



**CPVO**

Community Plant Variety Office

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### **EXAMINATION OFFICE - DESIGNATION AGREEMENT**

The Community Plant Variety Office ("the CPVO"), based in Angers, France, and represented by its President, Mr Francesco Mattina,

on the one part,

and

Click or tap here to enter text. (hereinafter referred to as "the Examination Office"),

located at

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and represented by Click or tap here to enter text.,Click or tap here to enter text., on the other part,

(hereinafter referred to as "the Parties"),

Having regard to the decision of the Administrative Council of the CPVO to entrust the Examination Office with responsibility for the technical examination of varieties of certain botanical taxa, as notified to the Examination Office by the President of the CPVO in accordance with Article 13(1) of Commission Regulation (EC) No. 874/2009<sup>(a)</sup> ("the Proceedings Regulation"),

Having regard to Article 15(1) of the Proceedings Regulation establishing that the designation of an Examination Office shall take effect by a written agreement between the CPVO and the Examination Office,

HAVE AGREED

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<sup>(a)</sup> COMMISSION REGULATION (EC) No 874/2009 of 17 September 2009 establishing implementing rules for the application of Council Regulation (EC) No 2100/94 as regards proceedings before the Community Plant Variety Office (recast), OJ L 251 24.9.2009, p. 3.

The following Annexes form an integral part of this Designation Agreement (hereinafter referred to as "the Agreement"):

- *Annex Remuneration to be paid by the CPVO to the Examination Office*<sup>1</sup>
- *Annex Scope of entrustment for your Examination Office**Error! Bookmark not defined.*
- Annex Details of technically qualified bodies and the botanical taxa that the CPVO has agreed that the Examination Office may use such bodies for
- Annex Template of the format to be used for preliminary reports
- Annex Template of the format to be used for interim reports on technical examination
- Annex Template of the format to be used for final reports on technical examination
- Annex Template of the format to be used for variety descriptions
- Annex Template of the format to be used for interim reports on technical verifications
- Annex Template of the format to be used for final reports on technical verifications
- *Annex Reporting deadlines of reports being delivered to the CPVO*<sup>1</sup>
- Annex Form for a declaration in cases where there is a risk of conflict of interest

For the purpose of communicating efficiently with its examination offices, the CPVO has developed a website with restricted access called hereafter the TLO website.*Error! Bookmark not defined.*

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<sup>1</sup> Information contained in these annexes is exclusively made available on the TLO website (<https://online.plantvarieties.eu/>) and continuously updated once agreed bilaterally; no static document is appended to this Designation Agreement.

## 1. Subject matter of the Agreement

### *Technical examinations – distinctness, uniformity and stability testing (DUS testing)*

- 1.1. The Examination Office undertakes to carry out (pursuant to Articles 55, 56 and 57 of the Basic Regulation) on behalf of the CPVO, in relation to the plant variety specified in the request, the technical examination required to ensure compliance with the distinctness, uniformity and stability criteria set out in Articles 7, 8 and 9 of Council Regulation (EC) No. 2100/94<sup>(b)</sup> (“the Basic Regulation”).

### *Technical verifications*

- 1.2. The Examination Office undertakes to carry out (pursuant to Articles 55 and 56 of the Basic Regulation) on behalf of the CPVO, in relation to the plant variety specified in the request, technical verifications in order to verify that the continuing existence of the variety is unaltered (Articles 64 and 65 of the Basic Regulation).

### *Take-over reports*

- 1.3. The Examination Office undertakes to provide to the CPVO, in relation to the plant variety specified in the request, reports of technical examinations of varieties already carried out, or in the process of being carried out, by or on behalf of the Examination Office (Article 27 of the Proceedings Regulation).

### *Botanical taxa falling within the scope of the Agreement*

- 1.4. The CPVO may only request the Services mentioned in Articles 1.1 - 1.3 (the “Service” individually or together “Services”) in relation to botanical taxa that the Examination Office has agreed to examine when entering into this Agreement and for which the Administrative Council of the CPVO has entrusted the Examination Office. The botanical taxa entrusted to the Examination Office are listed in the TLO website under My Contract section, “Scope of entrustment for your Examination Office”<sup>1</sup>. If the Administrative Council entrusts the Examination Office for more botanical taxa after signing this Agreement, such botanical taxa shall be added to the list available under “Scope of entrustment” in the TLO website [Error! Bookmark not defined.](#) upon written agreement between the parties.

If the Administrative Council decides to limit the scope of the entrustment by reducing the number of botanical taxa or types of varieties after signing this Agreement, such limitation shall be reflected in the list above [Error! Bookmark not defined.](#) after communication with the Examination Office.

In case that the Examination Office desires to delete a botanical taxon listed in the “Scope of entrustment for your Examination Office” [Error! Bookmark not defined.](#), it shall communicate this to the CPVO through the TLO website. If the CPVO agrees to the request, it shall inform the Examination Office in writing, acknowledging the date when the withdrawal enters into force. Despite a request from the Examination Office to delete a botanical taxon, the Examination Office shall finalise any tests having been requested by the CPVO before the entry into force of the withdrawal.

