ID License Agreement Number is incomplete. It will receive a complete number the moment it is signed by EUROCONTROL. Therefore, please do NOT sign the version we are sending to you. At this stage we only need your confirmation. The License Agreement will then be signed first by EUROCONTROL.

L-nnn-yy-[LICENSEE]-ELPAC-VVV

EUROCONTROL

AMBER	Sensitive information with limited disclosure.

LICENCE AGREEMENT

between

EUROCONTROL[1] established in Rue de la Fusée, 96, 1130 Brussels, Belgium, represented by its Director General, Mr Raúl MEDINA CABALLERO, represented in turn by the Head of Procurement, Mr David KRAUTHEIM;

hereinafter referred to as "EUROCONTROL",

and

[LICENSEE], established 'address', represented by (Mr/Ms surname, name)

hereinafter referred to as "[LICENSEE]",

DEFINITIONS

For the purpose of this document:

[LICENSEE]	shall mean the entity to which ELPAC has been made available including its staff.
Agreement	shall mean the present document (L-nnn-yy-[LICENSEE]-ELPAC-vvv).
Content Sensitive	shall mean any information or data [LICENSEE] does not wish to be freely accessible and generally available to third parties.
Data Subject	shall mean an identified or identifiable natural person i.e. an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such a name, an identification number or to one or more factors specific to his physical, psychological, mental, economic, cultural or social identity.

[1] The European Organisation for the Safety of Air Navigation.

ELPAC Administrator Data	shall mean personal data such as the name, address and other biographical data and administrative data required to identify the ELPAC Administrator.
ELPAC Administrator	shall mean the person registered as administrator on the ELPAC test system.
ELPAC Test Data	shall mean personal data generated through the use of ELPAC by the Test Taker in response to the test questions and tasks, in particular ELPAC scores (e.g. raw score data on item level, total number of correct/incorrect items, total number of skipped items, total test time, etc.) and which is used for the purpose of test validation and required by EUROCONTROL to maintain and further develop ELPAC.
ELPAC	shall mean English Language Proficiency for Aeronautical Communication.
Examiner Data	shall mean personal data such as the name, address and other biographical data and administrative data required to identify the Examiners involved in administering the ELPAC test.
Examiner Test Data	shall mean personal data collected by EUROCONTROL in order to monitor integrity, validity and reliability of the Examiners
Examiner	shall mean all persons who successfully completed ELPAC examiner training and can be assigned to conduct ELPAC testing by the [LICENSEE].
Mission Critical	shall mean information technology applications used for the purpose of storage and/or manipulation of data derived from ELPAC, which are crucial to the activities of [LICENSEE].
Personal Data Processing Terms	shall mean the terms regarding the protection of Personal Data as set out in Annex 2.
Personal Data	shall mean any information relating to a Data Subject
Test Taker Data	shall mean personal data such as the name, address and other biographical and administrative data required to identify the Test Taker, which EUROCONTROL needs in order to administer the ELPAC test and in particular link the test data to the Test Taker.
Test Taker	shall mean the person taking the ELPAC Test (i.e. pilots, air traffic controllers, student air traffic controllers or military air operations controllers).

ARTICLE 1 – SCOPE

This Agreement sets out the terms and conditions under which EUROCONTROL grants [LICENSEE] access to ELPAC.

ARTICLE 2 – LICENCE TO USE ELPAC

[LICENSEE] may use ELPAC for the exclusive purpose of English language proficiency testing of the Test Takers for the duration of this Agreement.

ARTICLE 3 – RIGHTS AND OBLIGATIONS OF THE PARTIES

3.1. Rights and Obligations of [LICENSEE]

a) Rights

[LICENSEE] may use ELPAC in strict accordance with the terms of this Agreement and exclusively for the purpose outlined in Article 2 above and Annex 1.

b) Obligations

[LICENSEE] shall:

(i) use ELPAC only through its qualified and accredited employees or agents (as specified in Annex 1);

(ii) not rent, lease, lent nor sub-licence, transfer, sell or otherwise make available to third parties any part of ELPAC without EUROCONTROL's prior and explicit written agreement;

(iii) not allow third parties to use ELPAC without EUROCONTROL's prior and explicit written consent;

(iv) not describe ELPAC or EUROCONTROL in a negative way;

(v) not in any way harm or cause prejudice to EUROCONTROL, directly or indirectly;

(vi) not compare ELPAC to [LICENSEE]'s own products and/or services or to other entities' products and/or services in advertisements and or any communication with third parties, or during courses or presentations given by [LICENSEE];

