The German language contract is the authentic version
– English translation provided for information only

# Contract

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The following contract on the supply of machine-readable data (DPMAdatenabgabe)

is made

between the

**Federal Republic of Germany**

acting through

the Federal Minister of Justice and Consumer Protection

the latter acting through

the President of the German Patent and Trade Mark Office

80297 München

hereinafter "**the DPMA**"

and

_____

(Company)

acting through

_____

hereinafter "**the Recipient**"

## Section 1

### Subject-matter of the contract

The DPMA shall provide machine-readable data of the German Patent and Trade Mark Office to the Recipient as provided for in this contract.

## Section 2

### Provision, scope

1. The scope of supply (kind of data and data formats) shall be determined according to Annex 1. To the extent that the below provisions do not provide otherwise they shall apply to both the supply of frontfile and backfile data.

   The DPMA reserves the right to change data fields and data formats. A relevant notice shall be issued, at the latest, four weeks before the change comes into effect. The DPMA does not assume any responsibility for the completeness, accuracy and correctness of the data provided or supplied. In view of the vast amount of data, errors and omissions cannot be ruled out completely, in the backfile, in particular.

2. The frontfile data shall be provided preferably over the Internet. They will be made available for downloading by the DPMA via a server according to the respective publication cycle. The download of data shall be password protected. After conclusion of this contract the DPMA shall provide the required password to the Recipient within one calendar week. The Recipient shall have the obligation to keep the password secret and to prevent any unauthorised third party use of the data access. If the Recipient gains information about a password abuse, he or she shall inform the DPMA without delay. In this case the DPMA shall be authorised to suspend the access to the data without delay.

   If required for technical or other reasons, the frontfile data can be provided in another form, to be determined by the DPMA.

3. The DPMA shall not be under the obligation to provide uninterrupted access to the download platform and permanent availability of data.

4. Backfile data shall be supplied preferably on data carriers such as CDs, DVDs, or hard

disks supplied by the Recipient. The Recipient shall accept that hard disks, provided by him, may be formatted by the DPMA for security reason.

5.   If required for technical or other reasons, the backfile data can be provided in another form, to be determined by the DPMA.

6.   The DPMA reserves the right to commission a third party to provide and supply data of the DPMA.

7.   Within the scope of a regular supply of data on new IP rights, frontfile data shall, as a rule, be provided by the DPMA at the respective date of publication.

The DPMA shall be free to change the date of provision; the Recipient shall be informed on any change four week before the change occurs, at the latest.

The date of supply of backfile data shall be determined separately.

The mentioned dates of provision shall not be binding. The Recipient cannot derive any rights from non-observance of these dates.

## Section 3

### Purpose limitation of data provision, rights of use

1.   The data on IP rights referred to under Sec. 1 and Sec. 2 shall be provided by the DPMA exclusively for the following purpose (please tick):

O   a)  For establishing/developing/enlarging the Recipient's own data collections on IP rights (for example, by way of databases), which the Recipient uses internally for identifying, managing and checking IP rights;

O   b)  For establishing/developing/enlarging the Recipient's own data collections on IP rights (for example, by way of databases), which the Recipient makes available to authorised third parties (for consideration, where applicable) to enable them to identify, manage and check IP rights;

O   c)  For developing and marketing information products and services on IP rights (other than those mentioned under a and b);

Please specify the contents of the information products and services. Indicate the

circle of recipients / target groups. Please provide as accurate information as possible.

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O     d)    Scientific activity

Please provide information about the objective of the scientific work. In case of contract research, please indicate the contract awarder. Please provide as accurate information as possible.

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O     e)    Other purpose:

Please provide as accurate information as possible.

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2.    By concluding this contract, the Recipient obtains a simple, non-exclusive right to use the data for the purpose mentioned under item 1, which right shall not be transferable to third parties.

Any processing or use of data for any other purpose shall not be allowed. In particular, it shall not be permitted

- to pass on data or data sets provided by the DPMA in full or in part to third parties;

any passing-on within the scope of a utilisation according to the purpose under item 1. b) to d) shall be exempted from this prohibition;

- to use or read out the supplied data or data sets for a commercial exploitation of addresses;

- to use the data or data sets in connection with an activity giving or creating the impression that the Recipient is entitled or qualified to validly register, renew or otherwise manage IP rights;

- to use the data for the purpose of rating of natural persons.

