**COOPERATION**

**AGREEMENT**

**CONTRACT NUMBER**

**4020170009**

**between**

**The European Union Intellectual Property Office**

**and**

**The Industrial Property Office of the Czech Republic**

The European Union Intellectual Property Office, hereinafter referred to as "the Office", which is represented for the purposes of the signature of this Cooperation Agreement, hereinafter referred to as "the Agreement", by its Executive Director, Mr. António Campinos

on the one part,

and the Industrial Property Office of the Czech Republic, hereinafter referred to as "the IPO", which is represented for the purposes of the signature of the Agreement, by its President, Mr. Josef Kratochvíl

on the other part,

Hereinafter collectively referred to as “the Parties”

Whereas Article 123c of European Union Trade Mark Regulation, as amended by Regulation 2015/2424 of the European Parliament and of the Council of 16 December 2015 (hereafter, “EUTMR”) foresees the cooperation to promote convergence of practices and tools in the fields of trademarks and designs with Central Industrial Property Offices in the Member States and the Benelux Office for Intellectual Property (hereafter “IPOs”);

Whereas on 1stJune 2016, the Management Board adopted Decision No MBBC-16-05 defining the European Cooperation projects pursuant to Article 123c(2) and 124(1)(e) EUTMR , namely:

|  |  |
| --- | --- |
| **ECP1** | **Consolidating and Completing the CF landscape** |
| **ECP2** | **Major Improvements to Existing CF Tools** |
| 2.1 | Major Improvements to Back Office |
| 2.2 | Major Improvements to Front Office |
| 2.3 | Major Improvements to Common Gateway |
| 2.4 | Major Improvements to Quality Suite |
| 2.5 | Major Improvements to TMView and Design View |
| **ECP3** | **New Tools** |
| 3.1 | Academy e-Learning Portal |
| 3.2 | Search Image for TM |
| 3.3 | Search Image for DS |
| 3.4 | IP User Repository |
| 3.5 | Decision Desktop |
| 3.6 | Digital Case Law Repository |
| 3.7 | Integrated Multiple Assessment Solution (IMAS) |
| **ECP4** | **Shared Services and Practices** |
| 4.1 | EU Cooperation Administration Portal |
| 4.2 | Convergence Analysis Project |
| 4.3 | Collaborative Network |
| **ECP5** | **Supporting the Network** |
| 5.1 | Capture and Store Historical Files |
| 5.2 | Project Management Certification for IP Offices |
| 5.3 | Support to Management Systems for IP Offices |
| 5.4 | Supporting the Network |
| 5.4.1.1 | Supporting the Network – TMView Service |
| 5.4.1.2 | Supporting the Network – Designview Service |

Whereas IPOS were invited to express their interest to effectively participate in the above defined project/s;

Whereas this agreement also covers cooperation activities under the Regulation (EU) No 386/2012 of the European Parliament and of the Council on entrusting the Office with tasks related to the enforcement of intellectual property rights as the European Observatory on Infringements of Intellectual Property Rights (solely if the IP office participates);

**HAVE AGREED:**

**Article 1**

1. The present Agreement sets out the terms and conditions of the cooperation between the parties.
2. The IPO has agreed to participate in the following projects:

**Under the European Cooperation Projects:**

ECP1 – Consolidating and Completing the CF landscape

ECP5 – Project Management Certification for IP Offices

ECP5 – Supporting the Network

**Under the European Observatory on Infringements of Intellectual Property Rights:**

Case Law

1. The IPO undertakes to do everything in its power to carry out the project tasks as described in the Management Board decision defining such projects.
2. This Agreement is extended to cooperation activities between the Office and IPO within the field of the work plan of the European Observatory on Infringements of Intellectual Property Rights, namely in the area of collection of data (solely if the IP Office participates).

**Article 2**

1. The following Annexesform an integral part of this Agreement:

 **Annex 1:** General Conditions

 **Annex 2**: Special Conditions

1. The provisions of the Special Conditions shall take precedence over those in the other parts of the Agreement.

**Article 3**

1. The total maximum eligible costs for the cooperation projects and activities covered by this Agreement as from 1 January 2017 is estimated at 232,763.01 € as listed below:

|  |  |  |
| --- | --- | --- |
| **Programme** | **Project** | **Amount** |
| **European Cooperation Projects** | ECP1 – Consolidating and Completing the CF landscape | 3,776.38 |
| ECP5 – Project Management Certification for IP Offices (Working Group) | 540.42 |
| ECP5 – Supporting the Network – TMView Service | 119,327.18 |
| ECP5 – Supporting the Network – Designview Service | 107,962.23 |
| **Total European Cooperation Projects** | **231,606.21** |
| **European Observatory on Infringements of IP Rights** | Case Law | 1,156.80 |
| **TOTAL** | **(all projects / programmes)** | **232,763.01** |

1. The amount to be paid to the IPO during the TMView and Designview service periods is determined according to the specific Annex attached hereto.

**SIGNATURES**

**For the IPO** **For the Office**

Mr. Josef Kratochvíl Mr. António Campinos

President Executive Director

Signature Signature

Date: 22/12/2016 Date: 02/01/2017

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**ANNEX 1:**

**GENERAL CONDITIONS**

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**Annex 1 – A:**

**GENERAL LEGAL AND ADMINISTRATIVE CONDITIONS**

**ARTICLE 1 - PURPOSE**

* 1. The purpose of the present General conditions is to specify the common conditions under which all cooperation programmes and subsequent cooperation projects as referred to in Article 1 of the cooperation agreement will be executed.
	2. The provisions of the Special Conditions (Annex 2 to the cooperation agreement) shall take precedence over those in the present general conditions.
	3. Unless it would be inconsistent to do so, words and phrases used in this document should be construed so that the singular includes the plural and the plural includes the singular.

**ARTICLE 2 - DURATION AND EFFECTS**

2.1 The Agreement shall enter into force on the date when the last of the two parties signs. It will expire on 31st December following the date of entry into force, hereinafter referred to as the expiration date.

2.2 This Agreement constitutes the entire agreement between the parties and replaces all previous agreements, oral or written, with respect to the matters contained herein.

**ARTICLE 3 ‑ SUSPENSION**

3.1 Without prejudice to the Office’s right to terminate the Agreement in pursuance of Article 5, the Office may at any time and for any reason suspend the execution of the Agreement. Suspension shall take effect on the day IPO receives notification by registered letter with acknowledgement of receipt or equivalent. The Office may at any time following suspension give notice to the IPO to resume the work suspended.

3.2 The IPO may suspend implementation of the project in the event of force majeure within the meaning contemplated in Article 4.1. It shall inform the Office in writing and without delay, giving all the necessary reasons for the suspension of the project and indicate the foreseeable date of resumption.

3.3 In the event suspension is requested by IPO, the Office shall notify in writing whether it agrees that suspension be given to the project notified by IPO or its intention to terminate the said project in pursuance of Article 5.

**ARTICLE 4 ‑ FORCE MAJEURE**

4.1 Force majeure shall mean any unforeseeable exceptional situation or event beyond the parties' control which prevents either of them from fulfilling any of their obligations under the Agreement, was not attributable to error or negligence on their part, and proves insurmountable in spite of all due diligence. Defects in equipment or material or delays in making them available (unless due to force majeure), labour disputes, strikes or financial difficulties cannot be invoked as force majeure by the defaulting party.

4.2 A party faced with force majeure shall inform the other party without delay by registered letter with advice of delivery or equivalent, stating the nature, probable duration and foreseeable effects.

4.3 Neither of the parties shall be held in breach of their obligations under the Agreement if they are prevented from fulfilling them by force majeure. The parties shall make every effort to minimize any damage due to force majeure.

4.4 The Agreement may be suspended in accordance with Article 3.

**ARTICLE 5 - TERMINATION OF THE AGREEMENT**

**5.1 Termination by the IPO**

In duly justified cases, the IPO may withdraw its proposal and terminate the Agreement at any time by giving 60 days' written notice stating the reasons, without being required to furnish any indemnity on this account. If no reasons are given or if the Office does not accept the reasons, the IPO shall be deemed to have terminated this Agreement improperly, with the consequences set out in the third subparagraph of Article 5.4.

