

EUROPEAN ORGANISATION FOR THE SAFETY OF AIR NAVIGATION

"EUROCONTROL"

- Measures of the Permanent Commission -

MEASURE No. 04/104

authorising the Agency to open negotiations and to conclude, on the Organisation's behalf, special agreements relating to the provision of support to Member States, to non-Member States which are Members of ECAC, or to International Organisations

THE PERMANENT COMMISSION FOR THE SAFETY OF AIR NAVIGATION:

Having regard to the EUROCONTROL International Convention relating to Co-operation for the Safety of Air Navigation, amended by the Protocol signed at Brussels on 12 February 1981, and in particular Articles 2.2(a), 2.3(a), 7.2 and 11.3 thereof and Article 3.3 of Annex 1 thereto, relating to the Statute of the Agency;

Having regard to the Protocol consolidating the EUROCONTROL International Convention relating to Co-operation for the Safety of Air Navigation, which was opened for signature on 27 June 1997, and in particular Article 2.1 of the consolidated version of the Convention annexed thereto;

Having regard to Decision No. 71 of 9 December 1997 on early implementation of the revised Convention, in particular in respect of the role and duties of the Organisation;

On the proposal of the Director General and the Provisional Council,

HEREBY TAKES THE FOLLOWING MEASURE:

1. The Agency is hereby delegated authority to open negotiations and to conclude, on the Organisation's behalf, special agreements relating to the provision of support to Member States, to non-Member States which are Members of ECAC, or to International Organisations, on the basis of the Model Agreement at Annex.
2. The agreements shall be signed by the Director General of the Agency.
3. Measure No. 77/1 of 14 August 1990 and Measure No. 85/49 of 1 August 1997 are hereby revoked.

Done at Brussels on 8.10.04

To be signed

Pietro LUNARDI
President of the Commission

REVISED MODEL AGREEMENT
For the provision of Support by EUROCONTROL

REVISED MODEL AGREEMENT

for the provision of Support by EUROCONTROL relating to
[add title of the subject matter]

The European Organisation for the Safety of Air Navigation (EUROCONTROL) established by the EUROCONTROL International Convention relating to Co-operation for the Safety of Air Navigation as amended at Brussels in 1981 ("the amended Convention"), represented by its Director General, Mr [name],

hereinafter referred to as "EUROCONTROL",

and

[Co-contracting Party]

hereinafter referred to as "[to be defined]"

HAVING REGARD to Articles 2.2 (a), 7.2, 11.3 and 12 of the amended Convention,

HAVING REGARD to Measure No. [../..] of the Permanent Commission of [date] authorising the Agency to open negotiations and to conclude agreements relating to the provision of [title of measure]

For Non-Member States:

[HAVING REGARD to Articles 2.3 (a), 7.2, 11.3 and 12 of the amended Convention, HAVING REGARD to Measure No. [../..] of the Permanent Commission of [date] authorising the Agency to open negotiations and conclude agreements relating to the provision of [title of measure],

For International Organisations:

[HAVING REGARD to Articles 7.2, 11 and 12 of the amended Convention, HAVING REGARD to Measure No. [../..] of the Permanent Commission of [date] authorising the Agency to open negotiations and conclude agreements relating to the provision of [title of measure],

CONSIDERING the request of the [Co-contracting Party] for EUROCONTROL to provide Support which will contribute to the implementation of a uniform European air traffic management system in line with the relevant programmes endorsed by EUROCONTROL

HAVE AGREED AS FOLLOWS :

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ARTICLE 1 - SCOPE

- 1.1. The subject of the present Agreement is the provision of support (“Support”) by EUROCONTROL for [specify subject matter].
- 1.2. The Support is detailed in the specifications attached at Annex 1.
- 1.3. EUROCONTROL shall not, however, be held responsible for any decision in the operational, technical, financial and or managerial field which have been taken by [the Co-contracting Party] in execution of its duties and or prerogatives.

ARTICLE 2 – SUB-CONTRACTS

EUROCONTROL shall be empowered to conclude any contracts required for the execution of the present Agreement including outsourcing or sub-contracting in accordance with the Contract Regulations for the EUROCONTROL Organisation in force at that time.