(vii) not modify, translate or merge ELPAC or any parts thereof with other products or courses;

(viii) not reverse-engineer, disassemble, or decompile ELPAC or parts or modules thereof or otherwise attempt to determinate its underlying source code or permit any such actions;

(ix) not develop or derive any data in whatever form that incorporates or uses ELPAC or part thereof, except to the extent that [LICENSEE] is required to do so for the assessment of Test Takers and for [LICENSEE]'s internal reporting purposes in order to draw conclusions on the use of ELPAC;

(x) neither copy ELPAC (in any form – paper, electronic, digital or otherwise) nor otherwise reproduce ELPAC except as far as strictly necessary for the good running of the ELPAC tests by [LICENSEE];

(xi) store copies of ELPAC (in any form – electronic, digital or otherwise) in a location where only authorised [LICENSEE] employees bound by the confidentiality provisions in Article 9 can access it;

(xii) put a system in place so that the competence of the personnel delivering products and/or services based on or related to ELPAC is guaranteed;

(xiii) not publish ELPAC or the results performed by or in connection with it without EUROCONTROL's explicit prior written consent;

(xiv) promptly return ELPAC to EUROCONTROL and where applicable all copies thereof as well as any materials and/or documentation relating thereto when this Agreement expires or is terminated and provide to EUROCONTROL a written statement that this has been done;

(xv) reasonably safeguard at all times the ELPAC content as well as any other related technical information disclosed by EUROCONTROL to [LICENSEE] and shall prevent the use and disclosure of any of the same to any third party;

(xvi) ensure that all ELPAC materials are stored securely and that appropriate measures to safeguard the integrity and confidentiality of ELPAC are taken. Any ELPAC test material no longer required (namely the copies made in accordance with this Agreement) must be destroyed;

(xvii) ensure that no ELPAC test material is copied in any physical, digital or other format, or stored on a computer. To this end, mobile phones, cameras or other digital or electronic devices shall be banned during ELPAC test sessions;

(xviii) not violate nor attempt to violate the security features of ELPAC, namely:

- access data not intended for [LICENSEE] or log into a server or account for which [LICENSEE] is not authorised access;
- attempt to probe, scan or ELPAC test the vulnerability of ELPAC or EUROCONTROL network/s or to breach security or authentication measures;
- attempt to interfere with services to any ELPAC host or network;
- forge any TCP/IP packet header or any part of the header information in any posting;
- knowingly post or transmit any content or information that contains a virus, worms, Trojan horses or corrupted data;
- create deep linking to any part of ELPAC;

(xix) not delete any author contributions, legal notices, copyright or proprietary designations contained in ELPAC;

(xx) not upload nor transmit any content or information that infringes any intellectual proprietary rights of EUROCONTROL or of third parties;

(xxi) not delete or revise any material posted by another person or entity than [LICENSEE], without express permission of such other person or entity;

(xxii) not use any device, software or routine to interfere with the proper working of ELPAC;

(xxiii) not take any action that imposes an unreasonable or disproportionately large load on EUROCONTROL servers and/or EUROCONTROL infrastructure;

(xxiv) not download, copy, modify and/or reuse ELPAC or any part thereof for purposes other than those of this Agreement, without the prior and explicit written agreement of EUROCONTROL, and/or

(xxv) not provide Test Takers with copies of print-outs and/or copies of screenshots of test result screens or any ELPAC Test Data output that are directly derived from ELPAC. Any such copies of print-outs and/or copies of screenshots or any ELPAC test printed material used for decision-making should either be physically destroyed by [LICENSEE] or if kept, stored by the [LICENSEE] in a secured place, access being given only to authorised persons bound by this Agreement.

3.2. Rights of EUROCONTROL

a) EUROCONTROL and/or other third parties known to EUROCONTROL are and shall remain the exclusive owner of ELPAC and shall as part of the ownership right have the right to maintain, update, modify and/or change the ELPAC test or parts thereof at any time itself or through a third party of its choice.

b) EUROCONTROL reserves the right, to be exercised at its discretion, to publish synthetic reports concerning the tests delivered based on ELPAC (including where applicable the number of Test Takers, as well the name of the entities that delivered

the ELPAC test) and [LICENSEE] has the obligation to provide to EUROCONTROL annually upon its demand such reports, as detailed in Article 6 below.

ARTICLE 4 – FEES AND PAYMENT

4.1. ELPAC is subject to the payment of the fees specified in paragraph 4.2.

4.2. Testing of individuals (i.e. Test Takers) using ELPAC is subject to a fee of 95 EUR (ninety-five euro) per ELPAC test administered on the ELPAC test server.