**5.2 Termination by the Office**

The Office may decide to terminate the Agreement, without any indemnity on its part, in the following circumstances:

(a) in the event of a legal, financial, technical, organizational or auditing change in the IPO's situation that is liable to affect the Agreement substantially or to call into question the decision to award the contract;

(b) if the IPO fails to fulfill a substantial obligation incumbent on it under the terms of the Agreement, including its annexes; for example, if the IPO fails to meet the conditions for effective reimbursement of eligible costs referred to in Article 17.2;

(c) in the event of force majeure, notified in accordance with Article 4, or if the project has been suspended as a result of exceptional circumstances, notified in accordance with Article 3;

(d) if the IPO submits reports inconsistent with reality to obtain the amount provided for in the Agreement;

(e) if the IPO has intentionally or by negligence committed a substantial irregularity in performing the Agreement to the detriment of the Office's financial interests. A substantial irregularity consists of any infringement of a provision of an Agreement or regulation resulting from an act or an omission on the part of the IPO which causes or might cause a loss to the Office budget.

**5.3 Termination procedure**

The procedure is initiated by registered letter with advice of delivery or equivalent.

In the cases referred to in points (a) and (b) of Article 5.2, the IPO shall have 30 days to submit its observations and take any measures necessary to ensure continued fulfillment of its obligations under the Agreement. If the Office fails to confirm acceptance of these observations by giving written approval within 30 days of receiving them, the procedure shall continue to run.

Where notice is given, termination shall take effect at the end of the period of notice, which shall start to run from the date when notification of the Office’s decision to terminate the Agreement is received.

If notice is not given in the cases referred to in points (c), (d) and (e) of Article 5.2, termination shall take effect from the day following the date on which notification of the Office’s decision to terminate the Agreement is received.

**5.4 Effects of termination**

In the event of termination, payments by the Office shall be limited to the eligible costs actually incurred by the IPO up to the date when termination takes effect, in accordance with Article 19. Costs relating to current commitments that are not due to be executed until after termination shall not be taken into account.

The IPO shall have 60 days from the date when termination takes effect, as notified by the Office, to produce a request for final payment. Should the termination take effect on the expiration date of the agreement, at year end, the IPO must send a provisional report with a financial statement of the expenses incurred, before January 15 of the following year. If no request for final payment is received within this time limit, the Office shall not reimburse the expenditure incurred by the IPO up to the date of termination and it shall recover any amount if its use is not substantiated by the Execution Reports and financial statements approved by the Office.

By way of exception, in the event of improper termination by the IPO or termination by the Office on the grounds set out in points (d) or (e) of Article 5.2, the Office may require the partial or total repayment of sums already paid under the Agreement on the basis of the Execution Report approved by the Office, in proportion to the gravity of the failings in question and after allowing the IPO to submit its observations.

When the termination procedure is over, the Office will no longer accept any payment obligation or any liability for the payment of services rendered by third parties to the IPO for the project.

**ARTICLE 6 ‑ LIABILITY**

6.1 The IPO shall have sole responsibility for complying with its legal obligations arising from the Agreement and for the execution of the project tasks assigned to it under the Agreement.

6.2 The Office shall not, in any circumstances or on any grounds, be held liable in the event of a claim under the Agreement relating to any damage caused during the project's execution. Consequently, the Office will not entertain any request for indemnity or reimbursement accompanying any such claim.

6.3 Except in cases of force majeure, the IPO shall make good any damage sustained by the Office as a result of the execution or faulty execution of the project contemplated under the Agreement.

6.4 The IPO shall bear sole liability vis‑à‑vis third parties and undertakes to defend, **hold harmless** and indemnify the Office against any and all claims of alleged or actual infringement of any rights raised by third parties against the Office.

**ARTICLE 7 ‑ OWNERSHIP/USE OF THE RESULTS**

7.1 Unless stipulated otherwise in the Agreement, ownership of the results of the project contemplated under the Agreement, including industrial and intellectual property rights, and of the reports and other documents relating to it shall be vested in the Office.

7.2 Without prejudice to paragraph 1, the Office grants the IPO the right to make free use of the results of the project contemplated under the Agreement as it deems fit, provided it does not thereby breach its confidentiality obligations or existing industrial and intellectual property rights.

**ARTICLE 8 ‑ CONFIDENTIALITY**

The Office and the IPO undertake to preserve the confidentiality of any document, information or other material directly related to the subject of the Agreement that is duly classed as confidential, if disclosure could cause prejudice to the other party. The parties shall remain bound by this obligation beyond the expiration date of the Agreement.

**ARTICLE 9 ‑ SUPPLEMENTARY AGREEMENTS**

9.1 Any amendment to the general agreement, to programmes or projects must be the subject of a written supplementary Agreement. No oral agreement may bind the parties to this effect.

9.2 The supplementary Agreement may not have the purpose or the effect of making changes to the Agreement which might call into question the decision awarding the cooperation agreement or result in unequal treatment of the IPOs.

9.3 If the request for amendment is made by the IPO, it must send it to the Office in good time before it is due to take effect and at all events one month before the expiration date of the Agreement, except in cases duly substantiated by the IPO and accepted by the Office.

**ARTICLE 10 ‑ APPLICABLE LAW AND COMPETENT COURT**

10.1 The terms of the Agreement, the European Union rules applicable and, on a subsidiary basis, the law of Spain apply to this Agreement.

10.2 The IPO may bring proceedings regarding decisions by the Office concerning the application of the provisions of the Agreement and the arrangements for implementing it, before the General Court of the European Union and, in the event of appeal, the Court of Justice of the European Union.

**ARTICLE 11 ‑ PERSONAL DATA PROTECTION**

11.1 All personal data contained in the Agreement shall be processed in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by the European institutions and bodies and on the free movement of such data.

11.2 The IPO may, on written request, gain access to their personal data and correct any information that is inaccurate or incomplete. The IPO may lodge a complaint against the processing of its personal data with the European Data Protection Supervisor at any time.

**ARTICLE 12 ‑ BANK ACCOUNT**

12.1 Payments shall be made to the bank account designated by the IPO and denominated in EUR. This account shall allow the identification of the payments made by the Office.

12.2 Bank account details are provided for in the Special Conditions (Annex 2 to the Agreement).

**ARTICLE 13 ‑ PUBLICITY**

13.1 Unless the Office requests otherwise, any communication or publication by the IPO about the project, including at a conference or seminar, shall indicate that the project has received funding from the Office.

Any communication or publication by the IPO, in any form and medium, shall indicate that sole responsibility lies with the author and that the Office is not responsible for any use that may be made of the information contained therein.

13.2 The IPO authorises the Office to publish the following information in any form and medium, including via the Internet:
- the IPO's name and the address,
- the subject and purpose of the project,
- the amount to be paid and the proportion of the project's total cost covered by the funding.

 - any internal deliverable created by the IPO in their role as member of Working Groups.

Upon a reasoned and duly substantiated request by the IPO, the Office may agree to forgo such publicity if disclosure of the information indicated above would risk compromising the IPO's security or prejudicing its commercial interests.

**ARTICLE 14 ‑ SubCONTRACTING**

14.1 If the IPO has to conclude contracts in order to carry out the project and they constitute costs of the project under an item of eligible direct costs in the estimated budget, it shall seek competitive tenders from potential contractors and award the contract to the bid offering best value for money; in doing so it shall observe the principles of transparency and equal treatment of potential contractors and shall take care to avoid any conflict of interests.

14.2 Contracts as referred to in paragraph 1 may be awarded only in the following cases:

(a) they may only cover the execution of a limited part of the project;

(b) recourse to the award of contracts must be justified having regard to the nature of the project and what is necessary for its/their implementation;

(c) the tasks concerned and the corresponding estimated costs must be set out in the Special Conditions.

(d) any recourse to the award of contracts while the project is under way, if not provided for in the initial application, shall be subject to prior written authorization by the Office;

(e) the IPO shall retain sole responsibility for carrying out the project and for compliance with the provisions of the Agreement. The IPO must undertake to make the necessary arrangements to ensure that the contractor waives all rights in respect of the Office under the Agreement;

(f) the IPO must undertake to ensure that any contractor shall agree to the terms and provisions of the Agreement as applicable to the realization of the project by such contractor.

