

DRAFT Agreement

between

Eindhoven Airport N.V.

and

Supplier

concerning

the supply of []

as well as

the maintenance and support

of

[]

Subject : Agreement

Client : Eindhoven Airport N.V.

Department : Procurement

Date : []

Contract no. : []

Version : Draft 0.2

The undersigned:

1. **Eindhoven Airport N.V.**, having its registered office at Luchthavenweg 13 in (5657 EA) Eindhoven, the Netherlands, duly represented in this matter by [REDACTED] in the capacity of [REDACTED], and [REDACTED] in the capacity of [REDACTED], hereinafter to be referred to as "EANV"

and

2. [REDACTED] having its registered office at [REDACTED], in () [REDACTED], registered in the Commercial Register under number [REDACTED], duly represented in this matter by Mr [REDACTED] in the capacity of Director, hereinafter to be referred to as the "Supplier".

also to be referred to jointly as the "Parties" and separately as the "Party",

Whereas:

- EANV requires a supply of [Equipment / Software / Services] concerning [REDACTED], as described in further detail below, that will be supplied in accordance with the conditions set forth in this Agreement;
- Within this context, EANV issued an European call for tenders bearing reference [REDACTED] (hereinafter to be referred to as "Call for Tenders") for the purpose of selecting a Supplier that meets the requirements and wishes set forth in the Specifications belonging to this Call for Tenders (hereinafter to be referred to as the "Specifications");
- The Supplier submitted a tender and was granted the assignment by the Client in accordance with the applicable procedure;
- The Parties wish by means of this agreement (hereinafter referred to as the "Agreement") to establish a number of standard provisions and preconditions relating to all current and future specific Services and deliveries to be carried out;
- Further Agreements supplementary to this Framework Agreement will be concluded between the Parties concerning the specifications of the Services and deliveries to be carried out by the Supplier.

Have agreed the following:

Article 1 - General Terms and Conditions ICT & Systems and additional definitions

- 1.1 EANV's General Terms and Conditions ICT & Systems apply to this Agreement. The Supplier's general terms of delivery and payment or any other set of general or specific terms and conditions are expressly rejected. In the event of conflict between provisions of the Agreement and provisions of the General Terms and Conditions ICT & Systems, the provisions of the Agreement shall take precedence over the provisions of the General Terms and Conditions ICT & Systems.

- 1.2 In addition to the definitions given in the General Terms and Conditions ICT & Systems, the following definitions apply within the context of the Agreement.

Appendices: The appendices that, after having been initialled by the Parties, form an integral part of the Agreement.

Maintenance: Maintenance relating to the Software and Equipment as further described in this Agreement and in the SLA (Appendix V).

Agreement: This Agreement signed by both Parties, including the associated preamble and appendices.

Terms and Conditions: EANV's General Terms and Conditions ICT & Systems, which Terms and Conditions are attached to this Agreement as Appendix I.

Data Processing Agreement: The Data Processing Agreement, signed by both Parties, including appendices.

Data: All data, metadata and files provided by a Party, entered by (or on behalf of) a Party or generated by the Services with respect to the Services.

1.3 The following clauses shall be applicable in addition to the articles in the Terms and Conditions:

Article 15.4

The Other Party is entitled to suspend the execution of the Agreement fully or in part with immediate effect, or to terminate the execution of the Agreement fully or in part by registered letter without judicial intervention in the case of failure of EANV to comply with the Agreement, and, insofar as compliance is not continuous or is temporarily not possible, the obligation is still not met within fourteen days after receiving written notice of default from the Other Party.

1.4 The following clauses shall replace the relevant articles from the Terms and Conditions:

Article 5.4

If an agreed final period of delivery is exceeded by circumstances attributable to the Other Party, the Other Party incurs an immediately payable penalty not eligible for setting-off of 1% of the value of the order up to a maximum of 10% for each working day that the Other Party exceeds the agreed period of delivery, without a demand or notice of default being required. This provision does not affect the other rights of EANV to performance or termination of the Agreement and/or full compensation of the Damage. Penalties shall not be set-off against any compensation of damages.

Article 8.4

The Documentation will be written in English (British or American).

Article 15.3

If the Agreement is terminated, EANV - not withstanding its right to compensation - is entitled to continue the use of the Hardware and the related System Software.

Article 29.1

In addition to the guarantee period as meant in article 33 of these General Terms and Conditions, the Other Party shall at the first request of EANV, maintain the Hardware - and System Software - to be delivered for a term of five (5) years, in accordance with the Special Conditions following under B.III and B.IV regarding the maintenance of Hardware and Software.