Any change of the botanical taxon name as a consequence of a change in the Taxonomy shall have no effect on the scope of entrustment. The changes will be implemented by the CPVO, after communication with the EO.

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<sup>(b)</sup> Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights, OJ No. L227, 1.9.94, p.1.

This list of entrusted examination offices and the botanical taxa covered by the scope of entrustment are published on the website of the CPVO.

*Procedure on requests for Services made by the CPVO*

- 1.5. The CPVO shall make a written request to the Examination Office specifying the requested Service.
- 1.6. If, for technical or other reasons, the Examination Office cannot undertake the Service requested, it shall so notify the CPVO in writing within 10 CPVO working days of receipt of the request. The notification shall set out the grounds on the basis of which the Examination Office cannot undertake the Service requested. The CPVO shall inform the Examination Office in writing within 10 CPVO working days of receipt of the notification of the Examination Office, without prejudice to the later CPVO findings on whether the grounds are justified or not.
- 1.7. If the CPVO finds that the grounds invoked by the Examination Office are justified, the Examination Office shall not be bound to provide the Service requested. If the CPVO finds that the grounds invoked by the Examination Office are not justified and the Examination Office refuses to deliver the Service requested, the refusal shall be considered as a failure to execute the Agreement and the CPVO shall be entitled to invoke the termination of the agreement pursuant to Article 15.2 of the present agreement in relation to the botanical taxon in question and/or ask for compensation of any loss incurred due to the refusal. The Examination Office shall be entitled to provide its comments within 10 CPVO working days of receipt of the notification by the CPVO of the failure to execute the Agreement.

## **2. Use of technically qualified bodies (TQBs) (Article 56.3 of the Basic Regulation)**

- 2.1. For the purpose of carrying out the Services or part of the Services (e.g. testing individual characteristics), the Examination Office may avail itself of the services and take into account the available findings of the technically qualified bodies mentioned in annex "Details of technically qualified bodies and the botanical taxa that the CPVO has agreed that the Examination Office may use such bodies for". The technically qualified bodies may only carry out the Services in relation to the botanical taxa allocated to it and included in the above mentioned annex.
- 2.2. The Examination Office shall not engage any other sub-contractor than the agreed technically qualified bodies to carry out the Services without prior written agreement of the CPVO. The Examination Office shall ensure that the technically qualified bodies do not engage sub-contractors to carry out the Services without prior agreement of the CPVO. If the CPVO agrees that a technically qualified body engages a sub-contractor, such a sub-contractor should be treated as a technically qualified body and should be added to the list in annex "Details of technically qualified bodies and the botanical taxa that the CPVO has agreed that the Examination Office may use such bodies for".
- 2.3. Acts performed by a technically qualified body shall be considered, as far as the CPVO is concerned, as acts of the Examination Office. The Examination Office is liable for all actions carried out by the technically qualified bodies in the framework of this agreement, as specified under Article 10.

### **3. Performance**

#### *Performance of technical examinations and technical verifications*

- 3.1. The Examination Office undertakes to perform the tasks assigned to it according to the Entrustment Requirements adopted by the Administrative Council, available on the CPVO website
- 3.2. The submission requirements for plant material shall be those as published in the S2/S3 Publication of the Office. Any proposed modification of the submission requirements shall be reported to the CPVO via the webtool and may not be applied before acceptance by the CPVO and publication in the aforesaid S2/S3 Publication of the CPVO.

#### *Involvement of external experts*

- 3.3. The Examination Office may not use external experts in the DUS testing (e.g. "walking reference collections") without the prior written approval of the CPVO. In cases where the CPVO has approved the use of external experts, the Examination Office shall ensure that the basic requirements for the involvement of external experts as laid down in "Requirements for the involvement of external experts" (vademecum document MEO.06.05.annex I) are respected.

#### *Standard samples*

- 3.4. In cases where the Examination Office keeps a living reference collection, it shall keep a standard sample of each variety for which it has carried out the technical examination and for which a Community plant variety right has been granted.
- 3.5. On request the Examination Office shall send a "sub-sample" of the standard sample of varieties mentioned in Article 3.4 to any Examination Offices entrusted by the Administrative Council of the CPVO for the same botanical taxon. Such sub-sample should be sent only once. The receiving examination offices should check the identity of their own standard sample based on the sub-sample received.
- 3.6. The Examination Office shall respect the "CPVO policy on the status of plant material submitted for DUS testing purposes" (Document AC-2024-1-4)).

#### *Administrative performance*

#### *Reports on technical examination and technical verification*

- 3.7. For each technical examination and technical verification, the Examination Office shall deliver to the CPVO a preliminary report ("the preliminary report") no later than four weeks after the date of the request for the technical examination by the CPVO, using the annex "Template of the format to be used for preliminary reports".
- 3.8. The Examination Office shall also deliver to the CPVO a report relating to each growing period ("the interim report") and, when the Examination Office considers the results of the technical examination to be adequate to evaluate the variety or the CPVO so requests, a report relating to the examination ("the final report"). The interim report and the final report shall be delivered in the form of the templates set out in annex "Template

of the format to be used for interim reports on technical examination” and annex “Template of the format to be used for final reports on technical examination” respectively.

