



Topotheque Licence Agreement

Project co:op - community as opportunity

Grant Agreement Number: 2014-3407

Concluded between

1. Dipartimento di studi Umanistici (University of Naples Federico II)

Via Porta di Massa, 1

80133-Naples

Hereinafter referred to as „Partner“

and

2. ICARUS - INTERNATIONAL CENTRE FOR ARCHIVAL RESEARCH (ZVRNr. 250156583)

Erdberger Lände 6/7

A-1030 Vienna

Hereinafter referred to as „ICARUS“.

Preamble

Topotheque (Topoteka, Topoteek, Topothek) is a regional historical archive aiming to digitally preserve local historical knowledge and material and to make it accessible to everyone in the World Wide Web in a uniform way.

1. Subject of the Agreement

1.1 Use of the web service „Topotheque“

The „Topotheque“ is a web service which allows the Partner to enter pictures, videos and audio material, to furnish them with metadata and to display them. Data entered by the Partner are stored, administered and made visible on a single Topotheque which has been established for the Partner. As of 1 December 2014 until 30 November 2018 ICARUS shall make the web service called „Topotheque“ available to the Partner during the duration of the project **co:op – community as opportunity (Grant Agreement Number 2014-3407)** and against payment of a user licence fee. As stipulated in the Grant Agreement 2014-3407 and the project application (Work Package 3), a total of 5 Topotheques shall be implemented by the Partner in the respective partner country and in the respective language during this period. ICARUS undertakes to use the licence fee exclusively for the services stipulated in the Grant Agreement 2014-3407 as well as the project application (Work Package 3). Upon completion of the project, a further use and sustaining of the Topotheques of the project partner shall be provided for by ICARUS free of charge and indefinitely (p. 9).

1.2 Use by third parties

Furthermore third parties (e.g. citizens) shall have the possibility to enter pictures, videos and audio material into this web service, however, only upon previous control and clearance of this material by the person in charge of the Partner's Topotheque (technical writer). The control of the material only

refers to quality and to establishing whether or not it is Topotheque-related. It does not refer to possible breaches of rights of third parties.

1.3 Service and maintenance

ICARUS shall be in charge of the service and maintenance of the web service „Topotheque“.

1.4 Provision of storage space

Furthermore, the provision of storage space for the Partner in order to save the contents of the Partner's personal Topotheque as well as the incorporation of this Topotheque in the Web are subject to the present contract. ICARUS shall provide storage space of up to 100 GB. Additional storage volume has to be requested separately by the partner.

2. Use of the web service „Topotheque“

2.1 Rights of use

ICARUS shall grant the Partner the simple rights of use of the web service „Topotheque“, which are necessary for using the services under the present contract.

2.2 Rights of use of the software of third parties

In case ICARUS puts at the Partner's disposal a software or web services developed by third parties, the Partner's rights of use shall be limited to the scope of the rights of use which the third party has granted ICARUS.

2.3 Copyrights

All copyrights or other intangible property rights of the agreed services of the web service „Topotheque“ remain with ICARUS or its licensors (with regard to data and metadata: p. 6.1). All copyrights or other intangible property rights in metadata entered or in uploaded contents remain with the Partner or the respective owners of rights.

3. Duties of ICARUS

3.1 Making the „Topotheque“ accessible

ICARUS undertakes to make the web service „Topotheque“ accessible to the Partner for use through a data network.

3.2 Servicing the „Topotheque“

ICARUS undertakes to fulfil the provisions of the present agreement with regard to servicing and maintaining the „Topotheque“.

3.3 Entering data into the „Topotheque“

Furthermore, ICARUS undertakes to provide third parties with the possibility to upload pictures, videos and audio material into this web service.

3.4 Access to the „Topotheque“

In order to provide the Partner with access to the administration section of the web service „Topotheque“ at any time, ICARUS shall assign a username and a password to the Partner. For safety reasons the Partner has the possibility to have their password modified at any time.

3.5 User account for third parties

Third parties shall open a user account in the „Topotheque“ for uploading pictures, videos and audio material. To this effect the third party shall provide the following personal data: full name, address and birth date. ICARUS undertakes to provide a registration form on the „Topotheque’s“ website for that purpose.

3.6 Conditions of participation for third parties

Furthermore, during the upload of data, third parties must tick a box to accept the respective conditions of participation, which are enclosed to this contract as a form and constitute an integral part of this contract. The consent to the participation conditions given by the third party shall apply to all data uploaded by them. ICARUS shall provide the Partner with the possibility to print out the consent declaration given by the third party. The printout must include the wording of the participation conditions as well as the personal data of the third party stipulated in point 3.5.

3.7 User Manual

ICARUS undertakes to provide the partner with a copy of the user manual.

3.8 Training

ICARUS shall carry out a one-hour training with competent persons in charge, who have been named by the Partner (Topothequer).

4. Duties of the Partner

4.1 Obligation to notify in case of malfunction

In the event of malfunctions during the use of the server within the scope of the present agreement, the Partner shall immediately inform ICARUS of these malfunctions.