4.3. EUROCONTROL shall invoice a Handling and Setup Fee of 950 EUR (nine hundred and fifty euro) following the entry into force of this Agreement. Access to ELPAC will be enabled only after receiving the payment of the Handling and Setup Fee. The ensuing invoices shall be based on the total number of ELPAC tests taken. EUROCONTROL shall invoice at a fixed invoicing period twice per year. During the first year after the entry into force of this Agreement, the Handling and Setup Fee will be discounted from the fees for the number of ELPAC tests taken.

4.4. An annual inflationary index shall be applied, from the 1 January of each year, using the EUROSTAT harmonised indices of consumer prices for the European Union (EU 27) as announced on the EUROSTAT homepage (http://epp.eurostat.ec.europa.eu) or similar official source.

4.5. Payment shall be made **only** to the following bank account:

ING Belgium
Account: BE36 3101 0973 5681

also indicated on the invoice issued by EUROCONTROL within a period of thirty (30) calendar days of the receipt of the invoice by [LICENSEE]. **Any emails requesting payments to other account must be ignored.**

4.6. Any delay in the payment of the amounts due under this Agreement shall give rise to the payment of interest on arrears calculated on the basis of the rate in the annual Decision by the EUROCONTROL enlarged Commission relating to the rate of interest on late payments of route charges. Each day's delay beyond the above-mentioned period shall be calculated as 1/360 of a year.

ARTICLE 5 – DELIVERY OF AND ACCESS TO ELPAC

Access to ELPAC and relevant material shall be granted by EUROCONTROL only to those employees or agents of [LICENSEE] who fulfilled the eligibility criteria specified in Annex 1.

ARTICLE 6 – FEEDBACK AND UPGRADES

6.1. [LICENSEE] shall provide EUROCONTROL annually with appropriate feedback reports (administrator reports) on the results, use and experience gathered with ELPAC in order to improve the ELPAC test performance.

6.2. EUROCONTROL shall respect the confidentiality of any feedback received, subject to Article 3.2. b) above.

6.3. EUROCONTROL requires data in the reports for ELPAC test evaluation purposes only. This may include Personal Data of a general nature such as the age, gender, ATC function, ATC experience from unidentifiable sources.

6.4. EUROCONTROL shall monitor ELPAC and its implementation and may from time to time issue and propose new versions (upgrades) of ELPAC which may be made available, at EUROCONTROL's discretion to [LICENSEE] free of charge as soon as they become available.

ARTICLE 7 – PROCESSING OF PERSONAL DATA

EUROCONTROL and [LICENSEE] shall process all Personal Data exchanged for the purposes of this Agreement, in particular Test Taker Data, and ELPAC Test Data and Examiner Data only for the purposes and under the conditions set out in the Personal Data Processing Terms attached at Annex 2. To protect the Personal Data exchanged under this Agreement, the Parties shall implement organisational, technical and physical measures, which shall be kept up to date in accordance with generally accepted standards.

ARTICLE 8 - SYSTEM SECURITY

8.1. EUROCONTROL operates secure data networks protected by industry standard security protection systems. EUROCONTROL security and privacy policies are periodically reviewed and enhanced. [LICENSEE] shall note, however, that ELPAC and EUROCONTROL servers, as most internet applications, are vulnerable to various security issues and should therefore not be considered as entirely secure as far as information technology for internet applications is concerned.

8.2. Data and information sent using ELPAC may be subject to illicit activities of third parties such as privacy and security invasions. While EUROCONTROL provides all reasonable efforts to prevent such invasions from occurring, EUROCONTROL cannot accept responsibility and liability for any damage or harm caused as a result of such actions other than as set out in the Personal Data Processing Terms at Annex 2.

8.3. [LICENSEE] shall not use ELPAC in connection with applications and information it considers “content sensitive”. [LICENSEE] shall maintain adequate security measures for components that it provides or controls and that interact with EUROCONTROL’s systems.

ARTICLE 9 – INTELLECTUAL PROPERTY RIGHTS – CONFIDENTIAL INFORMATION

9.1. Intellectual Property Rights

All right, title and interest in and related to ELPAC (including any images, photographs, animation, video, audio music and text incorporated in it) as well as all intellectual property rights embodied therein are protected by international intellectual property rights laws and shall at all times remain with EUROCONTROL and/or as may be the case with third parties known to EUROCONTROL.