- 3.9. With regard to technical verifications, the Examination Office shall deliver to the CPVO at the end of each growing period an interim report and at the end of the examination a report relating to the findings of the technical verification. The interim report and the final report shall be drafted in accordance with the templates set out in annex “Template of the format to be used for interim reports on technical verification” and annex “Template of the format to be used for final reports on technical verification” respectively.

#### *Take-over reports*

- 3.10. In cases where, at the time when the CPVO makes the request for a take-over, the final report is not immediately available, the Examination Office shall provide the CPVO with a preliminary report using the template set out in annex “Template of the format to be used for preliminary reports”,<sup>2</sup> The Examination Office shall provide the CPVO with interim report(s) that might already have been issued. The preliminary report and the already available interim report(s) shall be submitted to the CPVO no later than 4 weeks after the date of the request to take over the report by the CPVO. Other interim reports issued after the date of request should be submitted to the CPVO at the end of each growing period. The final report should be provided not later as on the agreed date for DUS examinations initialised by the CPVO.
- 3.11. In cases where a final report is available, it should be provided no later than 4 weeks after the date of the request to take over the report by the CPVO. No preliminary report is needed in this situation.
- 3.12. In case of withdrawal of the application at national level, the Examination Office shall inform the CPVO without delay about the withdrawal and if the DUS test can continue or not with the same plant material. The Examination Office shall keep the plant material of the variety, unless the applicant also withdraws the application at EU level and on condition that the CPVO has confirmed to the Examination Office that keeping the plant material is no longer necessary.

#### *General provisions on reports*

- 3.13. Reports on examinations carried out by a technically qualified body on behalf of the Examination Office shall be sent to the CPVO by the entrusted Examination Office.
- 3.14. The final report shall state the opinion of the Examination Office on the distinctness, uniformity and stability of the variety. Where it considers those criteria to be satisfied, or where the CPVO so requests, a description of the variety shall be added to the report. In case the variety is an agricultural hybrid, the official variety descriptions of the parental components shall be added. in separate documents clearly labelled.
- 3.15. Where the variety concerned is a hybrid, the Examination Office is bound to ensure that no reference to the hybrid formula is indicated in the variety description of the hybrid variety;
- 3.16. The official variety description shall be drafted in the format set out in annex “Template of the format to be used for variety descriptions”. In case the technical examination is carried out according to a CPVO guideline (CPVO technical protocol) the variety description should state both CPVO and UPOV numbering of the characteristics (if available).

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<sup>2</sup> Article 27(1) Commission Regulation (EC) No 874/2009

- 3.17. The Examination Office shall be responsible for ensuring the quality and completeness of the reporting reflected in preliminary reports, interim reports, final reports and official variety descriptions.
- 3.18. At the request of the CPVO, the Examination Office shall collaborate and provide all data on the basis of which the interim report or final report was established. In particular, the CPVO may request such data in the framework of legal proceedings instituted before the CPVO, the Board of Appeal of the CPVO, or the Court of Justice of the European Union.
- 3.19. If a report is negative the Examination Office shall set out the detailed reasons for its findings.
- 3.20. Where the examination of a variety has been carried out on behalf of the CPVO, the interim reports and the final report, including the official variety description, shall be the property of the CPVO. Those reports may not be used by the Examination Office, or any technically qualified body for registration purposes unless a formal request for take-over has been made to the CPVO. The use for any other purposes than registration needs to be authorised by the CPVO in writing.
- 3.21. The preliminary report, the interim report, the final report and the official variety description shall be written in one of the official languages of the European Union. If this language is not English, the report and the official variety description shall be accompanied by a translation in English. The report shall be signed by the responsible member of the staff of the Examination Office and shall expressly acknowledge the exclusive rights of disposal of the CPVO under Article 57(4) of the Basic Regulation.
- 3.22. The Examination Office shall inform the CPVO of the name of the person responsible for sending the reports from the Examination Office and/or from the technically qualified body if such body is appointed.
- 3.23. Where the CPVO does not consider the final report to constitute sufficient basis for a decision on the application or decides to arrange a complementary technical examination, it shall inform the Examination Office within 4 weeks upon receipt of the final report.
- 3.24. The interim and the final reports shall be delivered to the CPVO no later than on the deadlines as set out in the "Reporting Deadlines section"[Error! Bookmark not defined.](#) available in the TLO website For botanical taxa where no deadline is mentioned, the final report shall be delivered to the CPVO no later than five months from the end of the growing cycle of the variety in question, the interim report for each growing cycle at least 3 months before the anniversary date of the submission of plant material unless otherwise agreed with the CPVO on a case by case basis. In cases where the final report is negative such report should be provided as soon as it is established that the outcome of the technical examination is negative but not later than the deadlines as set out in the "Reporting Deadlines section" on the TLO website[Error! Bookmark not defined.](#) unless otherwise agreed upon with CPVO on a case by case basis.
- 3.25. Examination Offices shall send reports and variety descriptions to the CPVO in electronic format as a pdf document or any other format agreed upon between the CPVO and the Examination Office. Mention of the name of the responsible member of the staff of the Examination Office and the date the name was inserted to the document is sufficient in order to comply with the obligation to sign the document as set out in Article 3.21.