Likewise, the Recipient may not enable third parties to process or use the data in such an inadmissible manner.

3. In the event that the data file supplied by the DPMA contained data not included in the scope of provision under Sec. 2 of this contract, the Recipient may not process or use those data.

### Section 4

### Charges and mode of payment

1. The data shall be provided and supplied at marginal cost according to Annex 1. The provision shall be decisive, not the actual use or processing of data by the Recipient. All marginal costs are net costs. If turnover tax is payable, the amount applicable at the date of invoicing will additionally be charged.

2. The amount of marginal costs can be adapted by the DPMA. A notice of the President of the DPMA in the gazette "Blatt für Patent-, Muster- und Zeichenwesen" shall be sufficient for adapting the amount of marginal costs.

   If data are supplied on data carriers, the full amount of the additional costs of material and delivery (postal or courier services, etc.) shall be charged to the Recipient.

3. Once a year, at the beginning of the calendar year, the DPMA shall charge the costs for the provision of frontfile data for the given calendar year. Payments shall be due for the entire calendar year in advance. If the provision of frontfile data is taken up in the course of a calendar year, the first invoice shall be established after conclusion of the contract, on a pro-rata basis, covering the remaining period of that calendar year. The amount due shall be paid within 30 calendar days from the receipt of the invoice.

4. The costs of provision of backfile data shall be invoiced to the user on supply.

## Section 5

### Secrecy and security

1. In the event that the data file supplied by the DPMA contained data not or not yet released for publication in the interest of applicants of IP rights or IP right holders, the Recipient, to the extent that he is aware of this, may not process or use these data at all, or at any rate not before the date on which the publication is admissible pursuant to the legal provisions.

   The Recipient shall undertake to take all required measures within his own sphere to ensure that these data are kept secret. Furthermore the Recipient shall undertake to thoroughly inform his staff members and, where applicable, other persons entrusted with processing or use about the requirement to maintain secrecy according to sentences 1 and 2 and about the legal provisions of data protection, and to require them to give an undertaking to maintain confidentiality (Sec. 5 German Federal Data Protection Act).

2. If the DPMA communicates corrections to the data provided to the Recipient, e.g. the deletion of individual data sets or parts of data sets, or supplements, the Recipient shall correct the affected data files or products produced from these data files without delay. The Recipient shall hold the DPMA harmless of any third party claims that may arise from a correction according to sentence 1 that was not carried out, or not carried out in time.

3. The Recipient shall be obliged to take all measures to ensure data security according to the recognised state of the art while using the interface. The recommendations of the Federal Office for Information Security shall be implemented.

## Section 6

### Liability

1. The liability of the DPMA shall be limited to damages arising from gross negligence or

intentional misconduct of the DPMA or its staff members and persons used to perform obligations of the DPMA. This shall not apply to damages arising from injury to life, body or health and to damages resulting from the violation of obligations whose fulfilment is indispensable for the proper fulfilment of the contract and on whose observance the contract partner may regularly rely (fundamental contractual obligations). In case of slightly negligent violation of fundamental contractual obligations, liability shall be limited to compensation for the contract-typical foreseeable damage.

2.  The Recipient shall assume unlimited liability to affected third parties for damages to the extent that he processes or uses the data communicated by the DPMA for other than the intended purposes or enables third parties to carry out such activities.

**Section 7**

**Duration of the contract, termination**

1.  The contract shall take effect upon signing and shall be concluded, in respect of frontfile data, for an undetermined period of time. In respect of the provision of backfile data, the contract shall be concluded on a one-time basis for carrying out the respective order.

2.  The parties can terminate the contract in respect of frontfile data at the end of any month, with a one-month notice, without giving reasons.

3.  The right of extraordinary termination for serious reasons without notice shall remain unaffected. In particular, any breach of the obligations under Sec. 2, 3, and 5 of the contract by the Recipient shall constitute a serious reason.

