1, 2 and 3 do not apply where and in so far as the data subject already has the information.

Article 17

Information to be provided where personal data have not been obtained from the data subject

- (1) Where personal data have not been obtained from the data subject, the controller shall, at the time when personal data are obtained and in addition to the information to be provided under Article 16, provide the data subject with information on the categories of personal data concerned and the source of the personal data and, if applicable, whether they came from publicly accessible sources.

- (2) In addition to the information referred to in paragraph 1, the controller shall provide the data subject with the following further information necessary to ensure fair and transparent processing in respect of the data subject:
 - a. the period for which the personal data will be stored or, if that is not possible, the criteria used to determine that period;
 - b. the existence of the right to request from the controller access to and rectification or erasure of personal data or restriction of processing concerning the data subject or, where applicable, the right to object to processing or the right to data portability;
 - c. where the processing is based on Article 5(d) or Article 11(2)(a), the existence of the right to withdraw consent at any time, without affecting the lawfulness of processing based on consent before its withdrawal;
 - d. the right to request review by the delegated controller under Article 49 and the right to seek legal redress under Article 50;
 - e. from which source the personal data originate, and if applicable, whether they came from publicly accessible sources;
 - f. the existence of automated decision-making, including profiling, referred to in Article 24(1) and (4) and, at least in those cases, meaningful information about the logic involved, as well as the significance and the envisaged consequences of such processing for the data subject.
- (3) The controller shall provide the data subject with the information referred to in paragraphs 1 and 2:
 - a. within a reasonable period after obtaining the personal data, but at the latest within one month, having regard to the specific circumstances in which the personal data are processed,
 - b. if the personal data are to be used for communication with the data subject, at the latest at the time of the first communication to that data subject, or
 - c. if a disclosure to another recipient is envisaged, at the latest when the personal data are first disclosed.
- (4) Where the controller intends to further process the personal data for a purpose other than that for which the personal data were obtained, the controller shall provide the data subject prior to that further processing with information on that other purpose and with any relevant further information as referred to in paragraph 2.
- (5) Paragraphs 1 to 4 shall not apply where and insofar as:
 - a. the data subject already has the information;
 - b. the provision of such information proves impossible or would involve a disproportionate effort, in particular for processing for archiving purposes in the legitimate exercise of the official authority vested in the controller, scientific or historical research purposes or statistical purposes or in so far as the obligation referred to in paragraph 1 is likely to

- render impossible or seriously impair the achievement of the objectives of that processing;
- c. obtaining or disclosure is expressly laid down in the European Patent Convention and/or other applicable legal provisions of the European Patent Organisation which provide appropriate measures to protect the data subject's legitimate interests; or
 - d. the personal data must remain confidential subject to an obligation of professional secrecy regulated on the basis of the European Patent Convention and/or other applicable legal provisions of the European Patent Organisation, including a statutory obligation of secrecy.

Article 18 **Rights of access by the data subjects**

- (1) The data subject has the right to obtain from the controller confirmation as to whether or not personal data concerning him or her are being processed and, if so, to access the personal data easily and at reasonable intervals, to understand which data about him or her are processed, to verify the quality of his or her personal data, to verify the lawfulness of their processing and to exercise his or her other data protection rights and be provided with the following information:
 - a. the purposes of the processing;
 - b. the categories of personal data concerned;
 - c. the recipients or categories of recipient to which the personal data have been or will be disclosed, in particular recipients in third countries or international organisations;
 - d. where possible, the envisaged period for which the personal data will be stored or, if not possible, the criteria used to determine that period;
 - e. the existence of the right to request from the controller rectification or erasure of personal data or restriction of processing of personal data concerning the data subject or to object to such processing;
 - f. the right to request review by the delegated controller under Article 49 and to seek legal redress under Article 50;
 - g. where the personal data are not collected from the data subject, any available information as to their source;
 - h. the existence of automated decision-making, including profiling referred to in Article 24(1) and (4) and, at least in those cases, meaningful information about the logic involved, as well as the significance and the envisaged consequences of such processing for the data subject.
- (2) Where personal data are transferred in accordance with Article 9, the data subject has the right to be informed of the appropriate safeguards pursuant to the same Article put in place for the transfer.
- (3) The right of the data subject to access his or her own personal data does not entitle the data subject to an indiscriminate right to access all documents. The controller shall grant access to the data subject to the fullest extent possible unless a restriction under Article 25 applies. The controller shall provide a copy in an intelligible form of the data undergoing processing

and of all available information (of any kind, regardless of its nature (objective or subjective), content (including any type of activity undertaken), or format (paper file, computer records, emails)). If necessary to safeguard the confidentiality of the Office's deliberations and decision-making, certain information may be deleted from the copy provided to the data subject. Where the data subject makes the request by electronic means, and unless otherwise requested by the data subject, the information shall be provided in a commonly used electronic form.

- (4) Where the controller processes a large quantity of information concerning the data subject, the controller is able to request that, before the information is delivered, the data subject specifies the information or processing activities to which the request relates.
- (5) The right to obtain a copy referred to in paragraph 3 shall not adversely affect the rights and freedoms of others.

Article 19 **Right to rectification**

- (1) The data subject has the right to obtain from the controller without undue delay the rectification of inaccurate personal data concerning him or her. Taking into account the purposes of the processing, the data subject has the right to have incomplete personal data completed, including by means of providing a supplementary statement.
- (2) The right of rectification only applies to objective and factual data, e.g. identification data, which can be rectified at any time during a procedure or identification data linked to an administrative management system. It does not apply to subjective statements, including those made by third parties. However, in such cases, the data subject shall be permitted to complement existing data with a second opinion or counter-expertise or to provide comments.
- (3) The controller shall communicate any rectification of personal data carried out in accordance with paragraph 1 to each recipient to whom the personal data have been disclosed, unless this proves impossible or involves disproportionate effort. The controller shall inform the data subject about those recipients if the data subject requests it.

Article 20 **Right to erasure ("right to be forgotten")**

- (1) The data subject has the right to obtain from the controller the erasure of personal data concerning him or her without undue delay and the controller is obliged to erase personal data without undue delay where one of the following grounds applies:
 - a. the personal data are no longer necessary in relation to the purposes for which they were collected or otherwise processed;

- b. the data subject withdraws the consent on which the processing is based under Article 5(d) or Article 11(2)(a) and there is no other legal ground for the processing;
 - c. the data subject objects to the processing pursuant to Article 23(1) and there are no overriding legitimate grounds for the processing;
 - d. the personal data were unlawfully processed;
 - e. the personal data have to be erased for compliance with a legal obligation to which the controller is subject;
 - f. the personal data have been collected in relation to the offer of information society services referred to in Article 7(8).
- (2) Where the controller has made the personal data public and is obliged pursuant to paragraph 1 to erase the personal data, the controller, taking account of available technology and the cost of implementation, shall take reasonable steps, including technical measures, to inform controllers which are processing the personal data that the data subject has requested the erasure by such controllers of any links to, or copy or replication of, those personal data.
- (3) Paragraphs 1 and 2 do not apply to the extent that processing is necessary:
- a. for exercising the right of freedom of expression and information;
 - b. for compliance with a legal obligation to which the controller is subject or for the performance of a task carried out in reason of obligations arising from the Office's duty of co-operation with the contracting states or in the exercise of official authority vested in the controller;
 - c. for reasons of co-operation with the contracting states in the area of public health in accordance with Article 11;
 - d. for archiving purposes in the legitimate exercise of the official activities of the European Patent Organisation, or of the official authority vested in the controller, which includes the processing necessary for its management and functioning, for scientific or historical research purposes or statistical purposes, in so far as the right referred to in paragraph 1 is likely to render impossible or seriously impair the achievement of the objectives of that processing; or
 - e. for the establishment, exercise or defence of legal claims.
- (4) The controller shall communicate any erasure of personal data carried out in accordance with paragraph 1 to each recipient to whom the personal data have been disclosed, unless this proves impossible or involves disproportionate effort. The controller shall inform the data subject about those recipients if the data subject requests it.

