



ICAO

International Civil Aviation Organization
African Flight Procedure Programme

SC8/22-WP6.1

Eighth Meeting of the African Flight Procedure Programme Steering Committee

(Dar es Salam, 23 to 24 August 2022)

Agenda item 6 : Presentation of the AFPP Programme document for Phase III Working paper 6.1: Review of the Management Service Agreement

(Presented by the Secretariat)

EXECUTIVE SUMMARY

This paper presents the new Management Service Agreement (MSA) to be signed by the Member States and Organizations of the African Flight Procedure Programme (AFPP).

Action: The Steering Committee meeting is invited to urge the States/Organizations to sign the new MSA for the AFPP.

REFERENCES

Report of the 7th meeting of the Steering Committee
SC8/22-WP6.2 (Review of the new Programme document)

1. Introduction

1.1 The initial legal framework of the African Flight Procedure Programme (AFPP) is based on:

- a) the Management Service Agreement (MSA) between ICAO and the Agency for the Safety of Air Navigation in Africa and Madagascar (ASECNA), which is a general umbrella agreement for cooperation; and
- b) the project documents for Phases I and II (i.e. Annexes to the MSA), which:
 - 1) include the scope, timelines and budget for the respective Programme phase as well as legal provisions; and
 - 2) are signed by ICAO, ASECNA and the individual Member States/Organizations of the AFPP.

1.2 This framework has led to the following challenges during the implementation of the AFPP:

- a) The project document was cluttered with information which should be included in MSAs (legal provisions) or which has to be periodically reviewed and approved by the steering committee (work plan).
- b) The signature of the project document for Phase II by more than 30 Member States/Organizations resulted in significant administrative workload and long timelines.

- c) As some Member States/Organizations did not sign the project document for Phase II, there was uncertainty on whether the missing signatures of the project document for Phase II affect the membership status of the corresponding States or the applicability of the project document itself.
- d) The legal relationship between ICAO and the AFPP Member States/Organizations was not clearly defined.

1.3 During the 7th meeting of the steering committee, ICAO proposed to update the legal framework of the AFPP to the general structure of ICAO projects and to take advantage of lessons learned from similar regional projects through the development of:

- a) a new MSA, which formalizes the relationship between ICAO and individual Member States/Organizations, and through which the steering committee receives delegated authority to take decisions on behalf of its members; and
- b) a project document similar to the ones for Phases I and II, which includes the terms of reference of the steering committee as well as the technical objectives for Phase III and which is only signed by ICAO, the host administration and the Chairperson of the AFPP.

1.4 Based on this proposal and the subsequent deliberations, the steering committee took the following decision:

SC/7-Dec07: ICAO to develop a Management Service Agreement (MSA) and programme document for Phase III which reflect the decisions of the present meeting as well as the presented mechanism for future signatures.

1.5 This working paper presents the MSA which was developed in response to the above-mentioned decision.

2. Discussion

2.1 The new MSA is provided in the Appendix to the present working paper.

2.2 Key Elements:

2.2.1 The MSA is based on ICAO's standard MSA, which several members of the AFPP have signed with ICAO previously for other technical cooperation activities.

2.2.2 The following paragraphs were included to address the shortcomings mentioned in section 1.2 above:

1.11 Through the signature of the this Management Service Agreement, the Entities shall become members of the AFPP steering committee.

1.12 The Entities give power to the steering committee, represented by its Chairperson, to liaise with ICAO and to act on all matters relating to this Management Service Agreement on their behalf, except where stated otherwise in the sections below. In particular, the Entities give power to the Chairperson of the AFPP steering

committee to sign Annex(es) to this Management Service Agreement, revisions thereof or any other document related to the AFPP on their behalf.

2.2.3 In order to join the AFPP or to maintain their membership until the end of the Programme, States/Organizations therefore have to provide only one more signature, i.e. of the MSA. The project document for Phase III and potential subsequent phases will be signed by the Chairperson of the steering committee.

Note. — The types of membership in the steering committee and the voting rights are defined in the project document.

3. **Conclusion**

3.1 Based on the discussion in section 2 above, the steering committee meeting is requested to urge the States/Organizations to sign the new MSA for the AFPP.

