

# **TERMS AND CONDITIONS CONCERNING ELECTRONIC SYSTEMS OF COMMUNICATION WITH AND BY THE OFFICE AS ESTABLISHED IN DECISION OF THE PRESIDENT OF THE CPVO (Decision of the President of the Office concerning electronic communication with and by the Office)**

## **1. General**

Users are asked to carefully read the Terms and Conditions of use and are held to comply with the undertakings set out at the end. The registration as user in the User Area signifies user acceptance to the CPVO User Area's Terms and Conditions.

The User declares that he/she has the right to contractually accept these Terms and Conditions. Where the User acts in the name and on behalf of his/her employer or of a third party, he/she declares and warrants that he/she has received any necessary delegation and required power for representing his/her employer or the third party with the CPVO ("person authorized to sign").

Through the User area, access is provided to different electronic systems such as, without limitations, the CPVO online application system or MyPVR.

Unless otherwise provided, the CPVO User Area is accessible at any place, as long as the minimum technical conditions are respected, particularly in terms of access to the Internet network, to the mobile telephony network, and to the technical compatibilities of the equipment used. In view of the worldwide nature of the Internet network, the User agrees to comply with all rules of public policy concerning the behavior of the users of the Internet network and applicable in the country from which he/she uses the CPVO User Area.

These Terms and Conditions may be modified to reflect changes to the available services of any of the Office's electronic systems of communication. The Office will post modification notices to these Terms and Conditions. Changes addressing new functions made available through the Office's User Area will be applied with immediate effect.

## **2. Obligations of the User**

Users undertake to:

- provide full and accurate information when accessing the User area;
- check that their user information accessible on the CPVO client extranet is accurate;
- use the User area for its intended purpose only and in accordance with the applicable Terms and Conditions of use;
- use the services made available through the User area in accordance with the instructions published on the CPVO website;
- ensure that the password is protected at all times against loss, disclosure to any unauthorised party, modification or unauthorised use;
- ensure that their password is known only to them and to no-one else;
- submit a revocation request to the CPVO immediately in the event of actual or suspected compromise of password,
- inform the CPVO immediately if, for any reason, their entitlement to hold the password is curtailed;
- observe any legal restrictions or prohibition of use imposed by third parties with regard to the import or export of encryption technologies or products.

By using the User area the User undertakes to comply with the obligations set out above.

The User is not allowed to affect the CPVO User area in any way, in particular with the help of

software, or to have any activity that could disturb or attempt to disturb the CPVO User area

### **3. Definition of User Area**

The User Area is a professional and secure restricted electronic platform which is a collection of web pages requiring user's authentication, only accessible via a personalized account, providing identified users with a personalized access to user-related information and online tools.

The unique entry point to the User Area is the Official CPVO website ([www.cpvo.europa.eu](http://www.cpvo.europa.eu)).

The User Area will enable users to – not exhaustively -:

- file online applications;
- view a list of their past and present files with the Office;
- receive, view, download, print and save all electronically generated documents and notifications sent to them by the Office;
- upload, view, print and save all electronic documents and notifications sent by them to the Office;
- carry out various e-operations related to CPVRs: e-filings, e-actions, etc.;
- manage all their personal information (address, phone, contact information, etc.);

### **4. Content of the User Area**

#### **a) List of files**

In the User Area, the user will find a list of all their past (previous and closed) and present files with the Office. A user has access to all documents of a file until the point in time when he/she is registered as party to proceedings or as procedural representative. This list will be provided via search facilities and will allow the user to enter into some detailed file information.

The list available in the User Area will only contain files to which the identified user is party (party/procedural representative).

#### **b) E - s e r v i c e notification by the CPVO**

Where the user has opted for electronic communication, the CPVO notifies by email and serves electronically via the User Area all the decisions, documents, and other information; unless this avers impossible for technical reasons.

The date and time of service is the point in time at which the user accesses the electronic document or the information. The relevant time is that of France.

A decision or other document is, however, deemed to have been served on the party on the expiry of the seventh day following the day on which an e-mail was sent to the user notifying him/her that the decision or document was placed by the Office in the User Area ("deemed service"). In case of deemed service, a further email to the user will specify the exact date of service. Users are advised to log in to their User Area at least once a week to consult the decisions or other documents sent to them.