Article 21 **Right to restriction of processing**

- (1) The data subject has the right to obtain from the controller restriction of processing where one of the following applies:

- a. the accuracy of the personal data is contested by the data subject, for a period enabling the controller to verify the accuracy, including the completeness, of the personal data;
 - b. the processing is unlawful, and the data subject opposes the erasure of the personal data and requests the restriction of their use instead;
 - c. the controller no longer needs the personal data for the purposes of the processing, but they are required by the data subject for the establishment, exercise or defence of legal claims;
 - d. the data subject has objected to processing pursuant Article 23(1) pending the verification whether the legitimate grounds of the controller override those of the data subject.
- (2) Where processing has been restricted under paragraph 1, the personal data may, with the exception of storage, only be processed with the data subject's explicit consent or for the establishment, exercise or defence of legal claims or for the protection of the rights of another natural or legal person or for the performance of a task carried out in the exercise of the official activities of the European Patent Organisation or in the legitimate exercise of the official authority vested in the controller, which includes the processing necessary for the Office's management and functioning.
- (3) A data subject who has obtained restriction of processing pursuant to paragraph 1 shall be informed by the controller before the restriction of processing is lifted.
- (4) In automated filing systems restriction of processing shall as a rule be ensured by technical means. The fact that the processing of the personal data is restricted shall be indicated in the system in such a way that it is clear that the personal data shall not be used.
- (5) The controller shall communicate any restriction of processing carried out in accordance with paragraphs 1 to 4 to each recipient to whom the personal data have been disclosed, unless this proves impossible or involves disproportionate effort. The controller shall inform the data subject about those recipients if the data subject requests it.

Article 22 **Right to data portability**

- (1) The data subject has the right to receive, in a structured, commonly used and machine-readable format, the personal data concerning him or her which he or she has provided to the controller and the right to transmit those data to another controller without hindrance from the controller to which the personal data were initially provided where:
- a. the processing is based on consent pursuant to Article 5(d) or Article 11(2)(a) or on a contract pursuant to Article 5(c); and
 - b. the processing is carried out by automated means.

- (2) In exercising his or her right to data portability pursuant to paragraph 1, the data subject has the right to have the personal data transmitted directly from one controller to another where technically feasible.
- (3) The exercise of the right referred to in paragraph 1 is without prejudice to Article 20. That right does not apply to processing necessary for the performance of a task carried out in the legitimate exercise of the official authority vested in the controller, which includes the processing necessary for the management and functioning of the Office.
- (4) The right referred to in paragraph 1 shall not adversely affect the rights and freedoms of others.

Article 23

The right of the data subject to object

- (1) The data subject has the right to object, on grounds relating to his or her particular situation, at any time to processing of personal data concerning him or her which is based on Article 5(a), including profiling based on that provision. The controller shall cease to process the personal data unless the controller demonstrates compelling legitimate grounds for the processing which override the interests, rights and freedoms of the data subject or for the establishment, exercise or defence of legal claims.
- (2) At the latest at the time of the first communication with the data subject, the right referred to in paragraph 1 shall be explicitly brought to the attention of the data subject and presented clearly and separately from any other information.
- (3) Without prejudice to Articles 35 and 36, in the context of the use of information society services the data subject may exercise his or her right to object by automated means using technical specifications.
- (4) Where personal data are processed for scientific or historical research purposes or statistical purposes, the data subject has the right to object, on grounds relating to his or her particular situation, to processing of personal data concerning him or her unless the processing is necessary for the performance of a task carried out in the legitimate exercise of the official authority vested in the controller, which includes the processing necessary for the Office's management and functioning.

Article 24

Automated individual decision-making, including profiling

- (1) The data subject has the right not to be subject to a decision based solely on automated processing, including profiling, which produces legal effects concerning or similarly significantly affecting him or her.
- (2) Paragraph 1 does not apply if the decision:
 - a. is necessary for entering into, or performance of, a contract between the data subject and the controller;

- b. is authorised by a legal act adopted on the basis of the European Patent Convention or other applicable legal provisions of the European Patent Organisation and also laying down suitable measures to safeguard the data subject's rights and freedoms and legitimate interests; or
 - c. is based on the data subject's explicit consent.
- (3) In the cases referred to in paragraph 2(a) and (c), the controller shall implement suitable measures to safeguard the data subject's rights and freedoms and legitimate interests, including at least the right to obtain human intervention on the part of the controller, to express his or her point of view and to contest the decision.
- (4) Decisions referred to in paragraph 2 shall not be based on special categories of personal data referred to in Article 11(1), unless Article 11(2)(a) or (f) applies and suitable measures to safeguard the data subject's rights and freedoms and legitimate interests are in place.

Article 25 **Restriction of rights**

- (1) Specific legal provisions may restrict the application of Articles 15 to 22, 34 and 35, as well as of Article 4 in so far as its provisions correspond to the rights and obligations provided for in Articles 15 to 22, when such a restriction respects the essence of the fundamental rights and freedoms and is a necessary and proportionate measure in a democratic society to safeguard:
- a. the European Patent Organisation's security, public security or defence of the contracting states;
 - b. the prevention, investigation, detection and prosecution of criminal offences or the enforcement of criminal penalties, including the safeguarding against and the prevention of threats to public security and including cases in which Article 20 of the Protocol of Privileges and Immunities is applied;
 - c. other substantial interests of the European Patent Organisation pertaining to its core mission, or in reason of obligations arising from the duty of co-operation with the contracting states, including monetary, budgetary and taxation matters, public health and social security;
 - d. the internal security of the Office, including of its electronic communications networks;
 - e. the protection of judicial and quasi-judicial independence and judicial and quasi-judicial proceedings;
 - f. the prevention, investigation, detection and sanction of breaches of ethics for regulated professions;
 - g. a monitoring, inspection or regulatory function connected, even occasionally, to the exercise of official authority;
 - h. the protection of the data subject or the rights and freedoms of others;
 - i. the enforcement of civil law claims.