4.  The DPMA shall be entitled to terminate the contract exceptionally without notice if, due to legal provisions on data protection, it is no longer in a position to supply the data to be provided under Sec. 2 in compliance with the conditions set out in this contract.

5.  In the event of an extraordinary termination without notice, the DPMA shall be entitled to block access to the data with immediate effect. The Recipient shall be obliged to delete all previously communicated data and any copies made of these data, which are in his

possession. In this case, the Recipient shall no longer be authorised to use or process the data.

6. The restrictions of the right of use under Sec. 2 and Sec. 3 and the obligations of the Recipient under Sec. 5 shall remain in effect even after termination of the contract. If the Recipient violates obligations resulting for him from these clauses, the DPMA shall be entitled to require him to delete all previously communicated data and any copies made of these data, which are in his possession, even after termination of the contract. In this case, the Recipient shall no longer be authorised to use or process the data.

## Section 8

## Disclosure of the name of the Recipient

For the purpose of complying with its obligation set forth in Sec. 16(3) of the Federal Data Protection Act, the DPMA shall be entitled to disclose the name of the Recipient to persons affected by the data provision (applicants of IP right, IP right owners, inventors, representatives, etc., in particular). This can be done, in particular, by making a list of all Recipients available for general inspection on the homepage of the DPMA.

## Section 9

## Miscellaneous

1. The Recipient shall be obliged to inform the DPMA without delay about any changes occurring during the term of the contract and relating to the following:

    - the persons authorised to enter into binding commitments vis-à-vis the DPMA,

    - the legal form of the enterprise,

    - the name of the enterprise,

    - the seat of the enterprise.

2. The contract, its amendments and supplements  - including the waiver of the requirement of the written form - require the written form. Amendments and supplements

must expressly be identified as such.

3.  The DPMA shall be authorised anytime to transfer the rights and obligations accruing from this contract to third parties. The Recipient shall be informed about any such transfer in writing.

4.  If the Recipient is a trader, a legal entity under public law or a special fund under public law, or if the Recipient does not have a general place of jurisdiction in Germany, the place of jurisdiction shall be Munich.

5.  The contract shall be governed by the law of the Federal Republic of Germany.

## Section 10

### Severability clause

In the event a provision of this contract is found to be invalid or unenforceable, this shall not affect the validity of the other provisions of the contract. Invalid provisions shall be replaced by provisions which come closest to the intended purpose of the contract.

Munich, date                                                                                              , date

For the Federal Republic of Germany                   For the Recipient

The President of the
German Patent and Trade Mark Office
By order

_____          _____
Signature                                                            Signature

# Annex 1 of the Standard Agreement on DPMAdatenabgabe

**Personal Details:**

Title

_____

Family name

_____

Given name

_____

Company

_____

_____

Street/number

_____

Postal code          City/town

_____          _____

Country

_____

Phone                              Fax

_____          _____

E-mail address

_____

Please tick the frontfile and/or backfile data you wish to order (scope of supply) in the following summary of available data.

# Summary of available data of the German Patent and Trade Mark Office

## 1.1  Patents and Utility Models - available frontfile data

| category of data | kind code | data-format | delivery frequency | scope of supply | costs per delivery[8] |
|---|---|---|---|---|---|
| **bibliographic data and legal status data** | updates and corrections on the register | XML | weekly | ☐ | 20 EUR |
| **full texts** <br> data from the title page, description, claims, drawings | A, T1, T5, T8, T9 | XML, TIFF | weekly | ☐ | 20 EUR |
| | B, C | | weekly | ☐ | 20 EUR |
| | T2-T4, T8, T9 | | weekly | ☐ | 20 EUR |
| | U | | weekly | ☐ | 20 EUR |
| **full texts in the original layout** <br> title page, description, claims, drawings | A, T1, T5, T8, T9 | PDF | weekly | ☐ | 20 EUR |
| | B, C | | weekly | ☐ | 20 EUR |
| | T2-T4, T8, T9 | | weekly | ☐ | 20 EUR |
| | U | | weekly | ☐ | 20 EUR |
| **applicant citations** | A, U | XML | weekly | ☐ | 20 EUR |

In case of ordering frontfile data, please fill out the following data fields in order to set up your access to DPMAdatenabgabe.

