



Annex VIII to Request for Proposals (RFP) n° PTD/10/040

Non-disclosure agreement for non-treaty data access by member states and external Contractor, Assignees and Designated Users

1. This Non-Disclosure Agreement does not apply to information or data which is accessible to the Contractor, Assignees and Designated Users under the provisions of an applicable Treaty or decision of the Member States of WIPO.
2. WIPO may disclose to the Contractor, Assignees and Designated Users, or the Contractor, Assignees and Designated Users may otherwise obtain access to, specifications, drawings, photographs, data, computer programs, estimates, recommendations, documentation, correspondence, applications, other technical or business information, diskettes and compact discs (CDs) containing data related to the Patent Co-operation Treaty ("PCT") and other documents or items, whether owned by WIPO or held in confidence for others by WIPO, which WIPO considers confidential (hereinafter Information) in connection with any services the Contractor, Assignees and Designated Users may perform (hereafter "Services".)
3. With respect to Information provided under this Agreement, the Contractor, Assignees and Designated Users shall:
 - (a) hold the Information in confidence;
 - (b) restrict disclosure of the Information solely to those individuals who have a need to know and who are either employees of WIPO or other Contractor, Assignees and Designated Users who have undertaken non-disclosure agreements with WIPO similar to the present Agreement and who have been advised of the Contractor, Assignees and Designated Users' obligations with respect to the Information;
 - (c) use the Information only in connection with the performance of the Services, except as may otherwise be authorized by WIPO in writing.
4. The Contractor, Assignees and Designated Users shall have no obligation to preserve the confidential nature of any Information that:
 - (a) was previously known to the Contractor, Assignees and Designated Users free of any obligation to keep it confidential and free of any restriction on use and disclosure; or
 - (b) is or becomes publicly available by authorized disclosure by WIPO and without any restrictions on use and disclosure; or
 - (c) is approved for release by written authorization of WIPO.
5. The Information shall be deemed the property of WIPO and the Contractor, Assignees and Designated Users agree that it shall not be reproduced or copied and that upon request, all such Information in whatever form will be returned to WIPO.

6. Nothing contained in this Agreement shall be construed as granting or conferring any rights by license or otherwise in any Information disclosed to the Contractor, Assignees and Designated Users or in any confidential rights related thereto.

7. Nothing herein shall obligate or otherwise commit WIPO or the Contractor, Assignees and Designated Users to license or purchase any product or service.

8. This Agreement shall not be assignable or transferable by the Contractor, Assignees and Designated Users without the written consent of WIPO. Any such purported assignment or transfer shall be void without such written consent.

9. The Contractor, Assignees and Designated Users acknowledge that any commodities and/or technical data provided by WIPO under this Agreement may be subject to applicable export laws. Any export or re-export thereof must be in compliance with applicable laws. The Contractor, Assignees and Designated Users agree that it/they shall not export or reexport, directly or indirectly, either during the term of this Agreement or after its expiration, any commodities and/or technical data (or direct products thereof) provided by WIPO under this Agreement in any form to destinations that are controlled or embargoed under applicable laws.

10. WIPO makes no representations or warranties with respect to any Information furnished hereunder but shall furnish such in good faith to the best of its knowledge and ability. Without restricting the generality of the foregoing, WIPO makes no representations or warranties, whether written or oral, statutory, express or implied with respect to the Information or any technical assistance which may be provided hereunder, including without limitation, any warranty of merchantability or of fitness for a particular purpose.

11. In the event of a breach or a threatened breach or intended breach of this Agreement, WIPO, in addition to any other rights and remedies available to it under applicable law or in equity (except as otherwise limited by this Agreement), shall reserve the right to seek injunctive relief, both preliminary and final, enjoining and restraining such breach or threatened or intended breach.

12. This Agreement shall be effective upon the later date of signing and shall continue in effect for as long as such Information is deemed by WIPO to be confidential. The obligations contained in this Agreement, including (without limitation) those contained in article 2, shall survive and continue until such Information is deemed by WIPO to be nonconfidential, even after the termination of the contractual relationship with the Contractor, Assignees and Designated Users.

13. For the purposes of this Agreement, a reference to the Contractor, Assignees and Designated Users shall include a reference to the employees, officials and agents of the Contractor, Assignees and Designated Users. In the case of an external user, the Contractor, Assignees and Designated Users undertake and agree to cause each of its employees, officials or agents to sign a Non-Disclosure Agreement substantially similar to the present Agreement, as approved by WIPO, and provide it to WIPO as a pre-condition to giving access to such employee, official or agent to the information. In the case of an individual Contractor, Assignee and/or Designated User (including employees, official or agents of an external user), by signing this Non-Disclosure Agreement, such employee, official or agent of the external user agrees to be fully bound by its provisions.

14. In the event of a breach of this Agreement by the Contractor, Assignees and Designated Users, its/their employees, officials or agents, in addition to and not in substitution for any other remedy available to WIPO, the Contractor, Assignees and Designated Users agree to indemnify and save harmless WIPO from any loss, damage or claim made by third parties (including, without limitation, PCT applicants) arising as a result of such breach.

15. No overlooking by WIPO of any provision of this Agreement, or failure by WIPO to require the performance of such provision on an earlier occasion shall preclude WIPO from subsequently enforcing the Agreement or requiring compliance with its terms (including, without limitation, by way of paragraph 10 of this Agreement).

16. Nothing in or relating to this Agreement shall be deemed a waiver of any of the privileges and immunities of WIPO in conformity with the Convention on the Privileges and Immunities of the Specialized Agencies approved by the General Assembly of the United Nations on November 21, 1947 and with the provisions of the Agreement between the Swiss Federal Council and WIPO to determine the organization's juridical status in Switzerland of December 9, 1970, and of the Implementation Arrangement of the same date related thereto.