Article 33.2

The Other Party guarantees that during 12 (twelve) months, to be calculated from the date of Acceptance and, if following the expiry of this guarantee period maintenance has been agreed for the duration of the maintenance agreement, the Hardware will keep functioning in accordance with the agreed or promised - by the Other Party - characteristics and specifications and will at least be suitable for the aim indicated in the Agreement for which EANV acquired the Hardware, and be suitable for use in connection with the System Software and/or application software EANV has indicated to use.

Article 33.4

The guarantee period is 12 (twelve) months, to be calculated from the date of Acceptance, unless stated otherwise in the Agreement. In case design faults, manufacturing faults or defective materials would lead to breakdown of the Hardware or any part thereof for consecutive periods of twelve hours or more, such periods will be added up, and the guarantee period of the corresponding part will be extended with the sum of these breakdown periods. If the breakdown periods that can be attributed to the same defective material or construction fault amount to a total of ten Working Days or more, the guarantee period of the corresponding part will be renewed with a new period of 12 (twelve) months, starting on the day the defect has been repaired.

Article 47.1

The Maintenance with regard to the Hardware and/or (System) Software will include:

- a. Corrective maintenance: Tracing and correcting Defects of the Hardware and/or (System) Software and making available Updated Versions with the objective to correct Defects, after these have been notified by EANV or otherwise came to the knowledge of the Other Party.

- b. Restorative maintenance: In consultation with EANV, the modification of components of the Hardware and/or parts of the (System) Software in order to increase their reliability, to change functions or to add new functions and/or to solve problems with the use of these.
- c. Modification of (System) Software: At the request of EANV, the modification of the (System) Software when other hardware and/or software is being modified and/or the influence of external factors and/or the linking to other hardware and/or software gives rise to this.
- d. Support: The provision of assistance for correcting Defects, and advising on the telephone about the use and the operation of the Hardware and/or (System) Software.
- e. Training: As the case may be, at the request of EANV training of EANV's staff, so that such staff can perform maintenance activities. The nature, scope and price of these training measures will be agreed upon separately.

1.5 The following articles from the Terms and Conditions shall not apply to this Agreement:

Article 14.5, Article 41.3

Article 2 - Object of the Agreement

- 2.1 EANV hereby grants the Supplier the assignment to supply [Equipment / Software / Services] within the frameworks provided by the documents included in [], and the Supplier hereby accepts the assignment.
- 2.2 The Services relate to [the delivery, Implementation, Installation and Maintenance of the Equipment and Software] as set forth in the Programme of Requirements (Appendix II), the Solution design and Implementation Plan (Appendix IV), the SLA (Appendix V).
- 2.3 The Supplier guarantees on the basis of its performance obligation that the Equipment and Software as referred to in (Appendix) and (Appendix) shall comply in full with EANV's requirements as formulated in [] or, as the case may be, with the specifications agreed in writing during the term of the Agreement.

Article 3 - Term of the Agreement

- 3.1 This Agreement is being entered into for a term of five (5) years, coming into force on [date] and ending by operation of law on [date]. EANV is entitled to extend this Agreement three times for a term of 12 months with its terms and conditions unchanged, provided that EANV informs the Supplier accordingly at least 3 months before expiry of the current term.

Article 4 - Prices

- 4.1 As remuneration for the project activities to be [supplied and carried out] by the Supplier, EANV shall pay the Supplier the remuneration amounts specified in Appendix VI.

Article 5 – Payment

- 5.1 The Supplier shall charge EANV the amounts owed as based on the Agreement and which have been elaborated in Appendix VI. EANV shall send the Supplier a purchase order for this purpose.
- 5.2 The Supplier shall charge EANV the amounts owed for Maintenance as based on the Agreement on a yearly basis, which amounts shall be charged in advance and properly itemised. For this purpose, the Supplier shall first send an EANV contract manager a pro forma invoice which EANV, if it agrees to it, will approve. EANV shall then send the Supplier a purchase order that accords with the pro forma invoice approved by EANV. The Supplier shall invoice EANV on the basis of this purchase order.
- 5.3 The Supplier shall charge EANV the variable amounts owed as based on the Agreement and as specified in Appendix VI on a quarterly basis, which amounts shall be charged in arrears and properly itemised. For this purpose, the Supplier shall first send an EANV contract manager a pro forma invoice which EANV, if it

agrees to it, will approve. EANV shall then send the Supplier a purchase order that accords with the pro forma invoice approved by EANV. The Supplier shall invoice EANV on the basis of this purchase order.