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**Your login details to the DPMA server:**

**Username** (ten digits at most)**:** 

**Password** (ten digits at most)**:** 

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## 1.2 Patents and Utility Models - available backfile data

| category of data | data format | data available | scope of supply | costs[8] |
|---|---|---|---|---|
| **full texts in the original layout**<br><br>title page, description,<br>claims, drawings | PDF | 2004 + subseq. yrs | ☐ | 260 EUR per year |
| | | *Please specify the years you wish to receive (e. g. 2010 – 2015):* | | |
| **full texts**<br><br>data from the title page, description,<br>claims, drawings | XML, TIFF | 2004 + subseq. yrs | ☐ | 260 EUR per year |
| | | *Please specify the years you wish to receive (e. g. 2010 – 2015):* | | |
| **full texts**<br><br>bibliographic data, description, claims | XML | 1987 - 2003 | ☐ | 750 EUR complete supply |
| | | 1877 - 1986 | ☐ | 750 EUR complete supply |
| **bibliographic data** | XML | 1877 - last complete year | ☐ | 750 EUR complete supply |
| **bibliographic data and legal status data** | EBCDIC | 11/1981 -- 23/2007 | ☐ | 30 EUR complete supply |
| | ASCII | 24/2007 -- 2010 | ☐ | 30 EUR complete supply |
| | XML | 2011 + subseq. yrs | ☐ | 60 EUR per year |
| | | *Please specify the years you wish to receive (e. g. 2011 – 2015):* | | |

kind code A, B, C, T, U

## 2.1 Trade Marks - available frontfile data

| category of data | procedural status | data format | delivery frequency | scope of supply | costs per delivery[8] |
|---|---|---|---|---|---|
| bibliographic data, images | trade marks applied for[1] | | weekly | ☐ | 20 EUR |
| bibliographic data, lists of goods and services, images | registered trade marks, geographic indications/ designations of origin | XML, JPG | weekly | ☐ | 20 EUR |
| bibliographic data, images | trade marks not eligible for protection | | weekly | ☐ | 20 EUR |

Please also fill out the fields for your login details on page 2 when ordering frontfile data.

## 2.2 Trade Marks - available backfile data

| category of data | procedural status | data format | data available | number of mediums | scope of supply | costs[8] |
|---|---|---|---|---|---|---|
| bibliographic data, images | trade marks in any procedural status | XML, JPG | 1875[2] – 13/03/2016[3] | 1[4] | ☐ | 1,500 EUR complete supply |

## 3.1 Designs - available frontfile data

| category of data | procedural status | data format | delivery frequency | scope of supply | costs per delivery[8] |
|---|---|---|---|---|---|
| bibliographic data[5] | registered designs | XML | weekly | ☐ | 20 EUR |
| images[6] | | JPG | weekly | ☐ | 20 EUR |

Please also fill out the fields for your <u>login details</u> on page 2 when ordering frontfile data.

## 3.2 Designs - available backfile data

| category of data | procedural status | data format | data available | number of mediums | scope of supply | costs[8] |
|---|---|---|---|---|---|---|
| bibliographic data | registered designs | XML | 10/1988 + subseq. yrs | 1[4] | ☐ | 150 EUR per year[7] |
| images | | GIF, JPG | 2000 + subseq. yrs | | | |
| | | *Please specify the years you wish to receive (e. g. 2010 – 2015):* | | | | |

1) Trade marks applied for which have not been registered or have been rejected or withdrawn until the date of supply.
2) Information on the trade mark data available in the register is provided at: https://register.dpma.de/register/htdocs/prod/en/hilfe/datenbestand/marken/index.html
3) Cut-off date of the register excerpt
4) The data will preferably be supplied on a USB hard disk drive (HDD) with a storage capacity of 500 GB minimum to be provided by you.
5) including updates and corrections
6) approximately delayed by one week from supply of bibliographic data
7) the years starting from 2000 will be charged
8) plus statutory VAT