ARTICLE 3 - COST

- 3.1. Costs incurred by EUROCONTROL for the implementation of the present Agreement shall be borne by [the Co-contracting Party] and the necessary funds shall be made available to EUROCONTROL as provided for in Article 5 below.
- 3.2. The cost for the implementation of the present Agreement has been estimated at € [amount] ([amount in words] euro). This estimate is based on the most realistic information available at the time of drawing up the present Agreement and upon the currently applicable rules governing the costing of provision of support by EUROCONTROL. The cost estimate is detailed in Annex 2.
- 3.3. EUROCONTROL shall be free to modify the allotment of funds laid down in Annex 2 whenever required for the implementation of the present Agreement
- 3.4. The above-mentioned cost estimate shall be subject to revision in accordance with the conditions set out in paragraph 3.5. hereunder.
- 3.5. The following charging arrangements based on the principle of non-profit making shall apply:
 - a) Costs in respect of the provision of Support under this Agreement shall be calculated in accordance with the rules governing the costing of the provision of support by EUROCONTROL applicable at the date of signature of the present Agreement. In the event of any modifications of these rules by EUROCONTROL’s competent authorities during the operation of the present Agreement, the modified rules shall apply and the present Agreement shall be modified consequently, in accordance with the provisions of Article 9 below.
 - b) The cost shall include all staff expenditure as approved by the competent authorities and calculated in accordance with the provisions of the Staff Regulations governing Officials of the EUROCONTROL Agency.

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- c) All costs related to the supply of equipment and / or effort and services by third parties under contract shall be charged accordingly. The cost shall be determined inclusive of value added tax, where applicable.
- d) Where applicable, overhead charges will be added to the cost listed above.

ARTICLE 4 – PAYMENT

- 4.1. The funds shall be made available by [the Co-contracting Party] to EUROCONTROL through a Special Annex to EUROCONTROL's Budget.
- 4.2. In order to enable EUROCONTROL to commence its work [the Co-contracting Party] shall remit the sum of € [amount] € ([amount in words] euro) to EUROCONTROL at the latest at the date of the coming into force of the present Agreement.
- 4.3. EUROCONTROL shall request further instalments every [number of months] based on [the advancement of work] from [the Co-contracting Party] as the implementation of the present Agreement progresses. Payment shall be made within a period of 30 (thirty) calendar days beginning from the date the invoice has been issued.
- 4.4. Any delay in the payment of the amounts due according to paragraphs 4.2. and 4.3. above shall give rise to the payment of interest on arrears calculated on the basis of the euro interest rate. Each day's delay beyond the periods mentioned in paragraphs 4.2. and 4.3. above shall be calculated as 1/360 of a year. The euro interest rate shall be that applicable to 3-month term deposits published by the European Central Bank.
- 4.5. [The Co-contracting Party] shall communicate to EUROCONTROL of the appropriate payment services and EUROCONTROL shall communicate to [the Co-contracting Party] the appropriate bank details.
- 4.6. The financial management of the present Agreement shall be executed in accordance with the provisions of the Financial Regulations of the EUROCONTROL Agency. Upon specific written request to EUROCONTROL, a final statement of account shall be submitted to [the Co-contracting Party] within a period of 6 (six) months after the completion of the work under the present Agreement.
- 4.7. [The Co-contracting Party] shall be authorised to scrutinise the relevant accounts on request.

ARTICLE 5 – STAFF SUPPORT

- 5.1. EUROCONTROL staff assigned to [the Co-contracting Party] for the execution of the present Agreement shall remain subject to the Staff Regulations governing the Officials of the EUROCONTROL Agency.
- 5.2. [The Co-contracting Party] shall provide office accommodation and normal administrative services (such as the use of telephone / telefax / information technology facilities for official purposes and secretarial services).

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ARTICLE 6 – LIABILITY

- 6.1. Each Contracting Party shall exonerate the other from all civil liability arising from loss, damage or bodily injury suffered by its staff as a result of the performance of the present Agreement, where such loss, damage or bodily injury is not due to grave negligence or deliberate omission or wrongful act on the part of the other Contracting Party or its staff.
- 6.2. Each Contracting Party shall indemnify the other and its staff against any action for compensation for loss, damage or bodily injury to third parties, including their own staff or any staff under contract, arising from the performance of the present Agreement, where such loss, damage or bodily injury is not due to grave negligence or deliberate omission or wrongful act on the part of the other Contracting Party or its staff.
- 6.3. Staff of each Contracting Party to the present Agreement shall observe the laws of the respective host country and the rules relating to the conduct of foreigners.