4.2 Illegality and offence against common decency

The Partner undertakes to store neither illegal nor immoral contents in the storage space subject to the present agreement.

4.3 Claims of third parties

The Partner undertakes to hold harmless and indemnify ICARUS with regard to claims of third parties, independent of the legal nature, which may occur through illegal contents, stored by the Partner in the storage space subject to the present agreement.

4.4 Intangible property rights

In this context the Partner shall explicitly declare to hold all intangible property rights for the use of data and files stored by them (property rights, rights on their own picture, licences or lease permits).

This shall not apply to data or files entered into the web service "Topotheque" by third parties (e.g. citizens).

4.5 Quality assurance

With regard to quality assurance the Partner shall be obliged to provide ICARUS with the name of a competent person („Person in charge of the Topotheque “).

4.6 Writing of a legal notice

The Partner shall undertake to write their own legal notice for their „Topotheque“, as they are responsible for the contents visible thereon.

4.7 Advertisements

The Partner shall not be entitled to implement any kind of advertisements on the „Topotheque“ without the prior written consent of ICARUS.

4.8 Quality assurance

The partner undertakes to act with appropriate accuracy and precision when entering metadata and subject headings in order to assure the quality of the Topotheques as an overall project.

5. Maintenance of the Topotheque web service

5.1 Fault correction

ICARUS shall continuously control the functional capability of the web service „Topotheque“ and commit itself to repair possible defects within an appropriate period of time.

5.2 Fault definition

A defect exists if the web service „Topotheque“ does not fulfil its function and its use has become impossible or at least restricted, whereas this is in particular the case, if data entered by the Partner into their „Topotheque“ are not administered correctly or not visible.

6. Data hosting

6.1 Property rights

All property rights and other intangible property rights of data entered remain with the Partner or their licensors or third parties (e.g. citizens).

6.2 Power of disposition

The Partner continues to be responsible for and entitled to the power of disposition of their data entered. The Partner shall be entitled against payment of time invested pursuant to point 9.1, to require from ICARUS to provide all or some data, without retention right (independently of the legal reason) of ICARUS. The provision of data shall be made on data carriers or by data network transmission. However, the Partner has no right to maintain the web service „Topotheque“.

6.3 Data back-up

ICARUS shall back up data once in 24 hours without warranty. The Partner should consequently back up their data additionally on local data carriers.

6.4 Liability for contents

ICARUS shall not be liable for the contents which the Partners are making available. In particular, ICARUS shall not be obligated to control the contents with regard to law violations. Should third parties raise a claim against ICARUS for possible law violations arising from contents of their Internet presentations, the Partner shall be obligated - between partner and ICARUS and not towards third parties - to hold harmless and indemnify ICARUS for all expenses which arise from a possible breach of legislation. Furthermore, ICARUS shall be entitled to withdraw contents which have been rejected by third parties from the network, until a clarification of the actual legal position has taken place.

7. Partner support

ICARUS undertakes to answer questions of the Partner on the use of the web service „Topotheque“ immediately, however no later than 10 days upon receipt of the question by ICARUS, whereas in case of doubt the communication medium shall be the same one which has been used by the Partner.

8. Interruption

8.1 Temporary interruption of the web service

Adjustments, supplements and modifications of the web service „Topotheque“ as well as measures which serve to determine and repair functional defects, can lead to a temporary interruption or disturbance of accessibility.

8.2 Information of interruption

As soon as ICARUS becomes aware of an interruption, it shall inform the Partner immediately. Conversely, the Partner shall immediately inform ICARUS as soon as they receive knowledge of an interruption or functional disturbance.

8.3 Extent of interruptions

Interruptions or disturbances of accessibility shall be limited to 10 days/month. In the event that interruptions or disturbances of accessibility exceed this period, the Partner shall be entitled to prematurely cancel the contract for cause. Claims for damages by the partner shall be excluded.

9. Payment

Within the framework of the **Creative Europe Project co:op - community as opportunity (Grant Agreement Number: 2014-3407)** each participating partner (Work Package 3) shall implement a total of 5 Topotheques in the municipalities of their country and in their language between 1 December 2014 and 30 November 2018.

Each partner undertakes to pay for the set-up of the Partner's „Topotheque“, the training for the web service „Topotheque“, as well as for all maintenance and technical (further) developments a licence fee of an overall amount of EUR 10.000,00 to ICARUS, as foreseen in the project budget.

This licence fee shall be payable as follows:

1st instalment EUR 2,500.00 until 31 January 2016 at the latest

2nd instalment EUR 2,500.00 until 31 October 2016 at the latest

3rd instalment EUR 2,500.00 until 31 October 2017 at the latest

4th instalment EUR 2,500.00 until 30 November 2018 at the latest

(Pursuant to §2 para. 5 I 2 UStG 1994/Value Added Tax Act no value added tax must be paid)

ICARUS undertakes to exclusively use the licence fee for purposes stipulated in the Grant Agreement 2014-3407 and in the project application (Work Package 3, see point 3). This licence fee covers all services rendered by ICARUS within the scope of the present contract. Furthermore, upon completion of the project co:op as of 1 December 2018, ICARUS undertakes to permanently maintain and finance all Topotheques which have been set up during the duration of the project good-till-cancelled by one of the participating parties and without any additional expenses.