14.3 In case of subcontracting and in addition to Articles 14.2 and 5.2, the IPO has to submit the name of the company(ies) retained for awarding contracts to the Office.

14.4 Pursuant to Article 17, the IPO – by its signature of this Agreement – commits itself to paying all the invoices and expenditure within a maximum time period of 6 months as from the receipt of the final payment by the Office.

14.5 When the company retained by the IPO is in one of the situations referred to in Articles 106 and/or 107 of the Financial Regulation applicable to the general budget of the European Union (Regulation (EU, Euratom) n° 966/2012 of the European Parliament and of the Council), the Office can decide not to consider eligible the costs relating to the awarded contract.

**ARTICLE 15 ‑ EVALUATION *-* CHECKS AND AUDITS**

15.1Whenever the Office carries out an interim or final evaluation of the project impact measured against the objectives of the programme concerned, the IPO undertakes to make available to the Office and/or persons authorized by it all such documents or information as will allow the evaluation to be successfully completed and to give them the rights of access specified below.

15.2 The IPO undertakes to provide any detailed information requested by the Office or by any other outside body authorised by the Office to check that the project and the provisions of the Agreement are being properly implemented.

15.3 The IPO shall keep at the Office's disposal all original documents, especially accounting and tax records, or, in exceptional and duly justified cases, certified copies of original documents relating to the Agreement for a period of five years from the date of payment received from the office.

15.4 The IPO agrees that the Office may have an audit of the use made of the amount carried out either directly by its own staff or by any other outside body authorised to do so on its behalf. Such audits may be carried out throughout the period of implementation of the Agreement until the balance is paid and for a period of five years from the date of payment of the balance. Where appropriate, the audit findings may lead to recovery decisions by the Office.

15.5 The IPO undertakes to allow the Office staff and outside personnel authorised by the Office the appropriate right of access to sites and premises where the project is carried out and to all the information, including information in electronic format, needed in order to conduct such audits.

15.6 By virtue of Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council, the European Anti‑Fraud Office (OLAF) may also carry out on‑the‑spot checks and inspections in accordance with the procedures laid down by European Union law for the protection of the financial interests of the European Union against fraud and other irregularities. Where appropriate, the inspection findings may lead to recovery decisions by the Office.

15.7 The European Court of Auditors shall have the same rights as the Office, notably right of access, as regards checks and audits.

**Annex 1 – B:**

**GENERAL FINANCIAL CONDITIONS**

**ARTICLE 16 ‑ FINANCING**

16.1 The Office has allocated a budget for each of the cooperation programmes listed in Article 1 of the Agreement.

* 1. Special conditions will indicate:

- In each Project Brief, the total estimated budget for the duration of the project as it is currently defined. The Project brief contains the breakdown of the maximum total estimated costs that are eligible for reimbursement, per participating IPO.

* The type of costs that are eligible for reimbursement, wherever necessary scattered between Integration Costs and Service Costs. Further down scattering may be indicated as far as necessary according to each cooperation programme structure and purposes.
* The conditions and procedures under which eligible costs will effectively be reimbursed, in conformity with sound financial management and other principles referred to by the Office’s Financial Regulation.
	1. For project development and other set-up/integration tasks, the Office will contribute 90% of the estimated total eligible costs as defined in the project brief or project description(s), and in accordance with the principle of cofinancing adopted by the Management Board.
	2. The maintenance work and the financing of the corresponding maintenance, service and running costs related to the different programmes are defined in supplementary Annexes to this agreement.

**ARTICLE 17 ‑ ELIGIBLE COSTS**

17.1 To be considered as eligible costs of the project, costs must satisfy the following general criteria:

‑ they must be connected with the subject of the Agreement and they must be provided in the estimated budget in Article 3;

‑ they must be necessary for integration to the project covered by the Agreement;

‑ they must be agreed with Office prior to signing this Agreement, reasonable and justified and they must accord with the principles of sound financial management, in particular in terms of value for money and cost‑effectiveness;

‑ they must be generated during the lifetime of the project.

‑ they must be actually incurred by the IPO, be recorded in its accounts in accordance with the applicable accounting principles, and be declared in accordance with the requirements of the applicable tax and social legislation;

‑ they must be identifiable and verifiable.

The IPO’s internal accounting and auditing procedures must permit direct reconciliation of the costs and revenue declared in respect of the project with the corresponding accounting statements and supporting documents.

17.2 The eligible direct costs for the project are those costs which, with due regard for the conditions of eligibility set out in Article 17.1, are identifiable as specific costs directly linked to integration of the project and which can therefore be booked to it directly. In particular, the following direct costs are eligible provided that they satisfy the criteria set out in the previous paragraph and other rules and regulations of the Office:

‑ the cost of staff assigned to the project, according to Decision No ADM 10-30 of 10 September 2010, on the rules applicable toexpertise made available on a non-secondment basis for cooperation projects. By derogation to the Decision, payments may be made more than once during the duration of the Agreement. However, the salary supplements granted by the IPO to these same persons who result in a temporarily higher salary amount than their usual remuneration (for example the payment of extraordinary premiums during the project period) are not considered eligible for financing;

* travel and subsistence allowances for staff taking part in the project, will be in line with the Decision No ADM-13-37 of 30 October 2013, concerning rules on reimbursement of expenses incurred by people from outside the invited to attend meetings in an expert capacity, or any subsequent decision that repeals this one;

‑ the portion of the equipment's depreciation corresponding to the duration of the project and the rate of actual use for the purposes of the project may be taken into account by the Office, except where the nature and/or the context of its use justifies different treatment by the Office;

‑ costs of consumables and supplies, provided that they are identifiable and assigned to the project;

‑ costs entailed by other contracts awarded by the IPO for the purposes of carrying out the project, provided that the conditions laid down in Article 14 are met;

‑ costs arising directly from requirements imposed by the Agreement (dissemination of information, specific evaluation of the project, audits, translations, reproduction, etc.).

17.3 The following costs shall not be considered eligible:

‑ return on capital;

‑ debt and debt service charges;

‑ provisions for losses or potential future liabilities;

‑ interest owed;

‑ doubtful debts;

‑ exchange losses;

‑ VAT, unless the beneficiary can show that he is unable to recover it;

‑ costs declared by the IPO and covered by (an)other project or work programme receiving a grant, contract or loan from a European Union Institution or a body;

‑ excessive or reckless expenditure.

17.4 Where the Office may accept the co-financing of the project, the part of co-financing covered by the IPO may be made up entirely or in part of contributions in kind. In this case, the value calculated for such contributions must not exceed:

‑ the costs actually borne and duly supported by accounting documents of the third parties who made these contributions to the IPO free of charge but bear the corresponding costs;

‑ the costs generally accepted on the market in question for the type of contribution concerned when no costs are borne.

17.5 The determination of running costs related to common or connected tools is subject to the terms and conditions established in Section 7 of the Annex stipulating the terms and conditions referred to the sustainability of European Cooperation tools and related services.

**ARTICLE 18 ‑ GENERAL PROVISIONS ON PAYMENTS / currency conversion rates**

18.1 Payments shall be made by the Office in Euro. Any conversion of actual costs into euro shall be made at the daily rate published in the Official Journal of the European Union or, failing that, at the monthly accounting rate established by the European Commission and published on its website applicable on the day when the payment order is issued by the Office, unless the Special Conditions of the Agreement lay down specific provisions.

Payments by the Office shall be deemed to be effected on the date when they are debited to the Office's account.

18.2 **Suspension of Payments**

The Office may suspend the procedure for payment laid down in Art. 20 at any time by notifying the IPO that its request for payment cannot be met, either because it does not comply with the provisions of the Agreement, or because the appropriate supporting documents have not been produced or because there is a suspicion that some of the expenses in the financial statement are not eligible and additional checks are being conducted.

