



General Terms and Conditions for EASA's provision of services to an applicant for implementation of Flight Simulator Training Devices (FSTD) activities

1. Purpose

- 1.1. These Conditions shall establish the conditions under which the Agency by way of assistance provides a service to the Applicant by conducting/coordinating Flight Simulator Training Devices (FSTD) activities on a case by case basis during the transitional period.
- 1.2. The transitional period shall be defined as the period commencing from the 30th of June 2009 when JAA ceased to exist, until the EASA applicable rules become effective.
- 1.3. These General Terms and Conditions will form an integral part of the service provision Contract between EASA and the applicant, after the applicant has explicitly approved them in its application form and EASA has countersigned that application form.

2. Performance of the contract

- 2.1. The Agency shall perform the Contract to the highest professional standards. The Agency shall have sole responsibility for complying with any legal obligations incumbent on it, notably those resulting from employment, tax and social legislation.
- 2.2. Without prejudice to Article 7.3 any reference made to the Agency's staff in the Contract shall relate exclusively to individuals involved in the performance of the Contract.
- 2.3. The Agency must ensure that any of its staff performing the Contract has the professional qualifications and experience required for the execution of the tasks assigned to him.
- 2.4. The Agency shall neither represent the Applicant nor behave in any way that would give such an impression.
- 2.5. The Agency shall have sole employment responsibility for its staff executing the tasks assigned to them. The Applicant may not under any circumstances be considered to be the staff's employer and the said staff shall undertake not to invoke in respect of the Applicant any claims arising from the working relationship between the Applicant and the Agency.
- 2.6. In the event of disruption resulting from the action of a member of the Agency's staff working on the Applicant's premises, or unsatisfactory performance by, or lack of expertise of a member of the Agency's staff, the Applicant shall have the right to request the replacement of any such member of staff, providing objective justification for such a request.
- 2.7. The Agency shall apply its reasonable endeavour to resolve the matter and, if the Agency decides it is necessary and possible, replace the staff member. Replacement staff must have the necessary qualifications and be capable of performing the Contract under the same contractual conditions.
- 2.8. Should any unforeseen event, action or omission directly or indirectly delays execution of the tasks, either partially or totally, the Agency shall immediately and on its own initiative record it and report it to the Applicant. The report shall include a description of the problem and an indication of the date on which it started. In such event the parties shall give priority to solving the problem rather than determining liability.



3. Invoicing and payments

- 3.1. The Agency shall impose a charge to the Applicant for the provision of services by the Agency carried out under the Contract in accordance with the Fees and Charges Regulation.
- 3.2. These charges shall be equal to the real cost of the service provided, including administrative costs.
- 3.3. The Agency shall not be responsible for charging on behalf of other parties involved or working on the FSTD related processes.
- 3.4. The real costs associated with the services are defined as follows:
 - a) Hours performed by EASA technical experts and/or project coordinators.
 - b) Travel costs including:
 - i. Transport costs (airplane ticket, visa costs, train, car, bus, taxi)
 - ii. Travel time costs (travel time x hourly rate)
 - iii. All other costs shall be charged in accordance with the terms of payment published in the EASA website at http://www.easa.eu.int/ws_prod/g/doc/Regulation/Terms%20of%20payment%2020090128%20PDF.pdf
- 3.5. The applicable hourly rate is defined in Part II of the Annex of the Fees and Charges Regulation.
- 3.6. In the event of cancellation of activities or termination of the Contract, the working hours already spent will be fully recovered, plus any travel costs if applicable.
- 3.7. Payment shall be made upon presentation by the Agency of an invoice indicating the amount to be paid to compensate the related cost to the Agency
- 3.8. Payments under the Contract shall be made in accordance with Chapter III of the Fees and Charges Regulation in conjunction with Article 3.7 of the present Contract. Payments for the provided services shall be made on a quarterly basis and for travel costs on a non regular basis, unless the parties agree otherwise in writing.
- 3.9. All invoices are payable 30 days as from the date of invoice
- 3.10. In the event of late payment the Agency shall be entitled to claim interest. Interest shall be calculated at the rate applied by the European Central Bank to its most recent main refinancing operations ("the reference rate") plus seven percentage points ("the margin"). The reference rate in force on the first day of the month in which the payment is due shall apply. Such interest rate is published in the C series of the Official Journal of the European Communities. Interest shall be payable for the time elapsed between expiry of the payment deadline and the date of payment.

4. BANK ACCOUNT

- 4.1. Payments shall be made to the Agency's bank account denominated in Euro, identified as follows:

Name of bank: ING Matisse Business Branch
Address of branch in full: Avenue Henri Matisse, 16 B-1140 Brussels, Belgium
Exact designation of account holder: European Aviation Safety Agency
Account number: 310 1698326 39
IBAN: BE13 3101 6983 2639
SWIFT: BBRUBEBB



5. Recovery

- 5.1. If total payments made exceed the amount actually due or if recovery is justified in accordance with the terms of the Contract, the Agency shall reimburse the appropriate amount in Euro on receipt of the debit note, in the manner and within the time limits set by the Applicant.
- 5.2. In the event of failure to pay by the deadline specified in the request for reimbursement, the sum due shall bear interest at the rate indicated in Article 3.10. Interest shall be payable from the calendar day following the due date up to the calendar day on which the debt is repaid in full.
- 5.3. In the event of failure to pay by the deadline specified in the request for reimbursement, the Agency may, after informing the Applicant, recover amounts established as certain, of a fixed amount and due by offsetting, in cases where the Applicant also has a claim on the Agency that is certain, of a fixed amount and due.