- (2) In particular, any such specific legal provision of the European Patent Organisation within the meaning of paragraph 1 shall contain specific provisions, where relevant, as to:
 - a. the purposes of the processing or categories of processing;
 - b. the categories of personal data;
 - c. the scope of the restrictions introduced;
 - d. the safeguards to prevent abuse or unlawful access or transfer;
 - e. the specification of the controller or categories of controllers;
 - f. the storage periods and the applicable safeguards, taking into account the nature, scope and purposes of the processing or categories of processing; and
 - g. the risks to the rights and freedoms of data subjects.
- (3) The restrictions are subject to following limits:
 - a. The provisions on the basis of which the restrictions referred to in paragraph 1 take place shall be clear and precise and intended to produce legal effects vis-à-vis data subjects. They shall be adopted at least at the level of the President of the Office. When the President of the Boards of Appeal is the controller, they shall be adopted at least at the level of the President of the Boards of Appeal. In both cases, they shall be submitted to the Administrative Council for information. On the basis of these provisions, each time a delegated controller needs to impose a restriction it shall first carry out a duly documented "necessity and proportionality test". The Data Protection Officer shall be involved in the "proportionality and necessity test assessment note" and the subsequent reviews and shall keep a register listing all decisions allowing delegated controllers to apply restrictions.
 - b. If a restriction is imposed pursuant to paragraph 1, the data subject shall be informed of the principal reasons on which the application of the restriction is based and of his or her right to submit a request to the Data Protection Officer under Article 43(2) and/or of the possibility of filing a request for review by the delegated controller and seeking legal redress under Articles 49 and 50.
 - c. If a restriction imposed pursuant to paragraph 1 is relied upon to deny access to the data subject, the Data Protection Officer and/or the entities involved in the request for review by the delegated controller and in the proceedings for legal redress shall, when investigating the request, only inform him or her whether the data have been processed correctly and, if not, whether any necessary corrections have been made.
- (4) Provision of the information referred to in paragraphs 3(b) and (c) and in Article 43(2) may be deferred, omitted or denied if it would cancel the effect of the restriction imposed pursuant to paragraph 1.

IV. Controller and processor

Article 26 Responsibility of the controller

- (1) Taking into account the nature, scope, context and purposes of processing and the varying likelihood and severity of any risks for the rights and freedoms of natural persons, the controller shall implement appropriate technical and organisational measures to ensure and to be able to demonstrate that processing is performed in accordance with these Rules. Those measures shall be reviewed and updated where necessary.
- (2) Where proportionate in relation to processing activities, the measures referred to in paragraph 1 shall include the implementation of appropriate data protection policies by the controller.
- (3) Adherence to approved certification mechanisms may serve as evidence of compliance with the obligations of the controller.

Article 27 Data protection by design and by default

- (1) Taking into account the state of the art, the cost of implementation and the nature, scope, context and purposes of processing and the varying likelihood and severity of any risks for rights and freedoms of natural persons posed by the processing, the controller shall, both at the time of the determination of the means for processing and at the time of the processing itself ("by design"), implement appropriate technical and organisational measures which are designed to implement the data protection principles outlined in Article 4 and to integrate the necessary safeguards into the processing in order to meet the requirements of these Rules.
- (2) The controller shall implement appropriate technical and organisational measures for ensuring that, by default, only personal data which are necessary for each specific purpose of the processing are processed. That obligation applies to the amount of personal data collected, the extent of their processing, the period of their storage and their accessibility. In particular, such measures shall ensure that, by default, personal data are not made accessible to an indefinite number of natural persons without the individual's intervention.
- (3) A certification mechanism may serve as evidence of compliance with the requirements set out in paragraphs 1 and 2.

Article 28 Controller and delegated controllers

- (1) The President of the Office acts as the controller of the personal data processed by the Office, unless otherwise specified.

- (2) The President of the Boards of Appeal acts as the controller with regard to the personal data processing operations carried out as part of the judicial activity of the Boards of Appeal and in the exercise of functions and powers under the Act of Delegation. With regard to the personal data processing operations carried out by the Boards of Appeal Unit in the context of all other activities, the President of the Boards of Appeal acts as a delegated controller.
- (3) The controller is free to delegate the competence of determining the purposes and means of processing certain personal data to an operational unit.
- (4) Delegated controllers may not sub-delegate the controllership unless a specific unit's functional independence might otherwise be jeopardised or its size exceptionally requires a sub-delegation to a lower hierarchical level and the Data Protection Officer authorises it. The requisite act of sub-delegation or its withdrawal is valid only if the Data Protection Officer has been notified of it.

Article 29 **Joint controllers**

- (1) Where the controller together with one or more controllers outside the Office jointly determine the purposes and means of processing, they will be joint controllers. Joint controllers shall determine, in a transparent manner, their respective responsibilities for compliance with their data protection obligations, in particular as regards the exercising of the rights of the data subject and their respective duties to provide the information referred to in Articles 16 to 24, by means of an arrangement between them. The arrangement may designate a contact point for data subjects.
- (2) The arrangement referred to in paragraph 1 shall duly reflect the respective roles and relationships of the joint controllers vis-à-vis the data subjects. The essence of the arrangement shall be made available to the data subject as further specified in the operational documents.
- (3) Irrespective of the terms of the arrangement referred to in paragraph 2, the data subject may request exercise of his or her rights under these Rules in respect of, and enforce these rights against, each of the controllers.

Article 30 **Processor**

- (1) Where processing is to be carried out on behalf of the controller, the controller shall use only processors providing sufficient guarantees that appropriate technical and organisational measures will be implemented in such a manner that processing will meet the requirements of these Rules and ensure the protection of the rights of the data subject.
- (2) The processor shall not engage another processor without prior specific or general written authorisation from the controller. In the case of general

written authorisation, the processor shall inform the controller of any intended changes concerning the addition or replacement of other processors, thereby giving the controller the opportunity to object to such changes.

- (3) Processing by a processor shall be governed by a contract or legal act, adopted on the basis of the applicable legal provisions of the European Patent Organisation, which is binding on the processor with regard to the controller and sets out the subject-matter and duration of the processing, the nature and purpose of the processing, the type of personal data and categories of data subjects and the obligations and rights of the controller. That contract or other legal act shall stipulate, in particular, that the processor:
- a. processes the personal data only on documented instructions from the controller, including with regard to transfers of personal data to a third country or an international organisation, unless required to do so by the law to which the processor is subject; in such a case, the processor shall inform the controller of that legal requirement before processing, unless that law prohibits such information on important grounds of public interest;
 - b. ensures that persons authorised to process the personal data have undertaken to maintain confidentiality or are under an appropriate statutory obligation of confidentiality;
 - c. takes all appropriate technical and organisational measures to ensure a level of security appropriate to the risk;
 - d. respects the conditions referred to in paragraphs 2 and 4 for engaging another processor;
 - e. taking into account the nature of the processing, assists the controller, as far as possible, by appropriate technical and organisational measures to fulfil the controller's obligation to respond to requests for exercising the data subject's rights laid down in these Rules;
 - f. assists the controller in ensuring compliance with its obligations, taking into account the nature of processing and the information available to the processor;
 - g. at the choice of the controller, deletes or returns all the personal data to the controller after the end of the provision of services relating to processing, and deletes existing copies unless the applicable law requires storage of the personal data and the Office agrees to such storage;
 - h. makes available to the controller all information necessary to demonstrate compliance with the obligations laid down in this Article and allow for and contribute to audits, including inspections, conducted by the controller or another auditor mandated by the controller.

With regard to point (h) above, the processor shall immediately inform the controller if, in its opinion, an instruction infringes these Rules.

- (4) Where a processor engages another processor to carry out specific processing activities on behalf of the controller, the same data protection obligations as set out in the legal act or contract between the controller and the processor referred to in paragraph 3 shall be imposed on that other processor by

way of a contract or other legal instrument, in particular as regards providing sufficient guarantees that appropriate technical and organisational measures will be implemented in such a manner that the processing will meet the requirements of these Rules. Where that other processor fails to fulfil its data protection obligations, the initial processor will remain fully liable to the controller for the performance of that other processor's obligations.