APPENDIX

**NEW MANAGEMENT SERVICE AGREEMENT FOR THE AFRICAN FLIGHT PROCEDURE
PROGRAMME**



MANAGEMENT SERVICE AGREEMENT FOR THE AFRICAN FLIGHT PROCEDURE PROGRAMME (AFPP)

BETWEEN
THE INTERNATIONAL CIVIL AVIATION ORGANIZATION
AND
THE MEMBER STATES AND ORGANIZATIONS OF THE AFPP

The Member States and Organizations of the AFPP, hereinafter referred to as the “Entities”, represented by the undersigned; and

The International Civil Aviation Organization, hereinafter referred to as “ICAO”, represented by the Secretary General;

Hereinafter referred to as the “Parties”;

AGREE ON THE FOLLOWING:

1. GENERAL PROVISIONS

1.1 The Parties agree to enter into an agreement regarding management and other services to be provided by or through ICAO, as specified in this Management Service Agreement (hereinafter referred to as “this Agreement”).

1.2 A detailed description of the Project(s) in relation to which specific services are going to be provided will be set out in, and designated, as Annex(es) to this Agreement, which shall form an integral part of this Agreement.

1.3 The Entities shall submit requests to ICAO for the specific services they wish to be provided by or through ICAO through the AFPP steering committee. Such requests are subject to approval by ICAO. The approved services (hereinafter referred to as “the Services”) shall be specified in the Annex(es) to this Agreement and shall be furnished in accordance with ICAO’s regulations, rules, directives, procedures and practices. Notwithstanding the above, the AFPP steering committee shall retain overall responsibility for the implementation of the Project(s).

1.4 The specific responsibilities of the Parties with regard to the contribution for the implementation of Project(s) shall be outlined in the Annex(es) to this Agreement.

1.5 ICAO and the AFPP steering committee shall maintain close consultations in respect of all aspects of the provision of the Services under this Agreement.

1.6 Any change to the scope of the Project(s) shall require negotiations between the Parties. The Entities give power to the AFPP steering committee to carry out such negotiations with ICAO on its behalf.

1.7 ICAO shall, on behalf of the AFPP steering committee, contract for inputs required for the provision of the Services as specified in the Annex(es) to this Agreement. If such inputs involve the recruitment of personnel and/or contractors, the modality of such recruitment and the signature of the respective contracts shall be subject to agreement with the AFPP steering committee.

1.8 In the performance of their duties, the recruited personnel and/or contractors shall collaborate closely with officials of the Entities and shall act in conformity with such general guidelines as the AFPP steering committee may establish in consultation with ICAO. The latter shall furnish to the above-mentioned personnel and/or contractors whatever guidance ICAO deems necessary for the successful implementation of the Services.

1.9 Unless agreed otherwise by the AFPP steering committee and ICAO in the Annex(es) to this Agreement, each of the Entities shall be solely responsible, using funds other than those specified in the Annex(es), for the recruitment of local personnel and payment of their salaries and benefits, as well as for the administrative support (local secretarial and personal services, offices, locally produced equipment and supplies, transportation within the country, and communications) required for the execution of the Project(s) and the provision of the Services and related support.

1.10 The funds received by ICAO under this Agreement shall be administered according to applicable ICAO regulations, rules, directives, procedures and practices.

1.11 Through the signature of the this Management Service Agreement, the Entities shall become members of the AFPP steering committee.

1.12 The Entities give power to the steering committee, represented by its Chairperson, to liaise with ICAO and to act on all matters relating to this Management Service Agreement on their behalf, except where stated otherwise in the sections below. In particular, the Entities give power to the Chairperson of the AFPP steering committee to sign Annex(es) to this Management Service Agreement, revisions thereof or any other document related to the AFPP on their behalf.

2. FINANCING PROVISIONS

2.1 The estimated total cost of the Services will be indicated in the Annex(es) to this Agreement. For management of the Services, ICAO shall be paid Administrative Charges as indicated in the Annex(es). The total cost (Services and Administrative Charges) of the Project(s) may not exceed the amount reflected in the Annex(es) without the prior agreement of the AFPP steering committee.

2.2 Upon signature of the Annex(es), the Entities shall deposit the amounts detailed in the Annex(es) to cover the estimated cost of the Services and Administrative Charges. In the case of procurement services, the actual cost of such Charges shall be confirmed following a tender or request for quotation. Should the actual cost be more than the estimated cost, the Entities shall deposit such amounts to make up the difference within 30 days of being informed to that effect.