#### *Information on problems in the tests and keeping of samples*

- 3.26. The Examination Office shall report to the CPVO immediately in cases where the plant material of the candidate variety has not arrived in time or in cases where the material submitted does not fulfil the conditions laid down in the request for submission of plant material issued by the CPVO.
- 3.27. In cases where the Examination Office encounters difficulties obtaining plant material of reference varieties the CPVO should be informed in writing.
- 3.28. In cases where the Examination Office identifies issues during the course of the technical examination or technical verification that may lead to a negative report, the Examination Office shall inform the CPVO and in urgent cases the applicant/holder as soon as such issues become obvious. If the Examination Office does not provide this information in due time enabling the applicant/holder to visit the trial, the Examination Office shall bear the costs for extra trials that may need to be organized as a result of the omission to inform the CPVO, and in urgent cases the applicant/holder, of the problems.
- 3.29. As far as feasible the Examination Office shall keep a representative sample of any relevant testing material of the candidate variety and if necessary, of the reference variety(ies) if the technical examination has resulted in a negative report. As soon as possible, the CPVO shall inform the Examination Office when the material can be destroyed. If the material needs to be kept beyond 5 weeks of receipt by the CPVO of a negative report, the Examination Office may charge the CPVO 20€ per variety for each extra week until the CPVO informs the Examination Office that the material can be destroyed.
- 3.30. In cases where the Examination Office identifies problems of uniformity or stability with Community protected varieties used as reference varieties during technical examinations, the CPVO shall be informed.

#### *Photos*

- 3.31. The CPVO shall have a non-exclusive right to use, for any purposes, including the inclusion in a database available on the world wide web, photos taken by the Examination Office in the course of the technical examination and submitted to the CPVO as part of the report.

#### *Working days of the Office*

- 3.32. The Office publishes the CPVO holidays in number 6 of its Official Gazette each year. Any day which is not a CPVO holiday or a weekend is to be considered as a CPVO working day.

## **4. Monitoring of the performance**

- 4.1. In order to monitor the conduct of the technical examination, including inspection of the locations of the test plots and the methods used for the tests, staff of the CPVO may visit the premises of the Examination Offices and the technically qualified bodies if such bodies are appointed.
- 4.2. The monitoring of the technical examination may include assessing compliance with the relevant technical protocols/test guidelines/national protocols.

- 4.3. Before the visit, the CPVO shall inform the Examination Office and the technically qualified bodies of the subject of the monitoring. The CPVO shall inform the Examination Office of visits to the technically qualified bodies.
- 4.4. The CPVO shall communicate to the Examination Office the outcome of the visit.

## **5. Assessments by the CPVO Quality Audit Service (QAS).**

- 5.1. The Examination Office undertakes to cooperate in the triennial and ad-hoc assessments carried out by the CPVO Quality Audit Service according to the QAS Entrustment Procedure Manual as adopted by the Administrative Council. The assessments are carried out to evaluate the Examination Office's services in line with the CPVO Entrustment Requirements, and serve as a basis for QAS to provide a recommendation to the Administrative Council in respect of maintaining, renewing, extending or reducing the scope of entrustment for the Examination Office.

## **6. Technical Liaison Officer**

- 6.1. In order to safeguard efficient communication from the Examination Office to the CPVO and vice versa the Examination Office shall appoint a Technical Liaison Officer. The appointment shall be done by the General Manager/President/Director of the Examination Office in writing. Any modification in the person of the TLO should be communicated to the CPVO by the General Manager/President/Director of the Examination Office in writing.
- 6.2. The role and the responsibilities of the Technical Liaison Officer (TLO) are defined by a decision of the AC laid down in "Role and responsibilities of the TLO" (vademeccum document MEO13.05.1).

## **7. Payments**

### *General provisions on payments*

- 7.1. The Examination Office shall notify a single bank account for receipt of payments from the CPVO Bank Name: [Click or tap here to enter text.](#), IBAN : [Click or tap here to enter text.](#), BIC(Swift) Code: [Click or tap here to enter text.](#). Changes to this account shall be notified to the CPVO in writing with supporting evidence.
- 7.2. Payment shall be made in EUR to the account defined in Article 7.1, regardless of the account indicated on the invoice, within 30 days of receipt by the CPVO of an invoice without VAT.
- 7.3. Payment shall be deemed to be made on the date on which it is debited to the CPVO's account. However, after giving notice to the Examination Office that it is not satisfied with the performance of the Examination Office, the CPVO may defer payments. Where payment is so deferred, the CPVO shall not be liable to pay any interests or any indemnities of any kind.
- 7.4. The fees for Services relating to requests made by the CPVO before the entry into force of this Agreement, but carried out during the course of this Agreement, shall be the fee applicable when the request was made by the CPVO.