- (5) Adherence of the processor to an approved code of conduct or an approved certification mechanism may serve as evidence of sufficient guarantees as referred to in paragraphs 1 and 4. A list of the codes of conducts and certification mechanisms approved by the Office will be published.
- (6) Without prejudice to any individual contract between the controller and the processor, the contract or the other legal act referred to in paragraphs 3 and 4 may be based, in whole or in part, on standard contractual clauses referred to in paragraphs 7 and 8, including when they are part of a certification granted to the processor.
- (7) The Office may lay down standard contractual clauses for the matters referred to in paragraph 3 and 4 or approve standard contractual clauses adopted by other institutions.
- (8) The contract or the other legal act referred to in paragraphs 3 and 4 shall be in writing, which may also take electronic form.
- (9) Without prejudice to Article 52, if a processor infringes these Rules by determining the purposes and means of processing, the processor will be considered to be a controller in respect of that processing.

Article 31

Processing under the authority of the controller or processor

The processor and any person acting under the authority of the controller or the processor who has access to personal data shall not process those data except on instructions from the controller, unless required to do so by the law to which the processor is subject.

Article 32

Records of processing activities

- (1) Each controller shall maintain a record of processing activities under its responsibility. That record shall contain all of the following information:
 - a. the name and contact details of the controller and/or the delegated controller, the Data Protection Officer and, where applicable, the processor and the joint controller;
 - b. the purposes of the processing;
 - c. a description of the categories of data subjects and of the categories of personal data;

- d. the categories of recipients to which the personal data have been or will be disclosed, including recipients in third countries or other international organisations;
 - e. where applicable, transfers of personal data to a third country or an international organisation, including the identification of that third country or international organisation and the documentation of suitable safeguards;
 - f. where possible, the envisaged time limits for erasure of the different categories of data;
 - g. where possible, a general description of the technical and organisational security measures referred to in Article 33.
- (2) Each processor shall maintain a record of all categories of processing activities carried out on behalf of the controller which contains:
- a. the names and contact details of the processor or processors, each controller on behalf of which the processor is acting and the Data Protection Officer;
 - b. the categories of processing carried out on behalf of each controller;
 - c. where applicable, transfers of personal data to a third country or an international organisation, including the identification of that third country or international organisation and the documentation of suitable safeguards;
 - d. where possible, a general description of the technical and organisational security measures referred to in Article 33.
- (3) The records referred to in paragraphs 1 and 2 shall be in writing, which may also take electronic form.
- (4) The Office shall make its records available to the Data Protection Board on request.
- (5) The Office's records of processing activities will be kept in a central register.
- (6) The central register will be made publicly accessible, save for any confidential records.

V. Confidentiality and security of processing

Article 33

Confidentiality and security of processing

- (1) Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the varying likelihood and severity of any risks for the rights and freedoms of natural persons, the controller and the processor shall implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk, including, as appropriate:

- a. the pseudonymisation and encryption of personal data;
 - b. the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
 - c. the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident;
 - d. a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing.
- (2) In assessing the appropriate level of security, account shall be taken in particular of the risks that are presented by processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or access to personal data transmitted, stored or otherwise processed.
 - (3) The controller and processor shall take steps to ensure that any natural person acting on behalf of the controller or the processor who has access to personal data does not process them except on instructions from the controller, unless required to do so by the law to which he or she is subject. This exemption does not apply to persons covered by Article 1 of the Service Regulations.
 - (4) Specific requirements as to data security will be laid down in the operational documents. Adherence to an approved certification mechanism may serve as evidence of compliance with the requirements set out in paragraph 1.

Article 34

Notification and communication of a personal data breach

- (1) In the case of a personal data breach, the controller shall, without undue delay and, where feasible, no later than 72 hours after having become aware of it, notify the Data Protection Officer of this personal data breach unless it is unlikely to result in a risk to the rights and freedoms of natural persons. Where the notification does not take place within 72 hours, it shall be accompanied by reasons for the delay.
- (2) The processor shall notify the controller without undue delay after becoming aware of a personal data breach.
- (3) The notification referred to in paragraph 1 shall at least:
 - a. describe the nature of the personal data breach, including, where possible, the categories and approximate number of data subjects concerned and the categories and approximate number of personal data records concerned;
 - b. describe the likely consequences of the personal data breach;
 - c. describe the measures taken or proposed to be taken by the controller to address the personal data breach, including, where appropriate, measures to mitigate its possible adverse effects.

- (4) Where, and in so far as, it is not possible to provide details of the breach at the same time, this information may be provided in phases but this shall be done without undue further delay.
- (5) The controller shall document any personal data breaches, including the facts relating to the personal data breach, its effects and the remedial action taken. That documentation shall enable the Data Protection Officer to verify compliance with this Article.
- (6) When the personal data breach is likely to result in a high risk to the rights and freedoms of natural persons, the controller shall communicate the personal data breach to the data subject without delay. The communication to the data subject shall describe the nature of the personal data breach in clear and plain language.
- (7) Details of the complete information to be provided in the notification under paragraph 1 and in the communication under paragraph 6 will be specified in the operational documents.
- (8) No communication to the data subject is required if any of the following conditions are met:
 - (i) the controller has implemented appropriate technical and organisational measures, and those measures have been applied to the personal data affected by the personal data breach, in particular those that render the personal data unintelligible to any person who is not authorised to access it, such as encryption;
 - (ii) the controller has taken subsequent measures which ensure that the high risk to the rights and freedoms of data subjects is no longer likely to materialise;
 - (iii) it would involve disproportionate effort, in which case there shall instead be a public communication or similar measure whereby the data subjects are informed in an equally effective manner.
- (9) If the controller has not already communicated the personal data breach to the data subject, the Data Protection Officer, having considered the likelihood of the personal data breach resulting in a high risk, may require it to do so or may decide that any of the conditions referred to in paragraph 8 are met.

Article 35

Confidentiality of electronic communications

The Office shall ensure the confidentiality of electronic communications, in particular by securing its electronic communications networks.

Article 36

Protection of information transmitted to, stored in, related to, processed by and collected from users' terminal equipment

The Office shall protect the information transmitted to, stored in, related to, processed by and collected from the terminal equipment of users accessing its publicly available websites and mobile applications.

Article 37

Directories of users

- (1) Personal data contained in directories of users and access to such directories shall be limited to what is strictly necessary for the specific purposes of the directory.
- (2) The Office shall take all the necessary measures to prevent personal data contained in those directories from being used for direct marketing purposes, regardless of whether they are accessible to the public or not.

