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AGREEMENT BETWEEN EUROCONTROL AND THE “CRCO EXTRANET FOR AIRSPACE USERS” (“CEFA”) USERS

The European Organisation for the Safety of Air Navigation, EUROCONTROL, represented by its CRCO Director, hereinafter referred to as “the Organisation”,

and

the company, represented by its

President/CEO/Director, hereinafter referred to as “the User”,

hereinafter individually and collectively referred to as the Party/Parties,

Having regard to the Multilateral Agreement relating to Route Charges, signed at Brussels on the 12 February 1981, inter alia Articles 3(2)(e) and (h), 5 and 7 thereof;

Having regard to the Conditions of Application of the Route Charges System and Conditions of Payment, and the Financial Regulations applicable to the Route Charges System;

Having regard to Bilateral Agreements relating to air navigation charges and communication charges;

Having regard to Council Directive 2001/115/EC of 20 December 2001 amending Directive 77/388/EEC with a view to simplifying, modernising and harmonising the conditions laid down for invoicing in respect of value added tax,

Having regard to Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures,

Desiring to improve the transmission of information and documents relating to the billing and collection of air navigation and communication charges;

Considering that the specific means of transmission of electronic and digitised documents between the Organisation and Airspace Users, would allow this improvement while ensuring legal validity and the necessary adequate security level;

HAVE AGREED AS FOLLOWS

Article 1 – Object and Scope

1.1. This Agreement specifies the terms and conditions of use which apply for the provision of electronic and digitised documents relating to the air navigation and communication charges that the Organisation is tasked with establishing and collecting.

1.2. The Organisation will make the “CRCO Extranet for Airspace Users” (“CEFA”) available to the User, with the following services:

○ Declaration of its Fleet Data: the User will be able to submit online to the Organisation its yearly fleet declaration and subsequent updates;

○ Consultation of its monthly Billing Documents: this service will provide the User with access to the (PDF) image of its Billing Documents. Access to Billing Documents will be granted only under the condition that the User renounces receiving the paper version of its Billing Documents, as defined in Article 2.6, with the exception of the bill and VAT annex which will continue to be sent by paper.

○ Submission of its Claims on air navigation charges, resulting from the verification of invoices, and follow up of their status.

○ Download of detailed data for invoice verification, formatted in structured files. Access to this service will be granted only under the condition that the User renounces receiving the paper version of its Billing Documents, as defined in Article 2.6, with the exception of the bill and VAT annex which will continue to be sent by paper. The description of this service is set out in a technical Annex ‘CRCO*Datalink Technical Handbook’. The effective

implementation of this service shall not commence until both parties have declared the trials satisfactory.

1.3. These services are made available via the CEFA managed by the Organisation. More services may be added at any time to the CEFA by the Organisation. This service is provided free of charge.

1.4. The provisions of the Agreement do not govern the establishment and collection of the air navigation and communication charges which the Organisation is tasked with establishing and collecting.

1.5. Should the electronic transmission and availability of documents be prevented by factors beyond the control of the Parties, which they cannot overcome, the Parties undertake to resort to the alternative form of exchange previously agreed. The transmission of documents may be carried out by the communication technique best adapted to the particular circumstances of the case (ordinary mail, fax, e-mail, electronic form, website, etc.).

Article 2 – Definitions

For the purpose of this Agreement, the following definitions shall apply:

2.1. “CEFA”: Electronic documents and services made available by the Organisation in a restricted Internet website to enable the User to fill in, consult and exchange its Fleet Data Declarations, Billing Documents, and Claims Submissions with the Organisation.

2.2. “Electronic document”: Any data-set input stored on a computer or similar system which is readily available and accessible by a person or by such a system or which can be reproduced in human-readable form and can be transmitted and printed, including digitised documents.

2.3. “Digitised document”: Any document on paper transformed into an electronic image.

2.4. “Metadata”: The data describing the context, content and structure of documents and their management over time (sending, receiving, executing).

2.5. “Fleet Data Declaration”: Electronic document laying down the aircraft details of the fleet of a User that includes the following elements: Aircraft registration, aircraft type, version, construction number and maximum take-off weight (MTOW) in Kgs or Lbs.

2.6. “Billing Documents”: All digitised documents resulting from the billing of air navigation and communication charges, i.e., bills,

VAT annexes, interest bills, statements of accounts, pro-forma statements. These documents will cover all billing systems managed by the Organisation (Multilateral and Bilateral Air Navigation Charges Systems).

2.7. “Claim Submission”: Electronic document allowing the submission of disputed flights, resulting from the verification of Billing Documents by the User.

2.8. “Advanced electronic signature”: Electronic signature which meets the following requirements of Directive 1999/93/EC:

- a) uniquely linked to the signatory;
- b) capable of identifying the signatory;
- c) created using means that the signatory can maintain under his sole control;
- d) linked to the data to which it relates in such a manner that any subsequent change of the data is detectable.