9.2. Confidential Information

a) [LICENSEE] may not copy any of the printed materials accompanying ELPAC without the prior written agreement of EUROCONTROL. [LICENSEE] shall however be entitled to make the appropriate number of photocopies of ELPAC material as is required for the administration of ELPAC. Any authorised copies shall bear the legend according to Article 9.2. b) below.

b) All documentation to be released by [LICENSEE] and which contain or refer to ELPAC or parts thereof shall bear a legend[2] on the first page of such documentation or products clearly stating that EUROCONTROL has the relevant rights to make ELPAC available under this Agreement.

c) [LICENSEE] shall inform EUROCONTROL in advance of any planned release and EUROCONTROL reserves the right to review all documents to be released and to

[2]A legend along the following lines shall appear in full on any document, which contains or refers to ELPAC or parts thereof: “This product or document has been created by and/or contains parts which have been created or made available by EUROCONTROL. ©2018. All rights reserved. EUROCONTROL shall not be liable for any direct, indirect, incidental or consequential damages arising out of or in connection with this product or document, including with respect to the use of, modification or addition to ELPAC by [LICENSEE].”

disapprove of the distribution and/or use of the same if it considers that they affect EUROCONTROL's interests adversely.

d) [LICENSEE] shall ensure that disclosure of ELPAC is made only to those employees or agents of [LICENSEE] who have followed and successfully completed relevant accreditation training for ELPAC ADMINISTRATORS and after they have been notified to EUROCONTROL by [LICENSEE].

e) In the framework of this Agreement the Parties may have to exchange confidential, proprietary information ("Confidential Information") of each other. The Recipient shall not disclose or make available such Confidential Information or any part thereof to any person or entity except to those of the Recipient's directors, other officers, employees or agents for whom access is necessary due to their direct participation in the performance of the Recipient's duties or the exercise of the Recipient's rights under this Agreement for a period starting on the date of entry into force of this Agreement and ending five (5) years after the expiration or termination of this Agreement.

f) The Recipient shall ensure that, before disclosure of the Confidential Information, any person to which Confidential Information is disclosed under this Agreement shall be advised of and shall comply with Recipient's obligations of confidentiality under this Agreement as if such person was a Party to this Agreement. The standard of care that the Recipient must exercise to meet these obligations is the standard it exercises with respect to its own confidential information of a similar nature, but in no event less than due care.

g) The obligations of Article 9.2. e) and f) above do not apply to information:

(i) which is already, or subsequently becomes, generally available by means other than the fault of, or breach of this Agreement by the Recipient;

(ii) which the Recipient can demonstrate he rightfully had in his possession prior to disclosure to the Recipient by the Party other than the Recipient;

(iii) which the Recipient independently develops without the use of the confidential information, or any part thereof;

(iv) where the Recipient has rightfully obtained from a third party the right to transfer or disclose the Confidential Information; or

(v) which is produced in compliance with applicable law or a court order, provided that the Recipient first gives the disclosing Party reasonable notice of such law or order and gives the disclosing Party the opportunity to oppose and/or attempt to limit such production.

ARTICLE 10 - CHANGES TO ELPAC

10.1. EUROCONTROL reserves the right to modify, or cancel some or all of ELPAC web-based platform functionalities, replace and/or shorten tests and test items at its own discretion. EUROCONTROL undertakes to give [LICENSEE] prior notice of such modification, cancellation or replacement at least 14 (fourteen) days in advance. [LICENSEE] shall be considered to have accepted such modified version of ELPAC if it continues to use ELPAC after having received notice of modification, cancellation or replacement.

10.2. [LICENSEE] acknowledges that EUROCONTROL may, at any time, suspend ELPAC.

a) Insofar as the events resulting in such suspension of ELPAC are within the control of EUROCONTROL, prior to such suspension, the matter will be fully coordinated with and/or reported to the appropriate EUROCONTROL stakeholder consultative body. EUROCONTROL therefore undertakes to give [LICENSEE] prior notice at least 6 (six) months in advance of the beginning of the unavailability due to suspension of ELPAC.

EUROCONTROL shall not be liable for the unavailability of ELPAC duly notified to [LICENSEE].

b) [LICENSEE] acknowledges, however, that EUROCONTROL may not be able to give prior notice in case the temporary cancellation or suspension of ELPAC is due to internet interruption, unplanned maintenance or installation services or any other circumstances beyond the reasonable control of EUROCONTROL and that EUROCONTROL cannot be held liable for such unavailability of ELPAC.

ARTICLE 11 – WARRANTY AND LIABILITY

11.1. [LICENSEE] acknowledges that ELPAC, including any upgrades thereto, may not be error-free and agrees that the existence of such errors shall not constitute a breach of this Agreement by EUROCONTROL.