The Office may also suspend its payments at any time if the IPO is found or presumed to have infringed the provisions of the Agreement, in particular in the wake of the audits and checks provided for in Article 15.

The Office shall inform the IPO of any such suspension by registered letter with advice of delivery or equivalent.

Suspension shall take effect on the date when notice is sent by the Office. The remaining payment period shall start to run again from the date when a properly constituted request for payment is registered, when the supporting documents requested are received, or at the end of the suspension period as notified by the Office.

18.3 The IPO shall have two months from the date of notification by the Office of the final amount to be paid determining the amount of the payment of the balance or failing that of the date on which the payment of the balance was received, to request information in writing on the determination of the final amount, giving reasons for any disagreement. After this time such requests will no longer be considered. The Office undertakes to reply in writing within two months following the date on which the request for information is received, giving reasons for its reply. This procedure is without prejudice to the IPO’s right to appeal against the Office’s decision pursuant to Article 10.2. Under the terms of European Union legislation in this matter, such appeals must be lodged within two months following the notification of the decision to the IPO or, failing that, following the date on which the IPO learned of the decision.

18.4 By derogation to paragraph 1, the conversion into Euro of the real costs indicated in the final financial implementation report is made at the exchange rate of the first working day of the month which follows the end of the project as defined in Article 2 as published in the Official Journal of the European Union, Series C.

**ARTICLE 19 ‑ DETERMINING THE FINAL amount to be paid by the Office**

19.1 Without prejudice to information obtained subsequently pursuant to
Article 15, the Office shall adopt the amount of the final payment to be granted to the IPO on the basis of the documents referred to in Article 16.2 which it has approved.

19.2 The total amount paid to the IPO by the Office may not in any circumstances exceed the maximum amount referred to in Article 3.

19.3 The IPO hereby agrees that the amount to be paid by the Office shall be limited to the amount necessary to balance the project's receipts and expenditure and that it may not in any circumstances produce a profit for it.

Profit shall mean any surplus of total actual receipts attributable to the project over the total actual costs of the project. The actual receipts to be taken into account shall be those which have been established, generated or confirmed on the date on which the request for payment of the balance is drawn up by the IPO, to which shall be added the amount determined by applying the principles laid down in Articles 17.1 to 17.4 and in the Special Conditions.

Non‑eligible costs shall always be covered by non-European Union resources.

Any surplus determined in this way shall result in a corresponding reduction in the amount to be paid.

19.4 Without prejudice to the right to terminate the Agreement under Article 5, if the project is/are not implemented or is implemented poorly, partially or late, the Office may reduce the amount initially provided for in line with the actual implementation of the project on the terms laid down in this Agreement.

19.5 On the basis of the amount of the final payment determined in this way and of the aggregate amount of the payments already made under the terms of the Agreement, the Office shall set the amount of the payment of the balance as being the amount still owing to the IPO. Where the aggregate amount of the payments already made exceeds the amount of the final amount to be paid, the Office shall issue a recovery order for the surplus.

19.6 For the purposes of this article, only actual costs falling within the categories set out in the estimated budget referred to in Article 16.2 and presented in the Project Brief included in the corresponding annex to the Special Conditions shall be taken into account.

**ARTICLE 20 – PAYMENT ARRANGEMENTS**

20.1 An Execution Report is to be submitted by the IPO to the Office giving a clear description of the work done in accordance with the terms in the Project Brief included in the corresponding Annex to the Special Conditions.

Documentary proof that the work described in the report has been executed as reported (internal costs should be documented with time sheets and external costs justified with invoices) is required with the Execution Report.

20.2 A corresponding claim for payment (in EUR) must be issued by the IPO to the Office. This claim for payment shall specify the details of the costs and clearly relate them, in conformity, with the budget presented in the Project Brief included in the corresponding annex to the Special Conditions.

The payment request shall specify the concept of payment, the beneficiary, the amount, the date of issuing the request and the bank details.

20.3 Within 30 days following the approval of the Execution Report and claim for payment a payment representing the amount determined in accordance with the provisions of Article 19 is made to a bank account designated by the IPO. This payment period can be suspended by the Office in accordance with the procedure mentioned in Article 18.2.

**ARTICLE 21 ‑ SUBMISSION OF REPORTS AND OTHER DOCUMENTS**

One copy of the Execution Report and claim for payment as referred to in Article 20 have to be provided in any of the five languages of the Office (English, Spanish, French, German and Italian) at the following deadlines:

* Execution Report within 15 days following the expiration date of the Agreement as indicated in Article 2 or
* Execution report within 15 days following the completion date(s) of IPO’s obligations for the considered project, or.
* Execution report related to projects where payments consists entirely of working group costs for the period until 30 September, to be submitted not later than 30 October, and
* Final execution reports by 31 January of the next year.
* Upon receipt of the claim for payment, accompanied by the Execution Report, the Office shall have 30 days to approve or reject the Execution Report using the services of an Evaluation Committee, or to require any supporting document or additional information, in accordance with the procedure mentioned in Article 22. After this 30-day deadline without reaction on the part of the Office, this claim for payment and the Execution Report are deemed to have been approved (tacit Agreement).
* If necessary, the IPO has 30 days as from the date of the request of the Office to submit the additional information or a new report.

**ARTICLE 22 ‑ REQUESTS FOR PAYMENT**

22.1 Payments shall be made in accordance with Article 18 and 20.

22.2 Payment of the balance, which may not be repeated, is made after the end of the project, on the basis of the costs actually incurred by the IPO in carrying out the project.

22.3 By the appropriate deadline indicated in Article 21 the IPO shall submit a request for payment accompanied by the Execution Report on the implementation of the project.

22.4 The documents accompanying the request for payment shall be drawn up in accordance with the provisions of Article 21. If an external audit of the project's accounts is not required, the IPO itself shall certify that the financial documents submitted to the Office comply with the financial provisions of the Agreement, that the costs declared are the actual costs, and that all receipts have been declared.

22.5 On receipt of these documents, the Office shall have the period specified in Article 21 in order to:

‑ approve the Execution Report on the implementation of the project;

‑ ask the IPO for supporting documents or any additional information it deems necessary to allow the approval of the report;

‑ reject the report and ask for the submission of a new report.

22.6 Failing a written reply from the Office within the time limit for scrutiny indicated above, the report shall be deemed to have been approved. Approval of the report accompanying the request for payment shall not imply recognition of their regularity or of the authenticity, completeness and correctness of the declarations and information they contain.

22.7 Requests for additional information or a new report shall be notified to the IPO in writing (letter and/or e-mail). The IPO shall have the period laid down in Article 21 to submit the information or new documents requested. If additional information is requested, the time limit for scrutiny shall be extended by the time it takes to obtain this information. Where a report is rejected and a new report requested, the approval procedure described in this Article shall apply. In the event of renewed rejection, the Office reserves the right to terminate the Agreement by invoking Article 5.2 (b).

**Article 23 ‑ Recovery**

23.1 If any amount is unduly paid to the IPO or if recovery is justified under the terms of the Agreement, the IPO undertakes to repay the Office the sum in question on whatever terms and by whatever date it may specify.

23.2 If payment has not been made by the due date, sums owed to the Office may be recovered by offsetting them against any sums owed to the IPO, after informing it accordingly by registered letter with advice of delivery or equivalent.

23.3 Bank charges occasioned by the recovery of the sums owed to the Office shall be borne solely by the IPO.

**Article 24 ‑ IMPUTATION of payments**

24.1 Any amount paid to the IPO shall be appropriated for the reimbursement of costs incurred by the IPO in the fulfilment of its obligations derived from this Agreement.

24.2 Upon written request by the IPO, the Office shall proceed to reimburse those costs in equivalent non-financial contributions in kind such as the supply of consultancy and/or expertise services by the Office.

**COOPERATION**

**AGREEMENT**

**CONTRACT NUMBER**

**4020170009**

**ANNEX 2 SPECIAL CONDITIONS**

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**ANNEX 2: SPECIAL CONDITIONS**

**COMMON PROVISIONS:**

**ART. PSC-1:** Special Conditions prevail over the General Conditions. Project specific conditions as specified in the project briefs or project description prevail over the Special Conditions.