- 7.5. Remuneration to the Examination Offices shall be made on the basis of receipt of an invoice deemed to be valid by the CPVO. In the case remunerations are due for specific parental components, the components should be detailed on the invoice.
- 7.6. Decommitment because of failure by the Examination Office to send invoices. In the case an EO is failing to provide an invoice within a period of one year after the submission of the final report or the notification on the cancellation of the request for a technical examination or technical verification or sample keeping, the amounts shall be decommitted and the Examination Office right to require payment of the fees shall lapse.

#### *Payment for technical examinations*

- 7.7. For the Service mentioned in Art. 1.1, the CPVO shall pay to the Examination Office the amount set out in "Remuneration to be paid by the CPVO to the Examination Office" [Error! Bookmark not defined.](#), available in the TLO website, in relation to the botanical taxa indicated, for each growing period of the examination. In accordance with Article 15(5) of the Proceedings Regulation, failure to provide a breakdown of the costs of the examinations after two requests from the Office, may lead to a reduction in this amount by 20%.
- 7.8. The amounts of the "Remuneration to be paid by the CPVO to the Examination Office" [Error! Bookmark not defined.](#) shall be adjusted based on the completion of the so-called cost calculation exercise. In years during which there is no cost calculation exercise change, the amounts shall be adjusted due to inflation as defined by the Harmonised Index of Consumer Prices (HICP) of the European Central Bank. The CPVO will use the most recent yearly HICP available in December of the year without cost calculation exercise. The adjusted amounts shall apply to examinations requested by the CPVO from 1 January of the following year.
- 7.9. If a technical examination requested by the CPVO is cancelled by the CPVO
- Before the first year of testing, after the closing date for the species in question or 3 months before the deadline for submission of plant material when the period between the closing date and the date of submission of material is shorter than 3 months, or
  - less than a month before or on the anniversary date of the submission date of plant material in any subsequent year of testing,

the CPVO shall pay a reduced fee representing 25% of the remuneration of the technical examination for one growing period in relation to the botanical taxa concerned, upon request of the EO

The reduced fee shall compensate administrative organisational costs incurred on the side of the Examination Office due to the request made by the CPVO.

In case the cancellation of the technical examination takes place following a withdrawal of the CPVO application by the applicant, the calculation of the amount due to the Examination Office shall be based on the date of withdrawal of the application by the applicant even though the examination office may be informed after the deadline for submission/anniversary date thereof. The examination office shall be informed about the withdrawal by the CPVO within 5 working days.

If the technical examination is cancelled by the CPVO after the deadline for submission of plant material in the first year of testing or after the anniversary date thereof in any subsequent year of testing, the CPVO shall pay 100 % of the remuneration for the growing cycle in question.

This whole paragraph 7.9. shall apply to any cancellation of the technical examination from 1 January 2025 onwards, regardless of the date on which the technical examination was organized.

7.10. The remuneration is due for each growing period of a variety in respect of which interim reports and, as the case may be, a final report have been received and accepted by the CPVO.

7.11. The above remunerations are lump sums for the performance of this Agreement, including the maintenance of an appropriate reference collection.

#### *Payment for technical verifications*

7.12. For the Service mentioned in Article 1.2, the CPVO shall pay to the Examination Office 50% of the amount set out in "Remuneration to be paid by the CPVO to the Examination Office" [Error! Bookmark not defined.](#) in relation to the botanical taxa indicated, for each growing period of the verification.

7.13. Articles 7.9 to 7.11 shall apply, *mutatis mutandis*, to payments for technical verifications.

#### *Payment for take-over reports*

7.14. For the Service mentioned in Article 1.3, the CPVO shall pay to the Examination Office the amount of € 320 (three hundred and twenty euros) for the submission of the final report.

7.15. In the event that the CPVO has ordered a take-over report and the CPVO application has been withdrawn before the final report has been sent to the CPVO, the CPVO shall not pay the amount of € 320 (three hundred and twenty euros).

7.16. Article 7.6 shall apply, *mutatis mutandis*, to payments for take-over reports.

#### *Payment of a lump sum for New species*

7.17. In addition to the remuneration for the technical examination as defined in the paragraph 7.7, the CPVO pays a lump sum for new species, equivalent to one growing period. The criteria and rules for the application of the lump sum are defined in the document 'New species qualifying for the payment of a lump sum' and available on the TLO website,.

## **8. Confidentiality**

8.1. The members of the staff of the Examination Office taking part in a technical examination are not allowed to make any unauthorised use of, or disclose to any unauthorized person, any facts, documents and information coming to their knowledge in the course of or in connection with the technical examination of the candidate variety conducted in the framework of an application for CPVR. They shall continue to be bound by this obligation after the termination of the technical examination concerned, after leaving the service and after the cancellation of the designation of the Examination Office, should this be the case.