If users cannot access a decision or other documents, they should inform the CPVO of it immediately.

**c) E-communications sent by parties to proceedings or their representatives (requests, communications or other documents)**

The User Area allows the user to send documents electronically through it, without the need for such sending to be confirmed by post. As a rule, the sending of a document by means of the User Area means that the user will continue sending subsequent documents in the same file in the same manner unless it avers impossible for technical reasons, in which case the user may make use of a different means of communication. However, the user can at any time choose between electronic communication through the User Area or any other means of communication as provided by the rules in force. Any request for a change in the means of communication will be in place as soon as technically feasible.

Requests, communications or other documents transmitted to the CPVO are checked automatically to ensure that their transmission is secure. If such checks reveal an anomaly, the user will be in receipt of a notification of transmission failure.

In the event of a transmission failure of documents sent electronically, their sending by one of other means of communication will have to be effected, following the applicable procedural rules. The user should report transmission failures immediately.

The arrival date of documents is to be considered as the time and day when the document was effectively received electronically by the Office in accordance with the local time in France.

Since the length of time involved in the operations of preparing transmission of documents and uploading files can vary, users are advised not to leave transmission to the very last minute, just before the expiry of a time-limit. If a time limit expires on a day on which there is an interruption of the connection of the Office or of one of the parties to the proceedings to the electronic means of communication, the parties to proceedings shall demonstrate the interruption of the connection with the electronic provider. In such a case the time limit shall be extended until the first day following the end of the interruption of the connection of the Office or of one of the parties to the proceedings to the electronic means of communication.

Transmission confirmation, when technically available to users, is without prejudice to the procedural admissibility of the request, communication or other document transmitted.

The user will have the possibility at any time to view, print and/or save these requests, communications or other documents.

**d) E-operations that can be carried out via the User Area**

The following operations are available via the User Area:

- o Online Applications for Community plant variety rights;

- o Exchange of documents in the application procedure from the remedying information to request for all entries in the Register (including withdrawals and surrenders);
- o system of alerts.

*Disclaimer: the list of e-operations may be modified at any time. The Office cannot guarantee the availability of all these e-operations at all times.*

In all the aforementioned proceedings and where appropriate, the User may need to attach supporting documents, subject to the technical requirements available here. File formats accepted by the CPVO are to be found on the page 'Send documents'.

#### **e) Management of a personalised alert system**

When users are logged on, they can create online alerts. A user can receive for example an alert as soon as an application for a certain species is published, an application for a certain applicant is published, an information in a certain chapter of the Gazette of the CPVO is published or the sending of a debit note.

The alerts are merely of an informative nature.

### **5. Application for a user account and conditions of use**

The application to open a User account must be made online and is subject to the acceptance of these Terms and Conditions.

Once the application has been filed the users will receive confirmation of their login and will be invited to define their password. If they do not, their account will not be validated.

The user is responsible for the proper use and maintenance of confidentiality in respect of their account, passwords.

The user is not allowed to affect the CPVO User Area in any way, in particular with the help of software, or to have any activity that could disturb or attempt to disturb the CPVO User Area.

Should the User breach any of his obligations under these Terms and Conditions, the CPVO will send to the User a prior notice requesting the User to remedy the breach within ten (10) calendar days as from the receipt of the notice. If the User fails to remedy the breach within this time period, the CPVO is entitled to revoke, temporarily or definitively, the access to the CPVO's User area.

### **6. Indemnities**

The User will indemnify and hold the CPVO harmless from any and all liability arising out of or in connection with the use of the CPVO User Area by the User for any other than its intended use.

These terms and conditions of use shall be interpreted in such a way that the rights of the CPVO arising from Council Regulation No 2100/94, including the Protocol on Privileges and Immunities of the European Union are in all cases preserved.

### **7. User's consent for CPVO to send information via the user's email address**

When a user opens a user account and indicates their email address, they will be asked whether they authorize the Office to send Plant Variety Right related information, such as news on CPVRs, invitations to seminars, workshops, etc. to the user via their email address.