Article 3 – Validity of electronic documents

3.1. The Parties expressly waive any rights to dispute the validity of a document transmitted electronically under this Agreement on the sole ground that it was transmitted electronically.

3.2. The User shall ensure that the law of its own country authorises, without restriction, the electronic transmissions constituting the subject of this Agreement. In the event of inconsistency with such law, it shall take all necessary measures to inform the Organisation without delay.

3.3. Whenever the applicable national provisions require the signed original of a document, a document transmitted by the Parties under this Agreement satisfies this requirement if the document in question bears an advanced electronic signature which is based on an electronic certificate offering equivalent assurances with regard to the functionalities attributed to a signature.

3.4. The provisions of this article are subject to implementation of adequate security measures under the technical Annex referred to in Article 12.

Article 4 – Admissibility of electronic documents

To the extent permitted by national law, the Parties hereby agree that in the event of dispute, the records of electronic documents, including the relevant metadata, which the Organisation has maintained under this Agreement, shall be admissible before the Courts and shall constitute evidence of the facts contained therein unless evidence to the contrary is adduced.

Article 5 – Operational requirements

5.1. The Parties undertake to implement and maintain the operational environment required to

ensure the correct application of this Agreement, which includes but is not limited to the following:

5.2. Means of communication: the Parties shall determine the means of communication to be used, including the telecommunication protocols, and if required, the choice of third party service providers.

5.3. Operational equipment: the Parties shall provide and maintain the equipment, software and services necessary to transmit, receive, view, record and store electronic documents.

Article 6 – Service availability

6.1. The CEFA services are made available H24, however they will only be guaranteed during the Organisation's official services hours, from 08:30 – 17:00 CET, as posted on the CEFA. The CEFA services may not be available between 19:00 – 21:00 CET for backup reasons.

6.2. The Organisation shall endeavour to ensure uninterrupted access during the official service hours. In case of disruption during the official service hours, the Organisation shall provide the User with accurate and up to date information.

6.3. Planned interruptions of service, their expected duration, and the resumption of service, as well as any remedial measure undertaken or planned, shall be notified by e-mail to the User. If the service cannot be restored within two working days, the Organisation will use paper or alternative electronic media as interim solutions for data transmission.

Article 7 – Alterations to the service

7.1. The Organisation may at any time alter or introduce any characteristic of the service supplied under this Agreement.

7.2. However the Organisation will maintain the information flow, as required by the operation of the EUROCONTROL charges system. Any change will be co-ordinated with the User.

7.3. The Organisation undertakes to give at least three month's notice if the change to the service relating to the data download for invoice verification concerns the cancellation of, or any substantial amendment to, the existing message format.

Article 8 – Intellectual property rights

8.1 The Organisation shall retain at all times all intellectual property rights pertaining to the CEFA (database copyrights, trademarks, symbols, layout, data, metadata, know-how, domain name, etc.).

8.2. Billing Documents may be downloaded and reproduced by the recipient User.

Article 9 – Processing of electronic documents

9.1. Electronic documents shall be processed upon receipt.

9.2. Each year, the Organisation sets up a forward planning calendar indicating the billing dates of the said year. The forward planning shall be available on the CEFA and shall estimate the dates of availability of the Billing Documents.

9.3. Fleet Data Declaration and Claim Submissions shall be considered as documents submitted by the User, as part of the CEFA. The User may access information about processing of the related submissions, as part of the CEFA.

9.4. Once a Billing Document becomes available on the CEFA, the Organisation will send a notification in the User's inbox and to the e-mail address provided at registration. Billing Documents shall be considered to be received by the User upon their availability on the CEFA and after notification by electronic message. The User shall proactively and regularly check the CEFA and ensure payments within the prescribed time-limits.

9.5. The amount due shall be paid by the date indicated on the bill sent by post to the User, regardless of whether or not the User has received, opened, read or understood the electronic document concerning the Billing Documents and regardless of whether the User has consulted the CEFA.

9.6. If the User notifies that the electronic document could not be successfully transmitted, the Organisation may initiate an alternative data recovery procedure previously agreed with the User to ensure the effective receipt of the electronic document.

9.7. In case of corruption of the electronic document, a procedure shall allow the User to obtain a duplicate file from the Organisation. The User cannot prevail itself on the non-availability of the Billing Documents to avoid the payment of the bill.

9.8. If the correct transmission of the electronic document from the Organisation to the User has failed at least twice, the service may be interrupted by the Organisation and the paper system will be used as the only solution of transmission.

Article 10 – Availability of Billing Documents by the Organisation & Consultation of Claims by the User

10.1. Billing Documents shall be made available online to the User for a minimum period of 6 months after their date of issue.



10.2. The situation of Claim Submissions may be consulted online for a maximum period of two years after their date of receipt by the Organisation.

Article 11 – Recording and storage

11.1. Electronic documents, including the relevant metadata, shall be recorded and stored by the Organisation throughout the period required.