2.3 All cash receipts to, and payments made by, ICAO under this Agreement shall be recorded in a separate account, opened, inter alia, in order to place on record the receipt and administration of payments. All payments made to ICAO shall be made in United States dollars and deposited in ICAO's bank account as follows:

Pay to: //CC000305101
 Royal Bank of Canada
 Saint Catherine and Stanley Branch
 1140 Saint Catherine Street West
 Montréal, Quebec
 Canada H3B 1H7

For credit to: 05101 404 6 892
 Project: RAF14801 - AFPP
 ICAO Pool Account

Swift code: ROYCCAT2

2.4 ICAO shall not be obliged to begin or continue the provision of the Services until the payments mentioned in paragraphs 0 and 0 of this Agreement have been received and ICAO shall not be obliged to pay or commit any sums exceeding the funds deposited in the aforementioned account. ICAO shall have a right to set off any amounts incurred pursuant to paragraph 0.

2.5 ICAO shall furnish the AFPP steering committee with unaudited financial statements concerning the Services covered in this Agreement, showing the status of the funds in United States dollars as at the end of March, June, September and December of each year. After ICAO has concluded the provision of the Services, it shall submit to the AFPP steering committee a final financial statement. In the event that the AFPP steering committee requests that a special audit/evaluation of its account or project under this Agreement be performed by the Internal or External Auditor of ICAO, the AFPP steering committee shall bear the cost of such audit.

2.6 If due to unforeseen circumstances the funds received under this Agreement should prove insufficient to cover the total cost of provision of the Services and Administrative Charges, ICAO shall inform the AFPP steering committee to that effect, and additional funds shall be made available to ICAO no later than 30 days of being informed to that effect, before the continuation of the project.

2.7 Any balance of funds of the Entities exceeding 1,000 United States dollars which is not disbursed and not committed at the conclusion of the provision of the Services shall be returned to the Entities on request or be retained in the account for future use as determined by the Entities. The balance of funds of the Entities is calculated on a pro-rated basis by multiplying the overall project balance with the Entities' deposited contributions, divided by the overall amount of contributions received for the AFPP.

3. PROCUREMENT SERVICES PROVISIONS

3.1 ICAO may acquire, at the request and on behalf of the Entities and in conformity with this Agreement and ICAO's Procurement Code, the necessary equipment and services described in the Annex(es) to this Agreement.

3.2 The Entities shall be responsible for the customs clearance process, including the payment of any tariff duties, taxes or similar fees directly related to the release from customs of the equipment and supplies that are not subject to exemption by the relevant Government.

3.3 The Entities undertake to ensure that adequate funds are on deposit with ICAO either to cover procurement requisitions submitted and/or the related administrative overhead charges calculated in accordance with the Scale of Charges found in the Annexe(s), and that in the event of ICAO notifying the Entities that funds on deposit are inadequate to cover proposed purchases and the related administrative overhead charges, the amount requested will be deposited without delay. The Entities accept that until such time as adequate funds have been deposited, action in respect of the outstanding purchases will be held in abeyance.

3.4 Should (an) on-going Service(s) approved by the Entities be cancelled, deferred or otherwise modified by the Entities, ICAO shall be entitled to recover its costs based on the amount of work that has been completed in the implementation of the said Purchase Requisition. ICAO shall invoice the corresponding amount to the Entities.

3.5 If, after issuance of the purchase order/contract, additional funds are required to meet additional unavoidable costs, the Entities shall deposit the additional sum required within thirty days of notification by ICAO.

3.6 An amendment to a Purchase Order/Contract shall not decrease the Administrative Charges associated with the issuance of the original Purchase Order/Contract.

3.7 Following the acceptance of the equipment by ICAO on behalf of the Entities, title of ownership and all associated risks of loss or damage, shall pass automatically from the supplier of the equipment to the Entities.

3.8 When it is not clearly established that the equipment to be procured is intended primarily for civil aviation purposes, ICAO reserves the right to decline to undertake the procurement of the equipment.