Article 38

Data protection impact assessment and prior consultation

- (1) Where a type of processing, including the setting up or substantial alteration of any files and any automated processing of personal data, is likely to result in a high risk to the rights and freedoms of the data subject by virtue of its context, nature, scope or purpose, the controller shall, prior to the processing, carry out an objective assessment of the impact of the envisaged processing operations on the protection of personal data.
- (2) The controller will seek the advice of the Data Protection Officer on the need for a data protection impact assessment and when carrying out any such an assessment. In cases of doubt, the controller will, upon recommendation of the Data Protection Officer, consult the Data Protection Board on the need for a data protection impact assessment and request its opinion.
- (3) High risks to the rights and freedoms of data subjects within the meaning of paragraph 1 and the minimum content required in the data protection impact assessment will be defined and further specified in the operational documents.
- (4) A data protection impact assessment within the meaning of paragraph 1 is, in particular, required in the case of:
 - a. a systematic and extensive evaluation of personal aspects relating to natural persons which is based on automated processing, including profiling, and on which decisions are based that produce legal effects concerning the natural person or similarly significantly affect the natural person;

- b. processing on a large scale of special categories of data referred to in Article 11 or of personal data relating to criminal convictions and offences referred to in Article 12; or
 - c. a systematic monitoring of a publicly accessible area on a large scale.
- (5) The Data Protection Board will draw up a list of the kinds of processing operation subject to the requirement of a data protection impact assessment pursuant to paragraph 1. This list will be part of the operational documents. It may also draw up a list of the kinds of processing operation for which no data protection impact assessment is required.
- (6) In accordance with Article 39, the controller will consult the Data Protection Board prior to processing where a data protection impact assessment indicates that the processing would result in a high risk to the rights and freedoms of natural persons and the controller is of the opinion that the risk cannot be mitigated by reasonable security measures as defined in Article 33. The controller will first seek the advice of the Data Protection Officer on the need for prior consultation.
- (7) Where the Data Protection Board is of the opinion that the intended processing referred to in paragraph 1 would infringe these Rules, in particular where the controller has insufficiently identified or mitigated the risk, the Data Protection Board will, within a period of up to eight weeks from receipt of the request for consultation, provide the controller and, where applicable, the processor with written advice.
- (8) The assessment shall contain at least:
- a. a systematic description of the envisaged processing operations and the purposes of the processing;
 - b. an assessment of the need for and proportionality of the processing operations in relation to the purposes;
 - c. an assessment of the risks to the rights and freedoms of data subjects referred to in paragraph 1; and
 - d. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of personal data and to demonstrate compliance with these Rules, taking into account the rights and legitimate interests of data subjects and other persons concerned.
- (9) Compliance with approved codes of conduct by the relevant processors shall be duly taken into account in assessing the impact of the processing operations performed by such processors, in particular for the purposes of a data protection impact assessment.
- (10) Where appropriate, the controller shall seek the views of data subjects or their representatives on the intended processing, without prejudice to the protection of the Office's interests or the security of processing operations.
- (11) Where processing pursuant to Article 5(a) or (b) has a legal basis in a legal act adopted on the basis of the European Patent Convention which regulates

the specific processing operation or set of operations in question, and where a data protection impact assessment has already been carried out as part of a general impact assessment preceding the adoption of that legal act, paragraphs 1 to 7 will not apply unless that legal act provides otherwise.

- (12) Where necessary, the controller will carry out a regular review to assess whether processing is performed in accordance with the data protection impact assessment, at least when there is a change in the risk represented by processing operations in question.

Article 39

Prior consultation of the Data Protection Board

- (1) The controller shall consult the Data Protection Board prior to processing where a data protection impact assessment under Article 38 indicates that, in the absence of safeguards, security measures and mechanisms to mitigate the risk, the processing would result in a high risk to the rights and freedoms of natural persons but the controller is of the opinion that the risk cannot be mitigated by reasonable means in view of the available technologies and costs of implementation. The controller shall seek the advice of the Data Protection Officer on the need for prior consultation.
- (2) Where the Data Protection Board is of the opinion that the intended processing referred to in paragraph 1 would infringe these Rules, in particular where the controller has insufficiently identified or mitigated the risk, the Data Protection Board shall, within a period of up to eight weeks from receipt of the request for consultation, provide the controller and, where applicable, the processor with written advice and may use any of its powers referred to in Article 47. That period may be extended by six weeks, taking into account the complexity of the intended processing. The Data Protection Board shall inform the controller and, where applicable, the processor of any such extension and the reasons for the delay within one month of receipt of the request for consultation. Those periods may be suspended until the Data Protection Board has obtained information it has requested for the purposes of the consultation.
- (3) When consulting the Data Protection Board pursuant to paragraph 1, the controller shall provide it with:
 - a. where applicable, the respective responsibilities of the controller, joint controllers and processors involved in the processing;
 - b. the purposes and means of the intended processing;
 - c. the measures and safeguards provided to protect the rights and freedoms of data subjects pursuant to these Rules;
 - d. the contact details of the Data Protection Officer;
 - e. the data protection impact assessment provided for in Article 38; and
 - f. any other information requested by the Data Protection Board.

VI. Information and consultation

Article 40

Information and consultation of the Data Protection Officer

- (1) The controller shall inform the Data Protection Officer when drawing up administrative measures and internal rules relating to the processing of personal data, whether alone or jointly with others.
- (2) The controller shall consult the Data Protection Officer when drawing up rules or operational documents related to the implementation of the provisions referred to in Article 25.

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VII. Institutional provisions

Article 41

Appointment of the Data Protection Officer

The Data Protection Officer and his or her deputies are appointed by the President of the Office on the basis of their professional qualifications and, in particular, their expert knowledge of data protection law and practices and their ability to fulfil the duties referred to in Articles 43 and 44. The Office will publish their contact details and communicate them to the Data Protection Board.

Article 42

Position of the Data Protection Officer

- (1) The Office shall ensure that the Data Protection Officer is involved, properly and in a timely manner, in all issues which relate to the protection of personal data.
- (2) The Office shall support the Data Protection Officer in performing the tasks referred to in Article 43 by providing the resources necessary to carry out those tasks, including access to personal data and processing operations, and to maintain his or her expert knowledge.
- (3) The Office shall ensure that the Data Protection Officer does not receive any instructions regarding the exercise of those tasks. He or she cannot be dismissed or penalised by the controller or the processor for performing those tasks. The Data Protection Officer reports directly to the President of the Office. Where the processing operation is conducted under the organisational autonomy granted to the Boards of Appeal by the President of the Office by virtue of the Act of Delegation, the Data Protection Officer reports directly to the President of the Boards of Appeal.
- (4) Data subjects may contact the Data Protection Officer with regard to all issues related to processing of their personal data and to the exercise of their rights under these Rules.

- (5) The Data Protection Officer and his or her staff are bound by secrecy or confidentiality as regards the performance of their tasks, both for as long as they perform their functions and after they have ceased to perform them in accordance with the Service Regulations.
- (6) The Data Protection Officer may fulfil other tasks and duties. The controller shall ensure that any such tasks and duties do not result in a conflict of interest.
- (7) The Data Protection Officer may be consulted, also by informal means, by the controller and the processor and by any individual or any body set up under Article 2 of the Service Regulations on any matter concerning the interpretation or application of these Rules. No one is to suffer prejudice on account of bringing an alleged infringement of these Rules to the attention of the Data Protection Officer.
- (8) The Data Protection Officer is appointed for a term of three to five years and eligible for re-appointment. The Data Protection Board shall be consulted prior to any removal of the Data Protection Officer from his or her role where, for example, the position holder no longer fulfils the conditions required for the performance of his or her duties and prior to any termination of his or her appointment as Data Protection Officer on the basis of the relevant provisions of the Service Regulations.