**ANNEX 2 – A: PROVISIONS GOVERNING EUROPEAN COOPERATION PROJECTS**

**ART. ECS-1 - CONTACT PERSONS**

Contact person for the projects as indicated by the IPO are included in the following tables.

|  |  |
| --- | --- |
| EUIPO (\*)**:****Mr. Simon White**Head of European Cooperation ServiceTel: (+34) 965 139 189Simon.WHITE@euipo.europa.eu(\*) The EUIPO Project Managers, as specified in the Project briefs or project description, will be the main EUIPO contact persons. | IPO**:****Mr. Josef Dvornak**Director, Head Officejdvornak@upv.cz   |

**ART. ECS-2 - BANK ACCOUNT:**

Bank account(s) as indicated by the IPO for the programme(s) / project(s) are included in the next table.

|  |  |
| --- | --- |
| Name of Bank | Czech National Bank |
| Address of Bank branch | Na Prikope 28 |
| Town / City | Prague 1 |
| IBAN | XXXXXXX |
| BIC/SWIFT | XXXXXXX |

**ART.ECS-3: TASKS AND RESPONSIBILITIES**

3.1 The Office and the IPO will perform their tasks as described in the Management Board´s decision defining the European Cooperation Projects (MBBC-16-05, in relation to document MBBC/16/501/4.3.2 of 23rd February 2016) and in the resulting project briefs put at the disposal of the IPO.

3.2 Upon request of the IPO, the Office may facilitate to the IPO the access to software development resources for the fulfilment of tasks foreseen in those projects as part of ECP5. In such a case, such facility will be funded as a part of the implementation effort of the IPO and, where necessary, deducted from the committed funding of the specific project. In case of deployment, the responsibility of the outcomes lies within the IPO. This provision is without prejudice to the support stipulated in the Annex related to sustainability of European Cooperation tools and related services.

**Annex 2 – B: SPECIFIC CONDITIONS FOR THE SUSTAINIBILITY OF EUROPEAN COOPERATION TOOLSAND RELATED SERVICES**

**PURPOSE**

1. The purpose of this Annex is to specify the common terms and conditions establishing the maintenance, service and running costs in relation to the tools and applications developed by the European Cooperation Programme.
2. Those terms and conditions shall aim to guarantee the sustainability of the European Cooperation Programme solutions and the related services in the long term.

**ACTION**

3. This Annex contains the terms and conditions establishing:

1) the maintenance of tools developed within the Cooperation Fund Programme and any European Cooperation project which deliver a common service, other than non-central back and front office solutions (hereafter, “maintenance of common or connected services/tools”)

2) the support to participating offices (hereafter, “IPOs”) for the maintenance of their non-central back and front office solutions(hereafter “maintenance support model”)

3) the license of the non-central back and front office solutions (hereafter “SP license)

4) the reimbursement of the service costs incurred by IPOs for continuously supplying the necessary data and information for TMView and DesignView, in a timely and quality-oriented manner and in accordance with defined service levels (hereafter, “TMView and DesignView running costs”).

**MAINTENANCE OF COMMON OR CONNECTED TOOLS**

4.1 The Office shall be responsible for the central hosting and maintenance of the following tools and IT solutions once they are successfully put into production (hereafter, “the go-live”):

1) Search Image,

2) TMView,

3) Common database on classification of goods and services (including TMclass, Terminology Management Console and ALISTA),

4) Platform enabling the sharing and harmonizing of quality standards in trade marks and designs,

5) Platform enabling the harmonized forecasting methodology on trade marks and designs,

7) Platform enabling the harmonized user satisfaction survey on trade marks and designs,

8) DesignView,

9) Common tool on similarity of goods and services,

10) Common Examiner Support tool,

11) Common gateway for applications,

12) Common e-learning tool,

13) Common call center tool,

14) Multimodular database supporting enforcement of IP rights,

15) Counterfeiting Intelligence Support tool,

16) or common solution resulting from the combination and/or renaming of any of the above, as part of ECP2, with the exception of non-central back office and front office solutions

17) any new solution developed under ECP3,

18) any solution developed under ECP4 – EU Cooperation Administration Portal.

4.2 The Office shall manage the corrective and adaptive maintenance tasks of the central site elements of those tools, as well as the provision of licenses, hardware, equipment and hosting services when necessary for those tools. In particular, the Office shall be responsible for the following tasks:

1) supporting IPOs and end users with a multilingual service desk function, an incident management practice, a business continuity plan and a security policy;

2) maintaining a regular flow of information and feedback from IPOs and users on the tools;

3) managing general statistics on the use and performance of the tools;

4) if necessary, liaising between IPOs and the Office’s external service providers (e.g. software development, hosting services), in particular in relation to integration and set-up adjustments with common tools, performed by IPOs;

5) identifying needs for maintenance, in collaboration with designated experts from IPOs, through common platforms and within the context of the Office’s change management process. To this end, IPOs will be part of the process through the Liaison Meeting in Technical Cooperation, acting as a change advisory board; a subcommittee composed of a reduced set of experts may be created to prepare the change management process;

6) planning, managing, delivering and communicating releases for corrective and adaptive maintenance, including approving relevant release documentation and artefacts;

7) organising acceptance tests;

8) coordinating training for IPOs in relation to tools and releases;

9) promoting tools among users in collaboration with IPOs.

4.3 The Office shall manage these activities as part of its IT, stakeholders’ management and capacity-building activities.

4.4 The IPO shall manage the development and installation of adjustments to integration layers and set-up services connected with the common tools, when necessary. The IPO shall remain owner and responsible of its own data, displayed, integrated or otherwise used in any of those tools.

**MAINTENANCE SUPPORT MODEL**

5.1 The IPO shall be responsible for the local hosting and maintenance of the non-central back office and front office solutions developed as part of the former Cooperation Fund or as part of the improvements under ECP2 once they are successfully put into production (hereafter, “the go-live”).

5.2 The IPO shall be responsible for the monitoring and identification of incidents. It shall manage the corrective and adaptive maintenance tasks of those tools, as well as the provision of licenses, hardware, equipment and hosting services when necessary for those tools. The IPO shall manage these activities according to its own means, procedures and practices.

5.3 The Office shall cooperate with the IPO in the fulfillment of those tasks by offering during the period of service covered by this Annex, the following services:

1) the offer of one paid secondment position for an IT expert from the IPO to the Office, during one full year, with the aim to maximise knowledge transfer and to ensure that maintenance of tools can be effectively managed by the IPO subsequently; and

2) the offer of:

a) either the deployment of one full-time consultant from the Office’s providers during one full year, up to a maximum of 220 working days, on site in the IPO. The consultant shall be responsible for ensuring a measurable sustainable knowledge transfer to the IPO. When necessary, the consultant may offer his/her services at the Office’s premises; or

b) where the IPO opts to use its local contractor, funding for the equivalent of 220 working days of a similar consultant, with a ceiling equal to the daily rate foreseen in the Office’s contracts with is providers. The Office shall reimburse the IPO after the delivery of the service and upon acceptance of invoices submitted to the Office. The contractor shall be responsible for ensuring a measurable sustainable knowledge transfer to the IPO. When necessary, the consultant may offer his/her services at the Office’s premises.

5.4 The IPO may opt in any of these cooperation services offered by the Office. The IPO may decide when the provision of the selected services shall start, but not later than the date on which the last work package of the Software Package for the concerned IPO goes live. The maximum total of working days shall be 220 days as a whole. When calculating this maximum, working days requested in previous years will be included. The implementation of a major improvement within ECP2 of a non-central back office and or front office solution does not entitle the IPO to a new offer of such cooperation services.

5.5 Upon request of the IPO, the Office and the IPO shall formally agree by exchange of letters, within the context of these terms and conditions, the modalities of the services, including the possible use of working days divided per work package of the Software Package and any other flexible manner they agree on.

5.6 The Office shall foster and facilitate the establishment of a regular network between IT experts of IPOs that participate in the secondment. The Office shall employ and administer the Common Gateway platform to this end and shall support the regular meeting of such network within the context of the Liaison Meeting on Technical Cooperation where necessary. For that purpose, IPOs shall provide mutual assistance and support in order to enhance their ability to sustain the new software and to allow the resolution of common problems.