8.2. Article 8.1 shall apply *mutatis mutandis* to any material of the plant variety which has been made available to the Examination Office by the applicant.

- 8.3. If the Examination Office has availed itself of the services of other technically qualified bodies with the approval of the CPVO pursuant to article 2, Articles 8.1 and 8.2 shall apply *mutatis mutandis* to the staff members of the technically qualified body concerned, who shall sign a written undertaking to observe confidentiality.
- 8.4. The CPVO shall monitor compliance with these rules on confidentiality.

## **9. Conflicts of interest**

- 9.1. The Examination Office shall take every necessary precaution to avoid any risk of a conflict of interests and shall declare to the CPVO without delay any situation constituting or likely to lead to a conflict of interests. Such a declaration should be made in accordance with the form laid down in annex "Form for a declaration in cases where there is a risk of conflict of interest". A conflict of interests may arise in particular from economic interests, political or national affinities, family or emotional ties, situations where the EO or TQB may be involved in breeding or related R&D activities in the same botanical taxa or any other common interests that are liable to influence the impartial and objective execution of the Agreement.
- 9.2. Upon receipt of a declaration pursuant to Article 9.1, the CPVO shall decide whether there is a conflict of interest, and if so, if the request by the CPVO to carry out the examination should be withdrawn or be subject to specific conditions to address the possible conflict of interest.
- 9.3. The CPVO reserves the right to check that the measures undertaken are appropriate and may demand additional measures if necessary.
- 9.4. If the Examination Office has availed itself of the services to other technically qualified bodies with the approval of the CPVO pursuant to article 2, Articles 9.1 - 9.3 shall apply *mutatis mutandis* to the staff members of the technically qualified body concerned, who shall sign a written undertaking in which he/she commits to declare any situation in which a conflict of interest, within the meaning of Article 9.1, may arise in relation to the execution of his/her tasks performed under this agreement.

## **10. Liability**

- 10.1. Except in cases of force majeure as defined in Article 10.7, the Examination Office shall be liable for any loss or damage caused by itself in the performance of the Agreement, including any loss or damage caused by a technically qualified body agreed under article 2. The CPVO shall not be liable for any act or default on the part of the Examination Office in the performance of the Agreement.
- 10.2. The Examination Office shall indemnify the CPVO in full and undertakes to provide compensation in the event of any qualified action, claim or proceeding brought against it by a third party as a result of damage caused by the Examination Office or a technically qualified body in relation to the execution of the Agreement. However, the Examination Office shall not be liable for damages sustained by the CPVO resulting from decisions of the CPVO based on the performance of the Agreement except in the event of misconduct or negligence on the part of the Examination Office.
- 10.3. In the event of any action brought by a third party against the CPVO in connection with the performance of the Agreement, the Examination Office shall, if so requested, assist the CPVO. Expenditure incurred by the Examination Office to this end shall be borne by the CPVO, if so requested.

- 10.4. In the event of any action brought by a third party against the Examination Office in connection with the performance of the Agreement, the CPVO, if so requested, shall assist the Examination Office. Expenditure incurred by the CPVO to this end shall be borne by the Examination Office, if so requested.
- 10.5. A Party shall not be held in breach of its obligations under the Agreement if it has been prevented from performing them by force majeure. The Parties must take all necessary measures to limit any damage due to force majeure. If the Examination Office is unable to fulfil its obligations under the Agreement owing to force majeure, without prejudice to Article 15(4) of the Proceedings Regulation, it has the right to remuneration only for the Services actually provided.
- 10.6. Should a Party be faced with force majeure, it shall notify the other party without delay, stating the nature, likely duration and foreseeable effects.
- 10.7. Force majeure shall mean any unforeseeable exceptional situation or event beyond the control of the Parties including acts of terrorism which prevents either of them from fulfilling any of their obligations under the Agreement. The situation or event must not be due to error or negligence on the part of the Parties or on the part of the subcontractors and must prove to be inevitable despite their exercising due diligence. Defaults of service, defects in equipment or material or delays in making them available, labour disputes, strikes and financial difficulties may not be invoked as force majeure, unless they stem directly from a relevant case of force majeure.

## 11. Taxation

- 11.1. The CPVO shall be exempt from all taxes and dues, including value added tax, pursuant to the provisions of Article 32 of the Basic Regulation and Articles 3 and 4 of the Protocol on the Privileges and Immunities of the European Communities<sup>(4)</sup>. The Examination Office shall follow the instructions given by the CPVO for the purposes of Articles 3 and 4 of the said Protocol.
- 11.2. If the Examination Office is subject to VAT, the amount of the VAT shall be mentioned in the invoice even if it is € 0 (zero).
- 11.3. The Examination Office shall be responsible for complying with the national tax laws applicable to it in respect of revenue received under this Agreement.