Article 43

Tasks of the Data Protection Officer

- (1) The tasks of the Data Protection Officer are:
 - a. to inform the controller or the processor and the employees who carry out processing of their obligations pursuant to these Rules and to advise them accordingly;
 - b. to monitor in an independent manner the internal application of and the compliance with these Rules, other legal provisions of the European Patent Organisation having data protection implications and the policies of the controller or processor in relation to the protection of personal data, including the assignment of responsibilities;
 - c. to raise awareness among and provide training for staff involved in processing operations;
 - d. to carry out data protection audits and investigations;
 - e. to ensure that data subjects are informed of their rights and obligations pursuant to these Rules;
 - f. to provide advice where requested as regards the need to communicate a personal data breach pursuant to Article 34;
 - g. to provide advice where requested as regards the data protection impact assessment and monitor its performance pursuant to Article 38, and to consult the Data Protection Board in cases of doubt as to the need for a data protection impact assessment;
 - h. to provide advice where requested as regards the need for prior consultation of the Data Protection Board pursuant to Article 39;

- i. to respond to requests from the Data Protection Board; within the sphere of his or her competence, to co-operate and consult with the Data Protection Board at its request or on his or her own initiative;
 - j. to facilitate the co-operation between the Data Protection Board and the Office, in particular with regard to data protection investigations, complaint handling, data protection impact assessments and prior consultations, duly informing the Data Protection Board of any recent developments likely to have an impact on the protection of personal data, and forwarding to the Data Protection Board information on new administrative measures and internal rules relating to the processing of personal data;
 - k. to establish, by way of monitoring, that the rights and freedoms of data subjects are not adversely affected by the Office's processing operations. As a rule, data subjects may at any time consult the Data Protection Officer and submit requests related to processing of their personal data by the Office or the interpretation and implementation of the Rules and it is initially for the Data Protection Officer to respond to such requests. This does not, however, prevent a data subject from using the possibilities of filing a request for review and seeking legal redress under Articles 49 and 50.
- (2) The Data Protection Officer may make recommendations to the controller and the processor for the practical improvement of data protection and advise them on matters concerning the application of data protection provisions. Furthermore, he or she may, on his or her own initiative or at the request of the President, the delegated controller, the processor or any body set up under the legal provisions of the European Patent Organisation or of any individual concerned, investigate matters and occurrences directly relating to his or her tasks which come to his or her notice, and report back to the person who commissioned the data protection investigation or to the President of the Office, the delegated controller, the processor or the body set up under the legal provisions of the European Patent Organisation. Where matters and occurrences to be investigated concern the Boards of Appeal Unit, the Data Protection Officer may bring them to the attention of the President of the Boards of Appeal.
 - (3) The Data Protection Officer shall be informed whenever an issue is under consideration that has, or might have, data protection implications.
 - (4) If proceedings for the settlement of disputes under Articles 108 to 110a of the Service Regulations involve data protection aspects, the Data Protection Officer shall be consulted in accordance with the procedure provided for in Article 51.
 - (5) The Data Protection Officer shall have access at all times to the data forming the subject-matter of processing operations and to all offices, data-processing installations and data carriers.
 - (6) The Data Protection Officer may bring to the attention of the appointing authority any failure by an employee to comply with the obligations under

these Rules and, where appropriate, recommend that an administrative investigation be launched to establish whether any action needs to be taken in accordance with the Service Regulations. Where the employee in question is allocated to the Boards of Appeal Unit, the Data Protection Officer may also bring such a failure to comply with the obligations under these Rules to the attention of the President of the Boards of Appeal.

- (7) The Data Protection Officer will submit an annual report to the Administrative Council, the President of the Office, and the President of the Boards of Appeal.

Article 44 **Deputy Data Protection Officers**

- (1) The Deputy Data Protection Officers will support the Data Protection Officer in carrying out his or her tasks and duties and deputise in the event of his or her absence. The Deputy Data Protection Officers and any staff assisting the Data Protection Officer in relation to data protection issues will act solely on his or her instructions. The Deputy Data Protection Officers will be chosen in such a way as to ensure an adequate representation of the fields of expertise required in data protection matters.
- (2) Article 42 (2), (5) and (8) applies *mutatis mutandis* to the Deputy Data Protection Officers.
- (3) The Data Protection Officer may ask the Deputy Data Protection Officers to perform certain tasks independently.

Article 45 **Data Protection Liaisons**

- (1) At least one Data Protection Liaison is to be appointed in each operational unit unless the delegated controller decides otherwise for operational reasons.
- (2) The Data Protection Liaison's function can be combined with other functions as appropriate. To acquire the skills required to perform their function, Data Protection Liaisons will undergo compulsory training on data protection.
- (3) Data Protection Liaisons will be appointed for a renewable term of one to three years. They will be chosen, at the appropriate hierarchical level, on the basis of their high professional ethics, their knowledge and experience of the workings of their operational unit and their motivation to perform the function.
- (4) Without prejudice to the responsibilities of the Data Protection Officer or the controller, the Data Protection Liaisons will assist the controller in complying with its legal obligations.

Article 46

Obligation to provide assistance and information

Every employee and all operational units of the Office and bodies within the meaning of Article 2 of the Service Regulations are required to assist the Data Protection Officer, his or her Deputies and the Data Protection Liaisons in performing their duties. To enable the Data Protection Officer and, where appropriate, the Deputy Data Protection Officers to assess compliance with these Rules, they shall, at the Data Protection Officer's request, be:

- a. given information in reply to questions and be allowed to inspect all documents and all data stored in files and any data processing programmes;
- b. allowed access to all information, including personal data as well as processing operations, required to perform their tasks; and
- c. given access at all times to all EPO offices, data-processing installations and data carriers.

Article 47

Data Protection Board

- (1) The Data Protection Board has an oversight and advisory function and a function as part of the mechanism for legal redress under Article 50. It is responsible for:
 - a. monitoring, together with the Data Protection Officer, the application of these Rules and the operational documents to all data processing operations carried out by the Office;
 - b. requesting, where appropriate, co-operation from the delegated controllers and the controller in the performance of its tasks;
 - c. providing consultation for the President of the Office in cases of doubt on the adequacy of the protection afforded by a country or international organisation under Article 9(3);
 - d. overseeing the processing of data relating to criminal offences, criminal convictions or security measures under Article 5 where such processing is not covered by the legal provisions of the European Patent Organisation as provided in Article 12.
- (2) Pursuant to Articles 38 and 39, the Data Protection Board:
 - a. issues an opinion on the need for a data protection impact assessment following a request from the controller;
 - b. draws up a list of the kinds of processing operation for which a data protection impact assessment is required and may draw up a list of the kinds of processing operation for which no data protection impact assessment is required;
 - c. provides consultation for the controller, upon a recommendation from the Data Protection Officer, prior to processing where a data protection impact assessment indicates that the processing would result in a high risk to the rights and freedoms of natural persons and the controller is

- of the opinion that the risk cannot be mitigated by reasonable security measures as defined in Article 38(6).
- d. provides written advice to the controller, and where applicable to the processor, where it is of the opinion that the intended processing referred to Article 38(6) would infringe these Rules, in particular where the controller has insufficiently identified or mitigated the risk.
- (3) The Data Protection Board is responsible for:
- a. advising under Article 42(8) on dismissal of the Data Protection Officer if he or she no longer fulfils the conditions required for the performance of his or her duties;
 - b. providing an opinion where a data subject makes use of the means of redress available under Article 50.