 **SP LICENSE**

6.1 Ownership of the former Cooperation Fund Software Package, including industrial and intellectual property rights, and of the reports and other documents relating to it, shall be vested in the Office. The same applies in relation to the major improvements to Back Office and Front Office under ECP2.

6.2 Without prejudice to paragraph 6.1, the Office (hereafter, “the licensor”) grants the IPO (hereafter, “the licensee”) a license on a royalty-free, non-exclusive and non-sub-licensable basis for the IPO’s own non-commercial use of the Software Package and its major improvements as it deems fit, under the terms and conditions stated hereafter and provided the IPO does not thereby breach its confidentiality obligations or existing industrial and intellectual property rights. Any use of the software or work (as defined hereafter), other than as authorised under this license is prohibited (to the extent such use is covered by a right of the copyright holder of the work).

6.3 For the purposes of this Annex:

1) The Original Work or the Software refers to the Office’s Software Package and its major improvements distributed and/or communicated by the Office under this license, available as Source Code and also as Executable Code as the case may be. The term “original work” also includes all system documentation provided by the Office to the IPO in relation to the software;

2) Derivative Works refer to the works or software that could be created by the licensee, based upon the Original Work or modifications thereof, including all relevant system documentation. This license does not define the extent of modification or dependence on the Original Work required in order to classify a work as a Derivative Work; this extent is determined by the applicable copyright law;

3) The Work refers to the Original Work and/or its Derivative Works;

4) The Source Code refers to the human-readable form of the Work which is the most convenient for people to study and modify;

5) The Executable Code refers to any code which has generally been compiled and which is meant to be interpreted by a computer as a program.

6) Contributor(s) refers to any natural or legal person who modifies the Work under the license, or otherwise contributes to the creation of a Derivative Work.

7) The Parties refers to the licensor and the licensee.

6.4 For the purpose of this Annex, the license is granted for the duration of copyright vested in the Original work to do the following:

- use the Work in any circumstance and for all usage,

- reproduce the Work,

- modify the Original Work, and make Derivative Works based upon the Work, in particular with a view to improve, enhance and/or adapt the existing work and/or correct defects or “bugs”

6.5 Those rights can be exercised on any media, supports and formats, whether now known or later invented, as far as the applicable law permits so.

6.6 The licensor may provide the Work either in its Source Code form, or as Executable Code. If the Work is provided as Executable Code, the licensor provides in addition a machine-readable copy of the Source Code of the Work along with each copy of the Work that the licensor distributes or indicates, in a notice following the copyright notice attached to the Work, a repository where the Source Code is easily and freely accessible for as long as the licensor continues to distribute and/or communicate the Work.

6.7 Nothing in this license is intended to deprive the licensee of the benefits from any exception or limitation to the exclusive rights of the rights owners in the Original Work or Software, of the exhaustion of those rights or of other applicable limitations thereto.

6.8 The grant of the rights mentioned above is subject to some restrictions and obligations imposed on the licensee. Those obligations are the following:

1) The licensee shall support the strategic objective of establishing a European IP Network;

2) The licensor shall be granted by the IPO a world-wide, royalty-free, non-exclusive and sub-licensable license for any and all modifications of the Original Work, and for any and all Derivative Works based upon the Work, made by or for the IPO. The licensor shall be granted the same rights in the Derivative Works as those granted to the IPO.

3) The Licensee shall keep intact all copyright, patent or trademarks notices and all notices that refer to the license and to the disclaimer of warranties. The licensee must include a copy of such notices and a copy of the license with every copy of the Work he/she distributes and/or communicates. The licensee must cause any Derivative Work to carry prominent notices stating that the Work has been modified and the date of modification.

4) This License does not grant permission to use the trade names, trade marks, service marks, or names of the licensor, except as required for reasonable and customary use in describing the origin of the Work and reproducing the content of the copyright notice.

6.9 The original licensor warrants that the copyright in the Original Work granted hereunder is owned by him/her or licensed to him/her and that he/she has the power and authority to grant the license.

6.10 Each contributor warrants that the copyright in the modifications he/she brings to the Work are owned by him/her or licensed to him/her and that he/she has the power and authority to grant the license.

6.11 The Work may contain defects or “bugs” inherent to this type of software development. Further, the documentation concerning the software may not be uniform in nature or complete. For the above reason, the Work is provided under the license on an “as is” basis and without warranties of any kind concerning the Work, including without limitation merchantability, fitness for a particular purpose, absence of defects or errors, accuracy, completeness, non-infringement of intellectual property rights other than copyright. This disclaimer of warranty is an essential part of the license and a condition for the grant of any rights to the Work.

6.12 Except in the cases of willful misconduct or damages directly caused to natural persons, the licensor will in no event be liable for any direct or indirect, material or moral, damages of any kind, arising out of the license or of the use of the Work, including without limitation, damages for loss of goodwill, work stoppage, computer failure or malfunction, loss of data or any commercial damage, even if the licensor has been advised of the possibility of such damage. However, the licensor will be liable under statutory product liability laws as far such laws apply to the Work.

6.13 Furthermore, the licensor shall in no event be liable for any commercial or other damages arising from the licensee’s lack of use and/or lack of right to use additional software (e.g. database server, application server) which is necessary for making of the Original Work a workable system.

6.14 The license and the rights granted hereunder will terminate automatically upon any breach by the licensee of the terms of the license.

6.15 Without prejudice to the possibility to complete additional agreements, the license represents the complete agreement between the Parties as to the Work licensed hereunder. This license may be extended upon the written consent of both Parties.

6.16 If any provision of the license is invalid or unenforceable under applicable law, this will not affect the validity or enforceability of the License as a whole. Such provision will be construed and/or reformed so as necessary to make it valid and enforceable.

6.17 This License shall be governed by the law of Spain.

**TMVIEW AND DESIGNVIEW RUNNING COSTS**

7.1 Immediately after its integration to TMView and/or to DesignView, the IPO shall provide a continuous, automatic supply service of agreed trade mark and/or design data for the central applications of TMView and/or DesignView (hereafter, “the applications”), through web services within a central index model, in accordance with the terms and conditions hereafter agreed on.

7.2 The IPO shall provide the following services:

1) providing web services related to bibliographic data on a trade mark and design, trade mark and design representation media file, bibliographic data on an applicant and a representative, data on a correspondence address and trade mark and design image thumbnail, as well as any additional data required in corrective and adaptive releases of TMView and/or DesignView;

2) promoting among users the applications and supporting the Office’s promotional activities to this end;

3) reviewing and approving labels, help files and any associated static text used in the applications in its official language(s);

4) appointing and informing the Office of contact persons involved in the applications and informing of any subsequent changes to the Office;

5) supporting the Office’s help desk function in relation to the applications;

6) informing the Office of any and all user feed-back in relation to the applications on a regular basis;

7) developing and installing new versions/patches in integration layers and set-up adjustments in its local systems, when necessary to continue the supply of data, in particular after the release of corrective and adaptive versions of the applications.