6. Liability

- 6.1. The Agency will not accept third party liability for personal injury or death or for loss of or damage to property caused by its staff within the course of their employment or duties whilst acting under the Contract.
- 6.2. The Agency shall not be liable for any special damages or for any indirect or consequential losses or expenses (including loss of contracts, savings, business or goodwill) that are incurred by the Applicant as a result of the services provided or not-provided by the Agency under the Contract howsoever they are caused and even if it was aware of the possibility of those occurring when it entered into the Contract or into any contract hereunder.
- 6.3. Without prejudice to Article 12.6 and to the extent allowed the law applicable to the Contract the Applicant agrees to waive any claim it may have against the Agency, its members and staff personally in connection with the services provided and against any liabilities, including any legal costs, any damages and any expenses arising from or incurred due to or in connection with such actions or claims.
- 6.4. The Applicant will provide assistance or co-operation to the Agency and its staff and providers in case of legal action against the Agency, its staff or providers related to the execution of the Contract.
- 6.5. The Applicant shall indemnify the Agency, its members and staff against any actions or claims brought against them by any third party in connection with the services provided and against any liabilities, including any legal costs, any damages and any expenses arising from or incurred due to or in connection with such actions or claims.

7. Conflict of interest

- 7.1. The Agency shall not use, nor shall the Applicant require the Agency to use, any information or knowledge obtained in the course of the Contract for purposes other than as specified in the Contract in a way that prejudices the Agency's official function as a competent authority according to the EASA Regulation or any other legal instrument.
- 7.2. Both Parties shall ensure that the Agency and its staff members are not placed in a situation, which could give rise to conflict of interests. Without prejudice to Article 2.1 (Performance of the Contract) the Agency shall make its best effort to replace any member of its staff exposed to such a situation.
- 7.3. The Applicant shall take all necessary measures, or abstain from any measures, as the case may be, which could give rise to a conflict of interest situation for the Agency or its staff.



8. Confidentiality

- 8.1. Subject to the provisions of Article 47 of the EASA Regulation, the Agency and the Applicant undertake to treat in the strictest confidence and not make use of or divulge to third parties any information or documents which are linked to performance of the Contract, unless otherwise agreed upon. Both parties shall continue to be bound by this undertaking after completion of the tasks for an additional period of 10 years.

9. Data protection

- 9.1. Any personal data included in or relating to the Contract, including its execution shall be processed by the Agency pursuant to Regulation (EC) No 45/2001 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, and by the Applicant pursuant to national laws based on Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regards to the processing of personal data and on the free movement of such data.

10. Taxation

- 10.1. The Agency does not charge tax on its services.

11. Force majeure

- 11.1. Force majeure shall mean any unforeseeable and exceptional situation or event beyond the control of the contracting parties which prevents either of them from performing any of their obligations under the Contract, was not due to error or negligence on their part, and could not have been avoided by the exercise of due diligence. Defects in equipment or material or delays in making it available, labour disputes, strikes or financial problems cannot be invoked as force majeure unless they stem directly from a relevant case of force majeure.
- 11.2. Without prejudice to the provisions of Article 2.8, if either contracting party is faced with force majeure, it shall notify the other party without delay by registered letter with acknowledgment of receipt or equivalent, stating the nature, likely duration and foreseeable effects.
- 11.3. Neither contracting party shall be held in breach of its contractual obligations if it has been prevented from performing them by force majeure. Where the Agency is unable to perform its contractual obligations owing to force majeure, it shall have the right to remuneration only for tasks actually executed.
- 11.4. The contracting parties shall take the necessary measures to reduce damage to a minimum.

12. Termination

- 12.1. The parties may choose to terminate the Contract by mutual agreement.
- 12.2. The Applicant may terminate the Contract in the following circumstances:
- a) where a change in the Agency's legal, financial, technical or organisational situation, could have a significant effect on the Contract;



b) where there has been

- i. an irremediable breach of the terms of the Contract by the Agency, or
- ii. a remediable breach of any of the terms of the Contract by the Agency and the Agency have failed to remedy the same within 60 days of receipt by the Agency of a notice from the Applicant defining the breach and requiring its remedy; or
- iii. persistent remediable breaches of any of the terms of the Contract and the Agency fails to desist from such breaches having been given reasonable notice to do so;

c) where the Agency has been found guilty by the judicial bodies of serious professional misconduct;

d) where the Agency has made false, incomplete or incorrect statements or has failed to provide information in an attempt to obtain the Contract or any benefit resulting there-from, or where this was the effect of their action;

e) in the event of fraud, corruption or any other illegal activity detrimental to the European Communities' financial interests on the part of the Agency.