## 12. Data protection

- 12.1. Processing of personal data by the CPVO

Any personal data included in or relating to the Agreement, including its implementation shall be processed in accordance with Regulation (EU) No 2018/1725.<sup>3</sup> Such data shall be processed solely for the purposes of the implementation, management and monitoring of the Agreement.

Should any other person whose personal data is processed in relation to this Agreement have any queries concerning the processing of its personal data, it shall address itself to [dpc@cpvo.europa.eu](mailto:dpc@cpvo.europa.eu). They may

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<sup>(4)</sup> Protocol to the Treaty establishing a Single Council and a Single Commission of the European Communities signed at Brussels on 8 April 1965.

<sup>3</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, OJ L 295, 21.11.2018, p. 39–98

also address themselves to the Data Protection Officer of CPVO ([dpo@cpvo.europa.eu](mailto:dpo@cpvo.europa.eu)) . They have the right to lodge a complaint at any time to the European Data Protection Supervisor ([edps@edps.europa.eu](mailto:edps@edps.europa.eu)). The data protection notice is available at <https://cpvo.europa.eu/en/data-protection>.

## 12.2. Processing of personal data by the Examination Office on behalf of CPVO

The processing of personal data by the Examination Office shall meet the requirements of the applicable legal framework and be processed solely for the purposes set out by the controller.

The Examination Office shall assist the CPVO (referred to in this Article as "controller") for the fulfilment of the controller's obligation to respond to requests for exercising rights of person whose personal data is processed in relation to this Agreement as laid down in Chapter III (Articles 14-25) of Regulation (EU) No 2018/1725. The Examination Office shall inform without delay the controller about such requests.

The Examination Office may act only on documented written instructions and under the supervision of the controller, in particular with regard to the purposes of the processing, the categories of data that may be processed, the recipients of the data and the means by which the data subject may exercise its rights.

The Examination Office shall grant personnel access to the data to the extent strictly necessary for the implementation, management and monitoring of the Agreement. The Examination Office must ensure that personnel authorised to process personal data has committed itself to confidentiality or is under appropriate statutory obligation of confidentiality in accordance with the provisions of Article 8.

The Examination Office shall adopt appropriate technical and organisational security measures, giving due regard to the risks inherent in the processing and to the nature, scope, context and purposes of processing, in order to ensure, in particular, 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;
- (e) measures to protect personal data from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or access to personal data transmitted, stored or otherwise processed.

The Examination Office shall notify any personal data breaches to the controller without undue delay and at the latest within 48 hours after the Examination Office becomes aware of the breach. In such cases, the Examination Office shall provide the controller with at least the following information:

- (a) 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) likely consequences of the breach;
- (c) measures taken or proposed to be taken to address the breach, including, where appropriate, measures to mitigate its possible adverse effects.

The Examination Office shall immediately inform the data controller if, in its opinion, an instruction infringes Regulation (EU) 2018/1725, Regulation (EU) 2016/679<sup>4</sup>, or other Union or Member State data protection provisions as referred to in the tender specifications.

The Examination Office shall assist the controller for the fulfilment of its obligations pursuant to Article 33

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<sup>4</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ L 119 4.5.2016, p. 1

to 41 under Regulation (EU) 2018/1725 to:

- (a) ensure compliance with its data protection obligations regarding the security of the processing, and the confidentiality of electronic communications and directories of users;
- (b) notify a personal data breach to the European Data Protection Supervisor;
- (c) communicate a personal data breach without undue delay to the data subject, where applicable;
- (d) carry out data protection impact assessments and prior consultations as necessary.

The Examination Office shall maintain a record of all data processing operations carried on behalf of the controller, transfers of personal data, security breaches, responses to requests for exercising rights of people whose personal data is processed and requests for access to personal data by third parties.

The controller is subject to Protocol 7 of the Treaty on the Functioning of the European Union on the privileges and immunities of the European Union, particularly as regards the inviolability of archives (including the physical location of data and services) and data security, which includes personal data held on behalf of the Office in the premises of the Examination Office or Sub-Examination Office.

The Examination Office shall notify the controller without delay of any legally binding request for disclosure of the personal data processed on behalf of the contracting authority made by any national public authority, including an authority from a third country. The Examination Office may not give such access without the prior written authorisation of the controller, unless any obligations to the contrary under the applicable legislation.

The duration of processing of personal data by the Examination Office will not exceed the period referred to in Article 15. Upon expiry of this period and unless a new agreement with the Examination Office has been signed, the Examination Office shall, at the choice of the controller, return, without any undue delay in a commonly agreed format, all personal data processed on behalf of the controller and the copies thereof or shall effectively delete all personal data unless Union or national law requires a longer storage of personal data.

For the purpose of article 2, if part or all of the processing of personal data is subcontracted to a technically qualified body, the Examination Office shall pass on the same obligations as set out in the Agreement, in writing to those parties. At the request of the Office, the Examination Office shall provide a document providing evidence of this commitment.