ARTICLE 7 – INTELLECTUAL PROPERTY RIGHTS

- 7.1. Any copyrights, royalties and present or future legal rights relating to property - whether tangible or intellectual - accruing from the performance of the present Agreement shall be the exclusive property of both Contracting Parties who shall not dispose of them to third parties for commercial reasons without the prior and express written consent of the other.
- 7.2. All modifications to existing software and/or new software which may be developed as well as all documentation produced and/or modified, together with all general results and expert knowledge acquired during the implementation of the present Agreement, shall be the property of both Contracting Parties who shall be free to use them in the fulfilment of their proper tasks.
- 7.3. [Any software tools made available by EUROCONTROL to [the Co-contracting Party] under the present Agreement shall remain the ownership of EUROCONTROL and/or other third parties as may be the case. The rules governing such software tools are contained in Annex 3].¹

ARTICLE 8 - CONFIDENTIALITY

- 8.1. Except with the prior consent of the other Contracting Party, neither Contracting Party shall disclose any technical or financial detail of the present Agreement, or any specification, document and/or any other information acquired in connection with its implementation to any person other than a person employed or engaged by them, or to any other persons officially entitled to handle such information.
- 8.2. Any disclosure to any person permitted under paragraph 8.1. above shall be in strict confidence and shall extend so far only as may be necessary for the purpose of the present Agreement.

¹ To be inserted in appropriate cases

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ARTICLE 9 – AMENDMENTS

- 9.1. The present Agreement may be modified only by an instrument in writing of equal formality, signed by the duly authorised representatives of both Contracting Parties.
- 9.2. The Annexes to the Agreement may be modified by exchange of letters between [title of the authority] of the [Co-contracting Party] and the Director General of EUROCONTROL.

ARTICLE 10 – ENTIRE AGREEMENT

- 10.1. The present Agreement, including its Annexes, form the entire agreement between the Contracting Parties on [subject matter].
- 10.2. In case of divergence between the Annexes and the Agreement, the Agreement shall prevail.

ARTICLE 11 – DISPUTE SETTLEMENT

In the event of a dispute arising between the Contracting Parties to the present Agreement concerning the interpretation, application or performance thereof which cannot be settled by direct negotiation or by any other means, the provisions of Article 31 of the amended Convention shall apply *mutatis mutandis*.

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ARTICLE 12 – ENTRY INTO FORCE – DURATION - TERMINATION

- 12.1. The present Agreement shall enter into force on the day of its signature by both Contracting Parties.
- 12.2. The present Agreement shall remain in force until declaration by both Contracting Parties that its objective has been met successfully. The termination of the Agreement following such declaration shall only be effective upon an exchange of letters duly signed by the Contracting Parties.
- 12.3. Notwithstanding the provision of paragraph 12.2. above, the present Agreement may be denounced by either Contracting Parties subject to giving 6 months' prior written notice. [The Co-contracting Party] shall remain liable for full payment of all costs incurred by EUROCONTROL up to the date of expiry of the present Agreement so denounced.
- 12.4. In case of emergency or war the provisions of the present Agreement may be suspended by either Contracting Party.

Done at , on

in two originals in the ... language/s.

For EUROCONTROL

For [the Contracting Party]

[title]

[title]

[name]

[name]

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ANNEX 1

(DESCRIPTION OF SUPPORT – SPECIFICATION)

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ANNEX 2

COST ESTIMATE

STRATEGIC SUPPORT
free of charge

<u>TACTICAL SUPPORT (Staff costs with or without taxes + x% overhead)</u>
all costs in EUR
Effort/Outsourcing Missions Sub Total + x% overhead
TOTAL

<u>TECHNICAL & OPERATIONAL SUPPORT (Staff costs with taxes + x% overhead)</u>
all costs in EUR
Effort/Outsourcing Missions Sub Total + x% overhead
TOTAL

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Calculation of Total Costs Estimate (in EUR)

WP Nr.	Definition of WP	Category*	Effort m/days	Estimated Effort/Outsourcing (EUR)
1				
2				
N				
Estimated Total Effort (I)			0	0

* : Category: Strategic/ Tactical/ Technical&Operational

WP	Destination	duration/ days	Persons	Estimated cost per Mission	Total No of missions	Estimated Total Mission Cost per WP
1						0
						0
						0
						0
						0
						0
N						0
						0
Estimated Total Mission Costs (II)						0

WP	Effort/Outsourcing (I)	Missions (II)	Total (III = I + II)
1		0	0
		0	0
		0	0
	0	0	0
	0	0	0
N	0	0	0
TOTAL	0	0	0

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ANNEX 3

[where appropriate²]

(RULES GOVERNING SOFTWARE TOOLS / LICENCE AGREEMENT

² – rules governing software tools where made available – licence agreement