## **8. Request for deactivation of the user account**

Users may at any time request the deactivation of their user account. The deactivation will be effected as soon as technically possible. Until the definitive deactivation of the user account, all provisions related to the User Area are valid and fully applicable.

## **9. Technical requirements and security advice**

For Web site security and to ensure that CPVO Web services remain available to the general public, the CPVO monitors network traffic to identify unauthorized attempts to upload or change information, deny service, otherwise cause damage or access non-public information. Unauthorized attempts to upload information or change information are strictly prohibited and may be punishable under criminal law. Information regarding possible violations of law may be provided to law enforcement officials.

Any activity or operation, whether generated automatically or manually, that results in or has the potential to result in denial or decrease of service for other customers may be denied access to CPVO Web resources without notice. If you believe your IP address may have been blocked, you may contact the Webmaster for instructions.

Users are hereby provided with some security measures that should be adopted when using their computer, not to safeguard communications with the Office but to protect their computer and the information it contains.

1. Protect access to your computer by using passwords. Keep your password secret, do not give it out or write it down near your computer.
2. Deactivate the password-saving functions in your browser. Lock your computer whenever you are not using it.
3. Install an anti-virus software and keep it permanently updated.
4. Make frequent back-up copies of the files contained in your computer.
5. Disable permanent cookies in your browser configuration.
6. In your browser configuration, set the use of 'Active X' to 'Prompt'. Allowing Active X only from websites you can trust will prevent malicious software such as 'spyware' or 'adware' from being installed on your computer.

Users are advised to carefully read and follow all the technical requirements and security advice as indicated in this section 9). Compliance with these requirements may be necessary for the proper functioning of the User Area.

## **10. Disclaimers**

CPVO shall not be liable for any loss or damage arising from interference, omissions, interruptions, computer viruses, telephone faults or disconnections in the operational functioning of this electronic system brought about by causes beyond CPVO's control. These include any delays or blockages in the use of the system caused by faults in or overloading of CPVO's communication lines or servers, the internet system or other electronic systems, or any damage caused by third parties as a result of unlawful intrusion beyond CPVO's control.

Any action performed via the User Area must comply with the applicable rules. Where, due to a technical malfunction or any other equivalent reason, the User Area allows actions which do not comply with the applicable rules to be performed, such actions may be invalidated by the Office. In such a case the User will be informed accordingly.

The CPVO is not liable for any damages arising out of or in connection with any use of the CPVO's User area other than for communication between the CPVO or authorised Users. The CPVO disclaims all liability for the non-availability of the CPVO User area due to the Internet network, to system maintenance or repair or to factors outside the control of the CPVO.

The CPVO does not guarantee that the CPVO User area will meet the User's requirements or will operate in an error-free manner.

The CPVO's liability shall be limited to direct and foreseeable damages. The CPVO shall not be held liable in case of a force majeure event or of an act of a third party.

## **11. Encryption and non-repudiation**

CPVO has advanced and secure systems for guaranteeing the identity of clients when connected and for certifying the content of messages sent. It also guarantees the authenticity of the server to which clients are connected, thus preventing the server being supplanted by third parties. All information transmitted via the internet is encrypted using SSL protocol.

Certifying authority: the CPVO's server has been certified by an international certifying authority (Thawte), which guarantees that users have in fact connected to CPVO.

## **12. Data protection information**

All personal data collected in the present procedure by the CPVO are processed in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data.

Processing operations are under the responsibility of the controller for CPVR application proceedings. The controller is the Head of the Technical Unit or his delegate.

User's data are generally collected, stored and processed by the CPVO (i) for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract (article 5(c) of the Regulation 45/2001), and in particular to process the applications for CPVR, and (ii) for the performance of a task carried out in the public interest on the basis of the Treaties establishing the European Union, the Council Regulation 2100/94 on Community Plant Variety Right and other legal instruments adopted on the basis thereof or in the legitimate exercise of official authority vested in the EU institution or body or in a third party to whom the data are disclosed (article 5(a) of the Regulation 45/2001).