* 1. The IPO shall provide the index data in an incremental package with a daily frequency. Complete packages shall be required for fixing relevant data inconsistencies between the portal and the IPO. The thumbnail service for images is optional for the IPO. The IPO shall provide the public parts of data as laid down in the ST66 and ST86 standards, within the constraints of national legal rules. In particular, the data to be supplied shall be in compliance with the technical specifications agreed within the project brief and the set-up integration documentation.
	2. The IPO shall be entitled to the reimbursement of an allowance in consideration for the accomplishment of the referred services during a first period from 1st January to 31st March, during a second period from 1st April to 30th June, during a third period from 1st July to 30th September and a fourth period from 1st October to 31st December (hereafter, "the service periods"). The allowance, which will represent 90% of the running costs, shall not take into account the resources needed for the construction, deployment and support of the applications. The payment of this allowance shall be done based on four separate evaluation reports, to be issued by the Office no later than 30 calendar days following the expiration date of each service period, pursuant to paragraph 7.10.
	3. The calculation of the allowance shall rely on different service values (SV). Each one of those values corresponds to a service parameter (SP), recorded over the service period. The following formula shall be used for that purpose:

“90% of **Running costs = SP2 x SP3 x SP5 x (SP6+ (1,5 € x SP7))”**

7.6 For the application of the formula, the following service value levels and service parameters are agreed for both TMView and DesignView applications:

| **Services description** | **Agreed service value levels (averages over the service period)** | **Service parameters**  |
| --- | --- | --- |
| **SV2: Retrieval response time** (i.e. the time elapsed between the moment TMView / DesignView sends a request to obtain the details of a specific trade mark/design to an office and the moment those details are available in TMView / DesignView. This time includes the communication time through the Internet). | SV2 has to be <= 2 seconds for the retrieval response time. | SP2 means the correction factor for variances of the Retrieval response time service level (SV2).The maximum factor is 1.25 and the minimum factor is 0.00.**SP2 = [1 – ((SV2 - 2) /8)]** |
| **SV3: Index data update frequency** (i.e. this service value reflects the ability of an IPO to update daily the central index data). | It is expected that the central index data is updated by the IPO on a daily basis (SV3) with an automatic delivery of a differential file through FTP. | SP3 means the correction factor for variances of the frequency of update of the index data (SV3).The maximum factor is 1.00 and the minimum factor is 0.00. **SP3 = [1 – ((SV3 - 1) /4)].** |
| **SV5: Services availability** (i.e. the availability of the web services to answer trade mark/design details retrieval requests coming from TMView/DesignView. It is evaluated in percentage of answered requests.) | SV5 has to be >= 99.5% of answered details retrieval requests. This means that the availability of the services will only be measured at the occasion of a detail retrieval request. | SP5 means the correction factor for variances of the availability service level (SV5).The maximum factor is 1.25 and the minimum factor is 0.00.**SP5 = [1 + ((SV5– 99,5) /2)]** |
| **SV6: Trade mark/design details requests** (i.e. the maximum number of trade mark/design details requests per minute is used to define the base amount to refund the IPO. The average value of the daily highest number of requests per minute to access the details of a trade mark/design over the service period is used.)  |  | SP6 means the basic cost to run the services based on the average number of the daily highest details requests over the considered period (SV6).The parameters are:54.000€ if 0<= SV6 < 562.000€ if 5 <= SV6 < 1069.000€ if 10 <= SV6 < 1576.000€ if 15 <= SV6 |
| **SV7: Number of trade marks/designs** (i.e. the (average number of searchable trade marks/designs). |  | SP7 means the average number of trade marks/designs in the database over the selected period (SV7) divided by 1000. |

* 1. All calculations will be done with 3 decimals and time stamp will be measured in milliseconds. The mathematic method that will be used is the Symmetric Arithmetic Rounding or Round-Half-Up (Symmetric Implementation).
	2. The IPO shall benefit from a 6-month grace period starting on the date of the integration to the applications, during which no penalty shall be applied if the criteria of the service levels are not fulfilled. This period shall not be extended.
	3. The performance of the IPO shall be continuously evaluated with the assistance of an administration tool. This evaluation shall be based on the list of agreed service value levels. The Office shall provide the IPO with access to the tool. The IPO shall, at least on a quarterly basis, review its own statistics and communicate immediately any disagreement to the Office.
	4. The Office shall send an evaluation report to the IPO, based on the administration tool, no later than 30 calendar days following the expiration date of each serviceperiod. The IPO shall provide its invoice or payment request within 21 calendar days from the date of receiving the Office’s evaluation. The Office shall have 15 calendar days to approve or reject this invoice or request, or to require any supporting documentation or additional information. If necessary, the IPO shall have 15 calendar days, as from the date of the Office’s request, to submit the requested additional information or a new invoice for payment. The Office shall pay the IPO’s invoice within a maximum of 60 calendar days after the Office’s approval of the payment request.
	5. The Office may propose an adjustment to the service level and/or financial allowance scheme on an annual basis in accordance with the overall performance of all participating offices. It may also adjust the maximum annual allowance foreseen in Article 3 of the Agreement in accordance with the overall performance observed during each service period. In doing so, the Office shall apply the principle of co-financing as decided by the Management Board.
	6. If this Agreement is terminated before the expiry of the fourth year after the integration of the IPO into the applications, the IPO shall reimburse to the Office that part of the set-up costs which has not been recouped by depreciation at the time of termination. The refund schema in the case of a termination is as follows:
1. in the course of the 1st contractual year: 100%;
2. in the course of the 2nd contractual year: 75%;
3. in the course of the 3rd contractual year: 50% and
4. in the course of the 4th contractual year: 25%.
	1. If this Agreement is terminated by the Office before the expiry of the fourth year after the integration of the IPO into the applications, the IPO may not refund the set-up costs, except if the termination is due to non-compliance with the current Agreement.
	2. Force majeure shall mean any unforeseeable exceptional situation or event beyond the parties’ control which prevents either of them from fulfilling any of their obligations under this Agreement, is not attributable to error or negligence on their part, and proves insurmountable in spite of all due diligence. Defects in equipment or material or delays in making them available (unless due to force majeure), labour disputes, strikes or financial difficulties cannot be invoked as force majeure by the defaulting party. A party faced with force majeure shall inform the other party without any delay by registered letter with recorded delivery or equivalent, stating the nature, the probable duration and the foreseeable effects. Neither of the parties shall be held in breach of their obligations under the Agreement if they are prevented from fulfilling them by force majeure. The parties shall make every effort to minimise any damage due to force majeure.

**Annex 2 – C: SPECIFIC CONDITIONS FOR THE SUSTAINABILITY OF THE EUROPEAN COOPERATION COMMON STANDARDS AND PRACTICES AND RELATED SERVICES**

**PURPOSE**

The purpose of this Annex is to specify the common terms and conditions establishing the implementation, maintenance and service in relation to the common standards and practices developed by the European Cooperation Projects.

These terms and conditions shall aim to guarantee the sustainability of the common standards and practices and the related services in the long term.

**ACTION**

This Annex contains the terms and conditions establishing:

1) The implementation and continuity of Common Standards and Practices.

2) The maintenance of the Harmonisation of Classification in Trade marks and Designs,

**IMPLEMENTATION AND CONTINUITY OF COMMON STANDARDS AND PRACTICES**

1. The IPO can implement any new common practice endorsed the MBBC on a voluntary basis. The IPO which has not participated in the working group can at any time decide to implement the common practice, under the assumption that the IPO adopts the decisions that have been reached by the working group up to that point.

2. The IPO which is unable to implement a practice because of a legal constraint shall have the option to adopt the agreed common practice at any moment in the future when the legal constraint ceases to exist.

3. The IPO shall communicate to the Office any legal constraint that occur following the implementation of the common practice and which might impede the current or future implementation.

4. The IPO shall facilitate support, in the continuity of the common practices, to the maintenance tasks coordinated by the Office..

5. The IPO shall be responsible for amending its guidelines, based on the new common practice.

6. The IPO shall provide help in the elaboration, translation, validation and publication of common communications.

7. The IPO shall provide help in the validation, publication and translation of training and communication material.

8. The IPO shall provide assistance, namely completing surveys, in the continuity of the new common practice as coordinated by the Office.

9. The IPO shall liaise with user associations to communicate and receive feedback regarding the implementation of the common practice.

10.The IPO shall designate a person(s) to act as a point of contact and communicate it to the Office.

11.The IPO shall collaborate in the creation of the Extended Knowledge Circle Network which will be established in order to provide a platform to discuss the maintenance of common practices. The IPO shall designate one expert representing them on each of the specific subject matters (Absolute Grounds, Relative Grounds, Goods and Services issues, Designs, Register and Proceedings).

**MAINTENANCE OF THE HARMONISATION OF CLASSIFICATION IN THE FIELD OF TRADE MARKS**

12. The IPO shall provide active support for the maintenance of the Harmonised database, by acting within the Harmonisation workflow established by a working group composed of participating Offices, WIPO and the Office. The working group is responsible for the definition of this Harmonisation workflow and its future evolution. Any modification will be published and communicated to all participating Offices.