- 5.4 All invoices can be emailed to EANV by email as a PDF file to invoices@eindhovenairport.nl. Please state specifically the following reference on the invoice: **[Reference]**

Send the invoice to the following address:

Eindhoven Airport N.V.
To: Finance department
Luchthavenweg 13
5657 EA EINDHOVEN
The Netherlands

Please use this email address for all other financial correspondence: finance@eindhovenairport.nl.
If your invoice does not meet the requirement(s) mentioned above, we cannot process your invoice.

- 5.5 EANV shall pay the amounts it owes as based on the Agreement into the bank or giro account indicated for the purpose by the Supplier within 30 days of having received the correct invoices concerned.
- 5.6 The exceeding of a payment term or payment terms by EANV or a failure on the part of EANV to pay one or more invoices or otherwise unsound payment behaviour on the part of EANV, shall not give the Supplier the right to suspend or, as the case may be, terminate its performance of activities.

Article 6 – Maintenance

- 6.1 The Supplier shall carry out Maintenance work on the Software and Equipment in accordance with the provisions of the Terms and Conditions and the service levels agreed upon (Appendix V).

Article 7 - Right of use relating to Software **[optional]**

[Possibly include additional text that deviates from or, as the case may be, is supplementary to provisions 30 – 32 of the Terms and Conditions.]

[Possibly include additional text relating to Custom-Made Software.]

Article 8 - Implementation and Acceptance (Test)

- 8.1 The Supplier shall implement and install the Software (and Custom-Made Software) and Equipment in accordance with the Implementation Plan as described in Appendix V. The terms specified in the Implementation Plan are strict deadlines. As indicated in the Implementation Plan, the Supplier shall incur an immediately due and payable penalty of EUR [], with a maximum of []% of the tender amount, for each day that the Supplier fails to meet in a timely manner or in full its obligations as set forth in the Implementation Plan.
- 8.2 During and after the Implementation phase, the Supplier shall give EANV the opportunity to carry out an Acceptance Test. The Acceptance Test shall take place on the date specified in the Implementation Plan unless agreed otherwise. The Acceptance Test shall serve as a guide to determine whether the Supplier has met its obligations arising from this Agreement. If, based on the Acceptance Test, EANV does not accept the Software and Equipment due to defects in the Software, whether or not these are associated with the Equipment, EANV shall be entitled to dissolve this Agreement with immediate effect. The Supplier shall then return to EANV all amounts paid by EANV to the Supplier pursuant to this Agreement; the preceding without prejudice to all of EANV's other rights, including the right to compensation.

Article 9 - Contact persons

- 9.1 Both Parties shall designate one or more contact persons and one or more substitute contact persons who shall maintain contact with regard to (method of) performance of the Agreement.

9.2 The persons are mentioned in Appendix XI.

Article 10 - Data Protection

- 10.1 The Supplier will be considered processor as defined in the General Data Protection Regulation (Regulation (EU) 2016/679) ("GDPR") and therefore Parties shall conclude a Data Processing Agreement (Appendix III). The Data Processing Agreement applies solely to the processing of personal data within the scope of and the Services performed by Supplier under this Agreement.
- 10.2 The Supplier will take appropriate technical and organizational measures for protecting the personal data against loss or any form of wrongful processing. Such measures, taking into account the state of the art and the costs of implementation thereof, warrant an appropriate protection scheme with regard to the risks involved in processing and the nature of the data to be protected. The measures are also aimed at prevention of superfluous collection and further processing of personal data. The Supplier shall record the measures in writing. If desired, EANV may ask to have the measures taken by the Supplier inspected.

Article 11 - Exit conditions

- 11.1 At the end of this Agreement, the Supplier shall ensure that without loss of Data, all Data shall be transferred to EANV, with the guarantee that this data, including metadata, can be imported in XML format inclusive XSD-diagram, which shows the meaning of the XML, by EANV or by a third party appointed by EANV.
- 11.2 The Supplier shall ensure that at the end of this Agreement all activities shall be performed that will enable EANV or a third party appointed by EANV to receive all Data and to import all Data including Meta data. The Data is to be provided in XML format by the Supplier to EANV or to a third party appointed by EANV. EANV shall be entitled to perform an Acceptance Test in order to check whether the Data including all Meta data has been provided in the right way and can be used for the desired functionality. The Supplier shall solve any problems uncovered by the Acceptance Test.
- 11.3 The Supplier shall guarantee its complete cooperation in the provision of Data to EANV or to a third party appointed by EANV.
- 11.4 Should EANV wish to receive the Data in a format other than that described in Article 11.2 then the Supplier shall take care of this for a fee to be agreed at that time.
- 11.5 The Supplier shall inform EANV promptly in writing of any circumstances that could give cause to amend the Exit conditions. No later than one month after the circumstance occurred that gave rise to the amendment, the Supplier shall submit to EANV for the latter's approval two copies of the amendments to the Exit conditions that it is proposing. EANV shall assess the amended plan within twenty days.
- 11.6 In the event of termination or dissolution of (all or part of) this Agreement, the Supplier shall implement the Exit conditions in good time before this Agreement expires.
- 11.7 The Supplier shall remain fully responsible for a complete, prompt and correct performance of the Services until the stipulated end date for the Services.
- 11.8 The Supplier shall ensure that the end date for the Services in question shall on no account be later than 6 months after the notice of the termination or dissolution, and in the case of the expiry of the Agreement on the day that the fixed duration of this Agreement ends.
- 11.9 The Supplier shall guarantee that the Exit conditions can always be immediately implemented.