11.2. A complete and chronological record of all electronic documents transmitted between the Parties shall be stored by each Party, unaltered and securely, in accordance with the deadlines and specifications prescribed by national legislation governing the User, and in any event for a minimum of five years following completion of the transaction.

11.3. Unless otherwise provided by national legislation, the electronic document shall be stored by the sender in the format in which they are transmitted and by the receiver in the format in which they are received, or in a form which preserves the integrity not only of its content but also of the relevant metadata.

The User is advised to store and print out all electronic documents and to create a personal archive.

11.4. The Parties shall ensure that the contents and the relevant metadata of electronic documents are readable throughout the storage period by any person who is authorised to have access to them, and can be reproduced in human-readable form and can be printed, if required. Any operational equipment required for this purpose shall be retained as long as necessary.

Article 12 – Security

12.1 The Parties undertake to implement and maintain security procedures and measures in order to ensure protection of electronic documents and related transmissions against the risks of unauthorized access, data-corruption, delay, destruction and loss. These procedures and measures are laid down in the technical Annex to this Agreement.

12.2 If the use of security procedures and measures results in the rejection of, or the detection of an error in, electronic transmissions, the receiver shall inform the sender thereof within two working days.

Article 13 – Confidentiality and protection of data

13.1. The Parties shall ensure that electronic transmissions containing confidential information remain confidential and are not disclosed or re-transmitted to any unauthorised persons nor used

for any purposes other than those intended by the Parties, unless otherwise agreed by the Parties.

Where authorised, subsequent transmission of such information shall be subject to the same degree of confidentiality.

13.2. Electronic transmissions shall be deemed not to contain confidential information insofar as such information is in the public domain.

13.3 The parties agree to use an advanced form of protection for electronic documents and related transmissions such as a method of digital signature or encryption to the extent permitted by law in the User's country. These methods are described in the technical Annex to this Agreement.

13.4 Where electronic documents which include personal data are transmitted to countries where no data protection law is in force, the User agrees as a minimum standard, to respect the provisions of Council of Europe Convention N° 108, dated 28.01.81, for the Protection of Individuals with regard to Automatic Processing of Personal Data.

Article 14 – Liability

14.1. Except in the case of intentional oversight, wilful default or gross negligence, the Organisation shall not be held liable in respect of:

- (a) Any loss or damage arising out of or in connection with any defect in the equipment of the User,
- (b) Any action or lack of action on the part of the operator of any system or intermediary over which the Organisation does not exercise control,
- (c) Any cost, loss or damage arising out of or in connection with any break in the continuity of or impairment in the quality of the CEFA,
- (d) Any financial loss or any other consequence of the late availability or non-availability of information.

The User shall indemnify the Organisation against any claims or actions for damages made by third parties, where the claims or damages are due to a fault of the User.

14.2. Neither Party shall be liable for any loss or damage suffered by the other Party caused by any delay or failure in the implementation of one of the clauses of this Agreement, where such delay or failure is caused by an event beyond the Parties control which could not reasonably be expected to have been taken into account at the time of signature of the Agreement, or of which the consequences could not have been made avoided or overcome.

14.3. Neither Party shall be liable for any special, indirect or consequential damage resulting from a failure to implement the clauses of this Agreement.



14.4. If either Party engages any intermediary to perform such services as the transmission, logging or processing of any electronic data, the Party concerned shall be liable for damage arising directly from that intermediary's acts, failure or omissions in the provision of said services.

14.5. If either Party requires the other to use the services of an intermediary to perform the transmission, logging or processing of any electronic data, the Party who gave the instruction for the use of such services shall be liable to the other Party for damage arising directly from the intermediary's acts, failures or omissions in the provision of said services.

Article 15 – Applicable Law

Without prejudice to any mandatory national law, which may apply to the Parties regarding recording or storage of electronic data or confidentiality and protection of personal data, the transmission of electronic data between the Parties shall be governed by Belgian law.

Article 16 – Dispute resolution

Any dispute arising out of or in connection with this Agreement shall be referred to the Brussels

Court of First Instance (Belgium), which shall have sole jurisdiction.

Article 17 – Effect, modifications, term and severability

17.1. The Agreement shall take effect from the date on which it is signed by the Parties.

17.2. Where required, amendments to the Agreement, agreed in writing by the Parties, shall upon signature be deemed as an integral part of the Agreement.

17.3. This Agreement is concluded for an indefinite period. Either Party may terminate the Agreement by giving not less than three month's notice by registered post with acknowledgement of receipt.

Termination of the Agreement shall affect only electronic documents transmitted after the date. Termination of this Agreement for whatsoever reason shall not affect the rights and obligations of the Parties referred to in Articles 4, 9, 11 and 12.

17.4. Should all or part of any Article of this Agreement be invalid, the remaining provisions of the Agreement shall remain in full force and effect.

Executed in two copies in English.

Signed in Brussels on

For the User

For EUROCONTROL
*On behalf of the Director General,
by Special Delegation*