Article 48

Appointment and composition of the Data Protection Board

- (1) The Data Protection Board is composed of three external experts in the field of data protection appointed by the President of the Office, namely a chair and two other members, one of whom acts as deputy chair. Two alternate members are to be appointed to replace these two other members if they are unable to act. The Chair may invite the Data Protection Officer or, exceptionally, other parties to the meetings of the Data Protection Board as observers.
- (2) The chair, the two other members and the alternate members shall have the qualifications required for appointment to judicial office or be data protection professionals with proven expertise and experience in the area of data protection law acquired at national or international level. They shall not be Office employees in active service or have been employed by it within the past ten years.
- (3) The chair, the other two members and the alternate members of the Data Protection Board enjoy the privileges and immunities conferred under Article 15 of the Protocol on Privileges and Immunities of the European Patent Organisation when exercising their duties as members of the Data Protection Board.
- (4) The chair, the other two members and the alternate members are appointed for a renewable term of three years.
- (5) The chair, the other two members and the alternate members of the Data Protection Board are bound by an obligation of confidentiality which continues indefinitely after their term comes to an end.
- (6) The chair, the other two members and the alternate members of the Data Protection Board are completely independent in carrying out their functions. They shall not seek nor be bound by instructions from the Office or the Administrative Council.

- (7) The chair, the other two members and the alternate members of the Data Protection Board shall refrain from acting in a case in which they have a conflict of interest, in particular a personal interest.
- (8) Where the chair of the Data Protection Board is prevented from acting, he or she will be replaced by the deputy chair. A member of the Data Protection Board who is prevented from acting will be replaced by an alternate member nominated by the chair.
- (9) In proceedings under Article 50, the Data Protection Board will be bound by separate rules of procedure adopted by the President after consultation of the President of the Boards of Appeal and submitted for information to the Administrative Council.
- (10) The Office shall support the Data Protection Board in performing the tasks referred to in this Article by providing the resources necessary to carry out those tasks, the legal and administrative support of a Secretariat and access to personal data and processing operations.

Article 49

Request for review by the delegated controller

- (1) Data subjects who consider that the processing by the Office of their personal data infringes their rights as a data subject under these Rules may request that the delegated controller review the matter and take a decision. The request shall be submitted no later than three months from the day on which the data subject was informed or otherwise became aware of the processing of personal data allegedly infringing his or her rights.
- (2) Prior to taking any decision, the delegated controller shall consult the Data Protection Officer. The Data Protection Officer shall provide the delegated controller with a written opinion no later than 15 calendar days after receipt of the request for review. If the Data Protection Officer has not provided an opinion by the end of this period, it will no longer be required.
- (3) The decision under paragraph 1 above shall be taken within one month of receipt of the request, and communicated to the data subject in writing, indicating the means of redress provided for in Article 50. This time limit may be extended by two further months where necessary, taking into account the complexity and number of the requests. If it is necessary to extend the standard time limit, the delegated controller shall duly notify the data subject of this and the reasons for the delay within one month of receipt of the request for review. If the controller or the delegated controller fails to take any action by the end of a period of three months, this will be deemed to be an implicit rejection of the request.
- (4) A decision or implicit rejection by the delegated controller under this Article is a condition for filing a complaint with the Data Protection Board under Article 50.

Article 50

Legal redress

- (1) Data subjects may challenge the decision taken under Article 49(1) by filing a complaint with the Data Protection Board within three months of receipt of the decision in accordance with Article 49(3) or, in the case of an implicit rejection, of the date of expiry of the time limit for replying to the request for review.
- (2) When examining an objection filed by a data subject, the Data Protection Board shall invite the data subject, the delegated controller and, where applicable, the processor to set out in writing their position on the claims and facts at issue and to provide evidence or comments and arguments on evidence already at hand.
- (3) After examining the objection, the evidence and any written input submitted by the data subject, the delegated controller and, where applicable, the processor, the Data Protection Board shall issue a reasoned opinion to the controller. If it finds that the Office's processing of the data subject's personal data was unlawful, it may recommend that compensation for material and/or non-material damage be awarded.
- (4) The Data Protection Board shall communicate its reasoned opinion to the controller, which will then take a final decision. The controller will normally follow the Data Protection Board's opinion. If the controller decides not to follow the opinion, it shall set out in writing the reasons for deviating from it.
- (5) When the President of the Boards of Appeal acts as the controller under the organisational autonomy granted by the Act of Delegation, he or she shall inform the President of the Office of his or her final decision. When the President of the Office takes a final decision on a complaint lodged with the Data Protection Board and concerning activities of the Boards of Appeal in which the President of the Boards of Appeal acts as the delegated controller, he or she shall inform the President of the Boards of Appeal.
- (6) The controller shall notify the data subject, the delegated controller and, where applicable, the processor, as well as the Data Protection Officer, of the final decision and the conclusions of the Data Protection Board. A copy of the decision shall also be sent to the Data Protection Board.
- (7) The persons covered by Article 1 of the Service Regulations may challenge the decision of the controller only before the Administrative Tribunal of the International Labour Organization under Article 113 of the Service Regulations.
- (8) If data subjects not covered by Article 1 of the Service Regulations disagree with the decision taken by the controller, they may ask the President of the Office, within three months of receipt of the final decision under paragraph 6, for ad-hoc arbitration proceedings under Article 52 to resolve their dispute with the Office over the processing of their personal data.

- (9) In cases in which the final decision challenged under paragraphs 7 and 8 of this Article was taken by the President of the Boards of Appeal, he or she shall be informed that the decision has been challenged.

Article 51

Incidental data protection request during internal appeal proceedings

- (1) Where proceedings for the settlement of disputes under Articles 108 to 110a of the Service Regulations involve data protection aspects, the Data Protection Officer shall be consulted by the body under the Service Regulations advising the appointing authority before delivering its opinion or, at the latest, by the competent appointing authority before taking its decision.
- (2) The Data Protection Officer shall deliver his or her opinion in writing no later than 15 calendar days after receipt of the request for consultation under paragraph 1. If the Data Protection Officer has not provided his or her opinion by the end of this period, it is no longer required.
- (3) Where the Data Protection Officer's opinion has been requested during proceedings for the settlement of disputes under Articles 108 to 110a of the Service Regulations, the proceedings may be suspended for the time needed to provide that opinion but in any event for no longer than 15 calendar days.
- (4) The appointing authority is not bound by the Data Protection Officer's opinion.

Article 52

Ad-hoc arbitration

- (1) Any dispute, controversy or claim raised by a data subject not falling within the scope of application of Article 1 of the Service Regulations arising from a decision of the controller notified to the data subject in accordance with Article 50(6) shall be the subject of final and binding arbitration in accordance with the following procedure and to the exclusion of any other national or international jurisdiction.
- (2) Within three months of receipt of the controller's final decision under Article 50(6), the data subject may request the President of the Office in writing to initiate the arbitration procedure set forth in these Rules.
- (3) Within three months of receipt of such notification by the data subject, one arbitrator shall be appointed by the Secretary-General of the Permanent Court of Arbitration.
- (4) The arbitrator shall be legally qualified, admitted to practise law in one of the contracting states and be able to demonstrate relevant expertise in data protection matters. He or she shall be familiar with the law governing international organisations. The arbitrator must not be or have been in or at the service of the Office or the data subject. He or she shall act independently and impartially.