Article 12 - Additional documents

- 12.1 The Supplier shall guarantee that the "Supplier Code of Eindhoven Airport N.V." (Appendix VII) will always be considered.

- 12.2 The Supplier shall guarantee that the "Airport Regulations Eindhoven Airport" (Appendix VIII), will always be considered.
- 12.3 The Supplier shall guarantee that the "Access Policy EANV" (Appendix IX), will always be considered.

Article 13 - General

- 13.1 For the duration of the Agreement, Appendices may be altered and/or added. Altered and/or added Appendices shall be signed by both Parties, after which they shall form an integral part of the Agreement.
- 13.2 Notifications that the Parties shall give each other based on this Agreement shall be given in writing.
- 13.3 If a court deems one or more provisions of the Agreement to be null and void and/or declares one or more provisions to be void and/or not legally valid, the remainder of the Agreement shall remain in force. Furthermore, the Parties undertake now for then to engage in consultation about new provisions to replace those that have been deemed or declared null and void, while retaining the essence of the original provision or provisions to the greatest extent possible.
- 13.4 The following documents form an integral part of the Agreement. Insofar as these documents may be found to conflict with each other, the document below listed first shall take precedence, i.e. the lower the document in the list, the lower its respective priority:

The Agreement including all Appendices;
 Appendix I - EANV General ICT Terms and Conditions of Purchase, May 2019
Appendix II - Programme of Requirements
 Appendix III - Data Processing Agreement
Appendix IV - Solution design and Implementation plan, including due dates
Appendix V - Service Level Agreement
Appendix VI - Prices and Remuneration
 Appendix VII - Supplier Code of Eindhoven Airport N.V.
 Appendix VIII - Airport Regulations Eindhoven Airport
 Appendix IX - Access Policy EANV
Appendix X - Tenderer's Tender including compliancy list, dated [dd-mm-yyyy]
Appendix XI - Contact persons

Agreed and signed in duplicate.

For the Supplier:

Name:	Name:
Position:	Position:
Date:	Date:
Signature: _____	Signature: _____

For EANV:

Name:	Name:
Position:	Position:

Date:

Date:

Signature: _____

Signature: _____

Appendix I - EANV General ICT Terms and Conditions of Purchase, May 2019

The EANV General ICT Terms and Conditions of Purchase, May 2019 are enclosed as a separate document. File:
Appendix_I_General_Purchase_Terms_and_Conditions_ICT_and_Systems.pdf.

Appendix II - Programme of Requirements

The Programme of Requirements is part of the Tendering Guide and will be enclosed when finalising this contract.

Appendix III - Data Processing Agreement

The Data Processing Agreement is enclosed as a separate document. File:
Appendix_III_Data_Processing_Agreement_Draft.pdf.

Appendix IV – Solution design and Implementation plan, including due dates

The Solution design and Implementation plan is part of the procurement and will be enclosed when finalising this contract.

Appendix V - Service Level Agreement

The Service Level Agreement is part of the procurement and will be enclosed when finalising this contract.

Appendix VI - Prices and Remuneration

The Prices and Remuneration are part of the procurement and will be enclosed when finalising this contract.

Appendix VII - Supplier Code of Eindhoven Airport N.V.

The Supplier Code of Eindhoven Airport N.V. is enclosed as a separate document. File:
Appendix_VII_Supplier_Code_of_EANV.pdf.

Appendix VIII - Airport Regulations Eindhoven Airport

The Airport Regulations Eindhoven Airport is enclosed as a separate document. File:
Appendix_VIII_Airport_Regulations_Eindhoven_Airport

Appendix IX - Access Policy EANV

The Supplier Code of Eindhoven Airport N.V. is enclosed as a separate document. File:
Appendix_IX_Access_Policy_EANV.pdf

Appendix X - Tenderer's Tender including compliancy list, dated [dd-mm-yyyy]

The Tenderer's Tender is part of the procurement and will be enclosed when finalising this contract.

Appendix XI – Contact persons

The contact persons will be added when finalising this contract.