## **13. Intellectual property rights**

- 13.1 The Parties represent and warrant that the Intellectual Property Rights arising, or utilised, in the implementation of the Agreement are or shall be original and will not infringe to the best of their knowledge any Intellectual Property Rights owned by any third party.

## **14. Checks and audits**

- 14.1. The CPVO and/or the European Anti-Fraud Office (OLAF) may check or require an audit of any aspect related to the implementation of the Agreement, including audits related to the cost calculation exercise. This may be carried out by CPVO's or OLAF's own staff or by any outside body authorised to do so on its behalf, as the case may be.

Such checks and audits may be initiated at any moment during the provision of the services and up to five years starting from the last payment made pursuant to Article 7.

The audit procedure is initiated on the date of receipt of the relevant letter sent by the CPVO. Audits are carried out in confidentiality.

- 14.2. The Examination Office must keep all original documents stored on any appropriate medium, including digitized originals if authorised under national law, for a period of five years starting from the last payment made pursuant to Article 7.
- 14.3. The Examination Office must grant the CPVO's staff and outside personnel authorised by the CPVO the appropriate right of access to sites and premises where the Agreement is implemented and to all the information, including information in electronic format, needed to conduct such checks and audits. The Examination Office must ensure that the information is readily available at the moment of the check or audit and, if so requested, that information is handed over in an appropriate format.
- 14.4. On the basis of the findings made during the audit, a provisional report is drawn up. The CPVO or its authorised representative must send it to the Examination Office, who has 30 days following the date of receipt to submit observations. The Examination Office must receive the final report within 60 days following the expiry of the deadline to submit observations.

On the basis of the final audit findings, the CPVO may recover all or part of the payments made pursuant to Article 7 and may take any other measures which it considers necessary.

- 14.5. In accordance with Council Regulation (Euratom, EC) No 2185/96<sup>5</sup> and Regulation (EU, Euratom) No 883/2013<sup>6</sup>, OLAF may carry out investigations, including on the spot checks and inspections, to establish whether there has been fraud, corruption or any other illegal activity under the contract affecting the financial interests of the Union. Findings arising from an investigation may lead to criminal prosecution under national law.

The investigations may be carried out at any moment during the provision of the services and up to five years starting from the last payment made pursuant to Article 7.

- 14.6. For the purpose of checks, audits and investigations the Court of Auditors and the European Public Prosecutor's Office established by Council Regulation (EU) 2017/1939<sup>7</sup> (the EPPO) and, for the processing of personal data, the European Data Protection Supervisor, have the same rights as the contracting authority, particularly right to access.

## **15. Entry Into Force, Duration and Effects of the Agreement**

- 15.1. This Agreement enters into force on 01.01.2025 for a duration of three calendar years.
- 15.2. Either party is entitled to terminate the Agreement where the other party has failed to perform the Agreement and breached its obligations therein. Termination of the Agreement takes effect following the date of receipt of a formal notification by that Party.

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<sup>5</sup> Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspection carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularity, OJ L 292, 15.11.1996, p. 2–5

<sup>6</sup> Regulation (EU, Euratom ) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999, OJ L 248 18.9.2013, p. 1

<sup>7</sup> Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office, OJ L 283, 31.10.2017, p. 1–71

15.3. This Agreement, together with its annexed document(s), constitutes the entire and exclusive agreement between the Parties with respect to the subject matter herein. This Agreement:

- Supersedes and fully replaces the Designation Agreement in force until 31 December 2024 including all its annexes, amendments, and appendices;
- Invalidates any prior or contemporaneous oral or written agreements, negotiations, representations, understandings, and communications, whether formal or informal;
- Shall be the sole authoritative source of the Parties' rights, obligations, and understanding;

all relating to the subject matter hereof.

## **16. Assignment**

16.1. The Examination Office shall not assign the rights and obligations arising from the Agreement, in whole or in part, without prior written approval from the CPVO.

16.2. In the absence of the approval referred to in Article 16.1, or in the event of failure to observe the terms thereof, assignment by the Examination Office shall not be enforceable against and shall have no effect on the CPVO.

## **17. Jurisdiction**

17.1. The Agreement shall be governed by European Union law, supplemented by national law of France

17.2. Any dispute between the CPVO and the Examination Office, or any claim by one party against the other under this Agreement which cannot be settled by the parties out of court shall be brought before the Court of Justice of the European Union.

## **18. Amendment of the Agreement**

18.1. Any amendments to the Agreement shall be the subject of a written agreement concluded by the Parties. An oral agreement shall not be binding on the Parties.

## 19. Originals

19.1. Each party has signed this Agreement electronically and has received a copy.

### SIGNATORIES

For the Community Plant Variety Office,

For the Examination Office,

Done at: Click or tap here to enter text.

Click or tap here to enter text.

Date: Click or tap to enter a date.

Date: Click or tap to enter a date.

**Mr. Francesco Mattina**  
**President of the CPVO**

Click or tap here to enter text.  
Click or tap here to enter text.

By delegation

**Ms Nuria Urquía Fernandez**  
**Vice President of the CPVO**