- (5) The place of arbitration shall be The Hague (the Netherlands).
- (6) The law governing the arbitration procedure shall be the European Patent Convention, these Rules, including any implementing legislation, the law of international organisations and the principles of public international law.
- (7) The language of the proceedings shall be one of the official languages of the Office (English, French or German), as determined by the arbitrator.
- (8) Subject to this Article, the arbitrator may conduct the arbitration as he or she sees fit, provided that the parties are treated equally and each party is given the opportunity of presenting his or her case at every stage of the proceedings.
- (9) The arbitration proceedings are not public. The parties and the arbitrator shall treat the subject-matter of the proceedings confidentially. The arbitration award shall not be published.
- (10) A settlement shall be concluded in the form of a written arbitration award with an agreed wording.
- (11) The arbitrator shall fix the costs of arbitration in his or her award. The term "costs" includes the fees of the arbitrator, travel and other reasonable expenses incurred by the arbitrator, reasonable costs of expert advice required by the arbitrator and reasonable travel and other expenses of witnesses. The fees of the arbitrator shall be reasonable in amount, taking into account the complexity of the subject-matter, the time spent, the value of the dispute (if any) and other relevant circumstances of the case. Promptly after his or her appointment, the arbitrator shall inform the parties as to how he or she proposes to determine his or her fees and expenses. Within 15 calendar days of receiving that proposal, any party may refer the proposal to the Secretary-General of the Permanent Court of Arbitration for review. If the Secretary-General of the Permanent Court of Arbitration finds that the proposal is inconsistent with the principles of this paragraph, he or she shall make any necessary adjustments, which shall be binding upon the arbitrator.
- (12) The arbitrator fixes the value of the dispute by exercising his or her reasonable discretion.
- (13) The European Patent Organisation pays the arbitrator's fees and expenses, the cost of possible expert advice and witnesses. Each party pays his or her own costs for legal representation and expenses unless the arbitrator decides otherwise.

VIII. Final provisions

Article 53

Right to compensation

- (1) Any person who proves that he or she has suffered damage as a result of an infringement of these Rules may request compensation from the Office using the means of redress offered under Articles 49 and 50.
- (2) The controller or processor shall be exempt from liability under paragraph 1 if it proves that it was not responsible for the event giving rise to the damage.

3

Article 54

Sanctions

Any employee failing to comply with the obligations laid down in these Rules, whether intentionally or through negligence, may be liable to disciplinary or other action in accordance with the Service Regulations.

Article 55

Transitional provisions

- (1) The data collected up to the entry into force of these Rules will be deemed to have been lawfully collected within the meaning of Article 4.
- (2) Processing operations initiated after the adoption of these Rules shall comply with the requirements laid down in these Rules.
- (3) Processing operations which are already ongoing on the date of the adoption of these Rules shall be brought into line with the requirements laid down in these Rules within six months of the entry into force of these Rules. In exceptional cases, for which due justification shall be presented, the Data Protection Officer may allow this time limit to be extended.
- (4) The records for processing operations already entered in the Data Protection Register or covered by existing documents on the use of personal data shall be revised by the operational units concerned, brought into line with the new requirements and entered in the new central register within six months of the entry into force of these Rules.
- (5) As to restriction of rights under Article 25: specific provisions will be adopted by the President of the Office, in consultation with the Data Protection Officer and the President of the Boards of Appeal, before entry into force of these Rules.

Article 56

Entry into force/Revision

- (1) These Rules enter into force on 1 January 2022 and apply to any processing of personal data ongoing on or initiated after that date.
- (2) These Rules should be reviewed no later than five years after they have entered into force

Annex 6

to Agreement No. 2023/xxxxx

General Conditions of Contract



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. Fixing of prices

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

7.2 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 10.2), as stipulated in the Specific Conditions.

7.3 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.

8. Payment, set-off and security retention

8.1 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.

8.2 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.

8.3 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 8.1 and 8.2. Payment is considered to be made on time if the EPO's payment order reaches its bank within this period.

8.4 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 16.2). The Contractor may redeem this bond by providing a defects liability guarantee in accordance with Article 11.

- 8.5 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.
- 8.6 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.

9. Changes in Contractor's circumstances

- 9.1 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.
- 9.2 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.

- 9.3 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.

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

- 10.1 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.

- 10.2 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).
- 10.3 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.
- 10.4 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.
- 10.5 The Contractor must inform the EPO without delay of any dispute concerning Articles 5, 8 or 10 PPI (Annex C).

11. Guarantee

- 11.1 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.
- 11.2 The guarantee provided under Article 11.1 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.
- 11.3 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.

12. Contractor's staff

- 12.1 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.
- 12.2 The Contractor must pay at least the applicable minimum or collectively agreed wage and produce proof of this at the EPO's request.

12.3 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.

13. Assignment

13.1 The Contract may not be assigned in whole or in part without the express prior written consent of the EPO.

13.2 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.

13.3 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

14. Dates, periods and delay

14.1 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.

14.2 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.

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

15. Handover and acceptance

15.1 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.

15.2 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.

15.3 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.

16. Liability for defects

16.1 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.

16.2 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 16.2.

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.

16.3 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.

16.4 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.

16.5 In the case of contracts for the production of a work, the EPO, in addition to Article 16.4, 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.

16.6 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 14.1 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.

16.7 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.

16.8 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.

16.9 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.

17. Contractual penalty

17.1 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.

17.2 The foregoing provisions are without prejudice to the EPO's right to terminate the Contract in accordance with Article 19.

18. Liability

18.1 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.

18.2 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.

19. 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) provision for a right to terminate without notice for serious cause is made elsewhere in the Contract;
- (h) 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.

20. 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

21. 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.

22. Rights of third parties

- 22.1 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.
- 22.2 If the EPO is sued by a third party for infringement of any right within the meaning of Article 22.1, 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.

23. Applicable law and disputes

- 23.1 The Contract is governed by German contract law. The United Nations Convention on Contracts for the International Sale of Goods is not applicable.
- 23.2 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.
- 23.3 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.

24. Miscellaneous

- 24.1 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.
- 24.2 The Contract must be drawn up in English, French or German. All communications between the parties must be in the language of the Contract.
- 24.3 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.
- 24.4 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

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 Authorised person's signature

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 Name and position (in block capitals)

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 Place, date

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 Authorised person's signature

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 Name and position (in block capitals)

.....
 Place, date

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-Bentham-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

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Authorised person's signature

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Authorised person's signature

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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:

	Purpose
Description of purpose	Administration of the EPO Salary Saving Plan (SSP) in accordance with Article 65(3) ServRegs and its implementing rule, in particular the processing of personal data to maintain the SSP accounts of each plan participant.
Data subjects	Employees of EPO who take up their duties at the EPO on or after 1 January 2009 and are SSP plan members
Categories of personal data	EPO personnel number, name, surname, date of birth, gender, EPO e-mail address, in-house phone number, payroll area, job group, EPO address (building, room), preferred language, SSP contributions (employee and employer contributions)

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●●]

Fee schedule

[Will be added upon award of contract]

List of authorised officers of the parties

[Will be added upon award of contract]