13. The IPO shall use the Terminology Maintenance Console to enter any new entries and modification in the Harmonised database, following the Harmonisation Workflow rules.

14. The IPO shall assign at least one classification expert and one substitute in order to access the Terminology Maintenance Console and perform the maintenance tasks, following the Harmonisation Workflow rules.

15. The IPO shall be co-responsible of the quality of the translations and variants in the Harmonised database in the respective filing language(s).

16. The IPO shall be co-owner, with all the other harmonised Offices, of the Harmonised database.

17. The IPO shall actively participate in the voting process of the Harmonised Workflow.

18. The IPO shall actively collaborate in the implementation, communication and maintenance of the “Guidelines on acceptability of classification terms”. These guidelines comprise a set of instructions that will help to identify when a classification term is sufficiently clear and precise. The guidelines can also be of help to reason the acceptance or rejection of any classification term proposed to the Harmonised database.

19. The IPO shall cooperate in the updating of Taxonomy and Class Scopes, as coordinated by the Office, and validate the yearly taxonomy updates.

20. The IPO shall cooperate in the implementation, validation and translation of new Nice editions and versions.

21. The IPO shall provide support on off-line exercise regarding maintenance of translations of Goods & Services terms and the evolution of the Harmonised database.

22. The IPO, which is harmonised, shall strictly apply the agreed guidelines and rules (“Guidelines on acceptability of classification terms” and Harmonisation Workflow rules), and the content of the Harmonised database. This includes providing the full, unaltered and unedited content of the Harmonised Database (when Office harmonisation is completed) in all classification search tools, including e-filing classification functionality.

23. The IPO shall comply with the outcome of the voting process of the harmonised workflow.

24. The IPO shall prominently include a link to TMclass on their website, preferably in section(s) concerning classification of goods and services. Furthermore, when utilising the Harmonised Database and the built in web services on their own website, their e-filing or any other online tool, shall reference the origin by adding the text “Powered by TMclass and the Harmonised Database” (where TMclass is hyperlinked to the Trademark and Designs Network tool) clearly visible on the page.

**MAINTENANCE OF THE HARMONISATION OF PRODUCT INDICATIONS IN THE FIELD OF DESIGNS**

25. The IPO must provide active support for the maintenance of the harmonised database of product indications (HDBPI), by acting in accordance with the Harmonised Workflow established by a working group composed of Participating Offices, WIPO and the EUIPO. The working group is responsible for the definition of this Harmonised Workflow. Any modification will be agreed and communicated to the IPO in due course.

26. The IPO must use the Design Terminology Maintenance Console (DTMC) to enter any new terms and/or modifications into the HDBPI, in accordance with the rules of the Harmonised Workflow.

27. The IPO must assign at least one classification expert and one substitute that will have permission to access the DTMC and perform the maintenance tasks, as provided for in the rules of the Harmonised Workflow.

28. The IPO shall be jointly co-responsible for the quality of the translations and variants in the HDBPI in the respective filing language(s).

29. The IPO must be co-owner the HDBPI jointly with all the other harmonised Offices.

30. The IPO must actively participate in the voting process of the Harmonised Workflow.

31. The IPO must actively collaborate in the implementation, communication and maintenance of the “Guidelines on acceptability of classification terms”. These guidelines comprise a set of instructions that will help to identify when a classification term is sufficiently clear and precise. The guidelines can also be of help to justify the acceptance or rejection of any classification term proposed for entry into the HDBPI.

32. The IPO must cooperate in the updating of the extended product indication classifications (EPIC) and validate the yearly EPIC structure updates.

33. The IPO must cooperate in the implementation, validation and translation of new Locarno editions and versions.

34. The IPO must provide support regarding maintenance of translations of product indication terms and the evolution of the HDBPI.

35. The IPO, which is harmonised, must strictly apply the agreed guidelines and rules (“Guidelines on acceptability of classification terms” and the rules of the Harmonised Workflow), as well as the content of the HDBPI, throughout its operations. This includes providing the full, unaltered and unedited content of the HDBPI (when Office harmonisation is complete) in all classification search tools, including the e-Filing classification functionality.

36. The IPO must comply with the outcome of the voting process contemplated within the Harmonised Workflow.

37. The IPO must include a clearly visible link to DesignClass on its website, preferably in the section(s) concerning classification of product indications. Furthermore, when utilising the HDBPI and the built in web services via its own website, its e-Filing or any other online tool the origin of the content shall be referenced with the text “Powered by DesignClass and the HDBPI” (where DesignClass is hyperlinked to the Trademark and Designs Network tool), which shall be clearly visible on the page.

**SUSTAINABILITY OF THE COLLABORATIVE NETWORK PROJECT PRACTICES AND RELATED SERVICES**

38. The parties agree to the common terms and conditions establishing the implementation, maintenance and service in relation to the Collaborative Network Project. These terms and conditions shall aim to guarantee the sustainability of the collaborative network and the related services in the long term. The present specific terms and conditions shall be read in light of the General Terms and Conditions of the Agreement and they shall in no way be interpreted as an act of renunciation or rejection of those terms which continue to be fully effective and valid

 **PROCESSING OF DATA RELATED TO THE LANGUAGE CHECK TASK**

39. The parties undertake that the data corresponding to the names and working languages of each of the language checkers will be available to those employees of the Parties carrying out the Language Check Task via the Language Check Tool (LCT).

40. The parties undertake to manage the individual production data of each of the language checkers in order to facilitate evaluation reports regarding the number of language checks performed and the list of remarks left by each when so required by the language checker’s managing Office.

41. The IPO is hereby advised that the administrator of the LCT, which is an employee of the Office, has access to the production reports of all the language checkers of the Office and the IPO.

42. The parties hereby agree to the transfer of the personal production data of individual language checkers between the IPO and the Office, for purposes strictly related to the Language Check Task.

43. The parties are hereby advised that the processing of the data corresponding to the names and working languages of each of the language checkers, as well as the individual data corresponding to the number of language checks performed and remarks recorded, has been duly registered with the Data Protection Office (DPO) of the Office via a DPO Notification, in accordance with Office procedure.

44. The IPO must be responsible for ensuring that their own language checkers are duly advised of the processing of their personal and production data, and have read and understood the DPO Notification on the same.

 **MAINTENANCE OF CONFIDENTIALITY OF THE DATA PROCESSED DURING THE LANGUAGE CHECK TASK**

45. The parties hereby agree that the processing of the aforementioned personal data of individual language checkers must be confined to the context of the Language Check Task and must not be distributed under any other circumstances.

46. The parties undertake to preserve the confidentiality of all information relating to the trade marks examined within the scope of the Language Check Task.

**THE IMPLEMENTATION AND CONTINUITY OF THE LANGUAGE CHECK TASK**

47. The IPO undertakes to adhere to the quality standards and regulations laid out in the Instruction Notes to the Language Check Task.

48. The IPO must be responsible for managing its own Language Checkers members’ team.

49. The IPO must communicate any absences of languages checkers, planned or otherwise, to the Office forthwith in order to allow for replacements to be assigned in a timely manner, causing as little disruption to the Language Check Task as possible.

50. The IPO must be responsible for ensuring that all pending language checks assigned to their language checkers have been completed by 11.30 every week day morning.

51. The IPO must ensure that all language checkers are available to respond to questions or comments from Office examiners regarding any remark or decision registered in the LCT, and must undertake to ensure responses provide adequate information that allows for the resolution of the examiner’s doubts.

52. The IPO must observe all comments and suggestions made by the Office Operations Department regarding the execution of the Language Check Task and improvements that can be made thereto, incorporating feedback into language check procedure without delay.

53. In the event of noncompliance with any of the provisions laid out above, and pursuant to articles 3 and 5 of Annex 1 to this Agreement, the Office must suspend or terminate the involvement of the IPO in the Language Check Task.

54. The Office may terminate the execution of the Language Check Task by the IPO, at any time and for any reason relating to a change in the process for conducting language examinations and/or a change to Office procedure.

55. In case the IPO has a reason and wishes to stop performing the Language check should warn the Office one month in advance.