4. ICAO PRIVILEGES AND IMMUNITIES

4.1 Nothing in or relating to this Agreement shall be deemed a waiver, express or implied, of any immunity from suit or legal process or any privilege, exemption or other immunity enjoyed or which may be enjoyed by ICAO, its officers, staff, assets and funds either pursuant to the *Convention on the Privileges and Immunities of the Specialized Agencies*, 1947 or other applicable conventions, agreements, laws or decrees.

5. CORRESPONDENCE

5.1 All correspondence relating to the implementation of this Agreement other than this signed Agreement or the amendments thereto, shall be addressed, through the Chairperson of the AFPP steering committee, to:

ICAO:

Regional Director
Western and Central African (WACAF) Office
Léopold Sédar Senghor International Airport
PO Box 38050, Dakar
Senegal

5.2 The Entities shall keep ICAO duly informed of all measures which they adopt for the fulfilment of this Agreement or which may affect this Agreement.

6. LIABILITY

6.1 The Entities shall save, indemnify, hold harmless and, as advised and authorized by ICAO, defend ICAO, its officials, agents and employees, from and against all actions, suits, proceedings, claims, demands, losses and liability of any kind or nature brought against ICAO, including, but not limited to, all litigation costs and expenses, attorney's fees, settlement payments, and damages. The obligation to hold ICAO so harmless shall be applicable regardless of whether the suits, proceedings, claims and demands in question actually give rise to or otherwise result in any loss or liability.

6.2 The obligation under this clause shall survive the termination of this Agreement.

7. OFFICIALS NOT TO BENEFIT

7.1 The Entities warrant that no official of ICAO / the Entities has been or shall be admitted by the Entities to any direct or indirect benefit arising from this Agreement, including the Annex(es).

8. FORCE MAJEURE

8.1 In the event of force majeure, the obligations and responsibilities of ICAO under this Agreement shall be suspended to the extent of its inability to perform them and for as long as such inability continues.

8.2 Force majeure as used herein shall mean acts of nature, industrial disturbances, acts of the public enemy, civil disturbances, explosions and any other similar cause of equivalent force not caused by nor within the control of either Party and which neither Party is able to reasonably foresee and/or overcome.

9. SETTLEMENT OF DISPUTES

9.1 Amicable Settlement: Negotiations

The Parties shall use their best efforts to settle amicably through negotiation any dispute, controversy or claim arising out of, or relating to, this Agreement or the breach, termination or invalidity thereof, within a time period of ninety (90) days.

9.2 Arbitration

Any dispute, controversy or claim arising out of or relating to this Agreement, or the breach, termination or invalidity thereof, unless settled amicably under the preceding paragraph of this Article within ninety (90) days, shall be referred by either party to arbitration in accordance with the UNCITRAL Arbitration Rules then prevailing. The Parties agree that the arbitration be conducted by an arbitral tribunal consisting of a sole arbitrator. If the Parties cannot agree on a sole arbitrator within sixty (60) days, the appointment of the arbitrator shall be made in accordance with Article 8 of the UNCITRAL Arbitration Rules. The place of arbitration shall be Montréal, Quebec, Canada, and it shall be conducted in the English language. The Parties shall be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of any such dispute, controversy, or claim.

10. ENTRY INTO FORCE, AMENDMENTS AND TERMINATION

10.1 This Agreement shall come into effect on the date on which it has been signed by the last of both Parties. It shall continue to be in force until terminated under paragraph 0 below. Upon coming into force, it shall supersede any existing agreements concluded between the Parties on the same subject matter.

10.2 This Agreement may be amended at any time by written agreement between the Parties.

10.3 This Agreement may be terminated at any time, by either Party, giving to the other a written notification. This Agreement shall terminate sixty (60) calendar days after receipt of the said notification. The obligations assumed by the Parties under this Agreement shall survive the termination of this Agreement to the extent necessary to permit the orderly finalization of activities, the withdrawal of personnel, the distribution of funds and assets, the liquidation of accounts existing between the Parties, and the settlement of contractual obligations. Additional funds, if necessary, to cover the above-mentioned expenditures shall be provided by the Entities within 30 days of the notification of termination

Agreed on behalf of the International
Civil Aviation Organization:

Agreed on behalf of <the Entity>

Signed
by: _____

Name: Juan Carlos Salazar

Title: Secretary General

Date: _____