12.3. The Agency may terminate the Contract at its own discretion in the following circumstances:

- a) when the Applicant has failed to compensate the Agency for services rendered;
- b) when it is no longer in a position to provide the expertise necessary for the fulfilment of the services, as a result of a substantial loss of human resources for which the Agency is not responsible;
- c) when all the related tasks have been completed or when the duration of the Contract has expired
- d) when the Agency is in a position that it cannot provide the services required under the Contract as a result of the Applicant not providing information relevant for the provision of such services to the Agency.
- e) when the Agency determines that it or its staff members are - or could risk to be in - a conflict of interests situation which cannot be resolved by replacing the staff members according to Article 7.2;

12.4. In case of force majeure, notified in accordance with Article 11.2, either contracting party might terminate the Contract.

12.5. The dispatch of a registered letter with acknowledgement of receipt or equivalent shall initiate the termination procedure. Where prior notice is not required [paragraphs 12.1, 12.2.c), e) and 12.3.a), b), c), d)], termination shall take effect from the day after the day on which the letter terminating the Contract is received.

Where prior notice is required [paragraphs 12.2.a), b) and d)], termination shall take effect after a period of thirty days which shall start to run on the date on which the letter terminating the Contract is received. The Agency may submit arguments against termination within thirty days. In this case the Applicant shall provide a written response to the arguments of the Agency, within thirty days of the receipt of such arguments, and shall either withdraw the termination notice or confirm the termination procedure.

12.6. Consequences of termination

In the event of the Applicant terminating the Contract in accordance with this Article, the Agency shall waive any claim for consequential damages, including any loss of anticipated profits for uncompleted work. On receipt of the letter terminating the Contract, the Agency shall take all appropriate measures to minimise costs, prevent damage, and cancel or reduce their commitments. The Agency shall draw up a report for the tasks executed up to the date on which termination takes effect, within a period not exceeding sixty days from that date.



The Agency shall be entitled to remuneration for the tasks carried out under the contract. The Agency shall accept as the aggregate liability of the Applicant payment for the services already provided in accordance with the Contract at the effective date of termination. However, in the event of termination on the grounds set out in points b, c, d, or e of Article 12.2, the Applicant may recover payments in proportion to the scale of failure and in respect of the tasks deemed to have been executed in breach of the Contract.

13. Amendments

13.1. Any amendment to the Contract shall be the subject of a written agreement concluded by the contracting parties. An oral agreement shall not be binding on the contracting parties.

14. Suspension of the contract

14.1. Without prejudice to the Applicant's or the Agency's right to terminate the Contract, both parties may at any time and for any reason suspend execution of the Contract. Suspension shall take effect on the day the other party receives notification by registered letter with acknowledgment of receipt or equivalent, or at a later date where the notification so provides. Each party may at any time following suspension give notice to the other party to resume the work suspended. The Agency shall not be entitled to claim compensation on account of suspension of the Contract. The period of duration of the Contract shall continue to run irrespectively to the suspension of the Contract.

15. General administrative provisions

15.1. Any communication relating to the Contract or to its implementation shall be made in writing and shall bear the Contract number. Communications shall be sent to the following addresses:

European Aviation Safety Agency:

Organisations & Flight Standards Applications Management Section
European Aviation Safety Agency
Postfach 10 12 53
D-50452 Cologne
Germany

16. Applicable Law and Jurisdiction

The Contract shall be deemed to have been made in Germany, in the English language, and shall be governed by the national substantive law of Germany. Any disputes between the Parties in connection with any matter arising under the Contract, shall be settled in an amicable manner. Where such disputes cannot be solved through an amicable manner, the dispute shall be submitted to the exclusive jurisdiction of the Courts of Cologne

17. Definitions

In the Contract the following terms shall have the following meanings (except where inappropriate in their context) and cognate expressions shall be construed accordingly:



- a) "EASA Regulation" – Regulation (EC) No 206/2008 of the European Parliament and of the Council of 20 February 2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency, and repealing Council Directive 91/670/EEC, Regulation (EC) No 1592/2002 and Directive 2004/36/EC
- b) "Fees and Charges Regulation" – Commission Regulation (EC) No 593/2007 of 31 May 2007 on the fees and charges to be levied by the European Aviation Safety Agency, as last amended;
- c) "services" – The provision or coordination of general technical advice in connection with the object of the Contract as agreed between the parties, to be provided by the Agency pursuant to the Contract and the related Annex. For this purpose the Applicant shall be regarded as an Applicant, pursuant to the Fees and Charges Regulation.
- d) "the parties" – the Agency and the Applicant;
- e) "days" – calendar days, except if otherwise specified;
- f) "the Contract" – the Application form, signed by both parties, and the FSTD Terms and Conditions together, shall comprise the Contract

Terms not defined in this article shall have the meaning defined in the EASA Regulation and rules taken for its application.

References to any statute, statutory instrument and Agency rules, procedures and policies shall include any amendments or consolidations thereof.