9.1 Additional services

Additional services which are carried out by ICARUS upon request of the Partner during the term of the project as well as upon completion of the project of co:op, which are however not compulsory within the scope of the present contract, shall be negotiated separately on a time and material basis between the contractual parties and require an additional written agreement.

10. Warranty

10.1 Repair of defects

ICARUS undertakes to repair defects in the web service „Topotheque within an appropriate period. The repair of defects can lead to an interruption of the connection between the server of ICARUS and the Partner.

10.2 Functional capability of the network connection

ICARUS shall not be liable for the functional capability of the network connections to its server in the event of electrical power outage and outages of servers which are not within its scope of influence.

10.3 Card function

ICARUS shall not be liable / shall not give warranty for the possibility to use the card function at any time, as this function is provided by third parties. Should the card function cease to work due to the existing licence agreement between ICARUS and the card service provider, ICARUS shall do its best to find a substitute for the card function. However, there is no obligation as to how this has to be done.

10.4 Remedy of defects

In the event that ICARUS shall not fulfil its obligation to remedy defects within an appropriate period of time, the Partner shall be entitled to withdraw from the present agreement upon granting 14 days of grace through written notice.

10.5 Guarantee claims

Guarantee claims of the Partner shall lapse within a period of 6 months, provided that the Partner is not a consumer in terms of the Austrian Consumer Protection Law /österreichischen Konsumentenschutzgesetzes (KSchG). In that case the legal time limit shall apply.

10.6 Loss of data

ICARUS shall not be liable for data loss – unless done with wilful intent.

11. Illegal contents

In the event that the partner uses the storage space under this agreement against the contractual consent to abstain from storing illegal contents, the provider shall have the right to inhibit the access to such content through the Web by appropriate measures. Furthermore, ICARUS shall have the right to disclose the names and addresses (for notifications) of the Partners to third parties, in order to facilitate official and legal measures against the Partner.

12. Duration of contract

12.1 Beginning and end

The contractual relationship shall begin with the signing of the agreement by all contractual parties. The contractual relationship shall be in place until the end of the project co:op until 30 November 2018. The contract shall be prolonged upon project end *sine die* and until terminated by one of the contractual parties. In the event of a termination of the contract upon request after 30 November 2018, the party requesting to terminate the contract shall forward in writing a letter of notice to the other party. The cancellation period shall be six months.

12.2 Premature termination of contract

Each contractual party shall have the right to terminate the agreement prematurely due to the following important reasons: - In the event that a contractual partner – for any reason whatsoever – being their fault or not, will no longer be able to fulfil their obligations under this contract, - in the event that the contractual partner breaches significant provisions of the present agreement.

12.3 Requirement of written form

The requirement of written form is fulfilled by transmission of a certified letter to the address which the contractual partner has provided.

12.4 Consequences of termination of contract

If the agreement is terminated, the Partner's Topotheque will be removed from of the network, so that third parties (e.g. citizens), too, shall no longer be allowed to enter data and files. Upon request of the Partner, ICARUS shall provide the entered contents to the partner, in which case expenses shall be billed based on time invested, pursuant to point 9.1, by ICARUS to the Partner. ICARUS shall not be liable to automatically provide entered contents to the Partner, or store or file data beyond the time of validity of the agreement.

13. Data protection

The applicable legal data protection provisions are known to ICARUS. ICARUS shall fulfil the legal provisions of data protection in the applicable version.

14. Place of jurisdiction and applicable law

The present contract shall be subject to Austrian law only. This shall also apply to questions concerning the formation of the contract or legal consequences of after-effects. All disputes arising from the present agreement, including questions concerning its valid formation or after-effects shall exclusively be decided by the competent court at the seat of association of ICARUS (thus, the place of jurisdiction is Vienna). Concerning the relationship with consumers, obligatory consumer protection regulations shall prevail.

15. Final provisions

15.1 Privity of contract of the contractual partners

By means of the present agreement the privity of contract of the contractual partners is exclusively regulated. Possible agreements or declarations concluded in connection with this contract shall become invalid upon the signing of present contract.

15.2 Modifications and amendments

Modifications of or amendments to the present contract must be made in writing. Also, any modification of this requirement of form shall be in writing.

15.3 Invalidity of individual provisions

The invalidity of individual provisions of the present contract shall not affect the remaining provisions. The contractual parties undertake to replace the invalid section with a valid provision as close as possible to the economic and legal purpose of the invalid one.

15.4 Legal representation and consultancy

The expenses for legal representation or consultancy shall be borne by each of the contractual partners individually.

Place & Date

Naples, 28/01/2016

Date

Place &

Signature for the Partner

Signature for ICARUS



Name: Edoardo Massimilla
Position: Director

Dr. Thomas Aigner
President