The CPVO ensures that the collected data are processed and/or accessed only by the members of its staff responsible of the corresponding processing operations. However some data such as the CPVO client code, name, company name, street address, city, phone, fax and email address may be also accessed by other users of the CPVO User Area when using it for the sole purpose of finding their personal information in a predetermined list. The right to collect and process personal data is foreseen, amongst others, in Articles 50, 87 and 88 and 89 of the CPVO's "Basic Regulation" (Council Regulation 2100/94 on Community Plant Variety Right) and amongst others, Articles 2 and 16 of the Proceedings Regulation (Commission Regulation 874/2009).

Unless specified differently in the data protection register, all natural persons providing personal information to the CPVO by means of paper or electronic form are deemed to have unambiguously given their consent for the subsequent processing operations in application of article 5(d) of Regulation 45/2001.

In accordance with article 2 of the "Decision of the President of the Office on the form of Registers kept by the Office, retention and the keeping of files including documentary evidence, publication of the Official Gazette"; in case a title is granted, data will be kept for a period of 30 years from the expiry of the granted Community plant variety right. Otherwise, it will be kept for a period of 10 years following the date of refusing the application or the date of the withdrawal of the application or the date on which the Office informs the applicant that the Office considers the application abandoned.

Data subjects have the right to access and rectify their personal data on written request to be addressed to the CPVO's controller. Data subjects may at any time consult the CPVO Data Protection Officer or, in case of conflict, have recourse to the European Data Protection Supervisor (<http://www.edps.europa.eu>). Any information relating to processing of your personal data is detailed in the register of the Data Protection Officer.

### **13. Changes to these Terms and Conditions of use**

Users will be requested to agree again on the terms and conditions when entering into the online services in case of any changes to the substance of these Terms and Conditions of use.

### **14. Dispute resolution**

If a dispute arises out of or in connection with these Terms and Conditions of use, the parties shall undertake in good faith to use all reasonable endeavours to settle the dispute by negotiation. Should this fail, any such dispute shall be finally settled before the European Court of Justice.

### **15. Access to documents**

Documents, including electronic documents, submitted to the CPVO are subject to the rules on public access to documents. Article 33(a), was introduced to the Basic Regulation in 2003 by the adoption of Council Regulation (EC) No 1650/2003. Article 33(a) contains the following elements:

- Regulation 1049/2001 regarding public access to European Parliament, Council and Commission documents shall also apply to documents held by the Office. This provision entered into force on 1 October 2003.
- The Administrative Council shall adopt practical arrangements for implementing Regulation 1049/2001 before 1 April 2004.
- Decisions taken by the Office on public access to documents may form the subject of a complaint to the Ombudsman or of an action before the Court of Justice.

Regulation 1049/2001 as well as the rules adopted by the Administrative Council is available on the CPVO website as well as information on these rules and forms to use when requesting access to a document:

<http://cpvo.europa.eu/en/about-us/law-and-practice/legislation-in-force>.

The Users may request at any time in written form to access documents held by the CPVO. Such an access can be totally or partially refused by the CPVO where disclosure would undermine the protection of:

- the public interest as regards public security, defence, international relations, and the financial, monetary or economic policy of the Community or a Member State;

- the privacy and the integrity of an individual, in particular in accordance with the Community legislation regarding the protection of personal data;
- a person's commercial interests;
- court proceedings and legal advice;
- the purpose of inspections, investigations and audits.

In the case of varieties for which material with specific components has to be used repeatedly for the production of material, at the request of the applicant, all data relating to components, including their cultivation shall be withheld from inspection.

### **UNDERTAKINGS TO BE GIVEN BY THE USER**

The user is held to comply with the following undertakings, breach of which may result in deactivation of the user account.

I have taken note of how the User Area operates as described above and I expressly undertake:

- Not to inform third parties of my user identification and password; any process carried out using that user identification and password will be deemed to have been carried out by me.
- To give notice immediately of any change of my email address.
- To accept notification by means of the User Area of documents relating to a file if I have lodged a document by means of the User Area in that case.
- To log on regularly to my User Area and to consult the notifications awaiting service for which I am the intended recipient. I accept that, in the event of my failure to consult any such document, it will be deemed to have been notified to me on the expiry of the seventh day following the day on which an e-mail was sent to me notifying me that a decision or document was placed by the Office in the User Area ("deemed service").