11.2. ELPAC is provided by EUROCONTROL and accepted by [LICENSEE] on a strictly "as-is" basis, without any warranty whatsoever. All other warranties express or implied, including any warranties of or against interference with the enjoyment of the information, infringement, accuracy, compatibility, title, merchantability and fitness for any particular purpose, are explicitly excluded and disclaimed by EUROCONTROL. EUROCONTROL does not warrant that ELPAC or the operation of ELPAC will meet [LICENSEE]'s purposes or requirements or that they will be error-free.

11.3. Notwithstanding Article 11.2. above, EUROCONTROL makes every attempt to provide and maintain ELPAC as a state-of-the art product. ELPAC operations are done in line with ISO 9001 requirements.

11.4. EUROCONTROL does not accept any liability for or in connection with the use of ELPAC. The entire liability as to the quality, performance, accuracy of, or quality of information transmitted or received via the products or services provided by [LICENSEE] or arising out of or in connection with the use of ELPAC by [LICENSEE], is with [LICENSEE].

11.5. EUROCONTROL shall not be liable for the unavailability of ELPAC duly notified to [LICENSEE]. Planned unavailability shall be notified no less than 10 (ten) calendar days prior to such planned unavailability.

11.6. [LICENSEE] acknowledges, however, that EUROCONTROL may not be able to give prior notice in certain circumstances for example where the temporary cancellation or suspension of ELPAC is due to internet interruption, unplanned maintenance or installation services or any other circumstances beyond the reasonable control of EUROCONTROL and that EUROCONTROL cannot be held liable for such unavailability of ELPAC.

11.7. Some modules of ELPAC may be derived from third party software or information and neither such third party nor EUROCONTROL warrants the modules or assumes any liability regarding the use of the modules or undertakes to furnish any support or information relating to or in connection with the modules.

11.8. EUROCONTROL warrants that it has all relevant rights to make ELPAC available in the framework of this Agreement and that, to the best of its knowledge, no proprietary rights of third parties are infringed. It is emphasized, however, that ELPAC may be used by [LICENSEE] only within the limits set out in this Agreement.

11.9. Liability for Personal Data exchanged between EUROCONTROL and [LICENSEE] is set out in the Personal Data Processing Terms at Annex 2

ARTICLE 12 - INDEMNIFICATION

To the extent permissible under the law applicable to the Agreement, and without prejudice to Clause 7 of Annex 2, the Parties shall indemnify each other and hold each other harmless from

and against any claim, damage, loss, liability or expense, including attorney's fees, arising out of the other Party's failure to comply with the Agreement or its breach or infringement of any party rights due to such Party actions or omissions. This obligation shall survive the Agreement.

ARTICLE 13 – NOTICES

All notices and requests required or authorised under this Agreement, shall be given in writing by registered mail, unless otherwise specified in this Agreement. The points of contact[3] of the Parties which may be changed by notice given by registered mail with respect to the Administrator and by email with respect to the other points of contact are the following:

For EUROCONTROL

Technical matters	Licensing matters
EUROCONTROL Learning Aviation Centre	EUROCONTROL
12, Rue Antoine de St. Exupéry	Rue de la Fusée 96
LU-1432 Luxembourg	BE-1130 Brussels, Belgium
Att.: Mr P. Satijn	Att.: Mr David KRAUTHEIM
Telephone: +352 43 60 61 209	Telephone: +32 2 729 3688
Email: pieke.satijn@eurocontrol.int	Email: david.krautheim@eurocontrol.int

For [LICENSEE]

ELPAC Administrator	Licensing matters
[LICENSEE]	[LICENSEE]
Att.:	Att.:
Telephone: +	Telephone: +
Email:	Email:
	Signatory : Name Surname: Title: Email : (mandatory for electronic signature)

ARTICLE 14 – ENTRY INTO FORCE, DURATION AND TERMINATION

14.1. This Agreement shall enter into force after its signature by both Parties and shall remain in force for one (1) calendar year. It shall automatically be extended by further periods of one (1) year unless written notice of termination is given by registered letter by any of the Parties at least three (3) months before the expiration of this Agreement.

14.2. In the event of the failure or neglect of [LICENSEE] to fulfil any of its obligations under this Agreement, EUROCONTROL may serve [LICENSEE] a written notice of default. If the default is not remedied within thirty (30) calendar days after the serving of the notice, EUROCONTROL shall have the right to terminate this Agreement with immediate effect at any time thereafter, provided the default still exists, by serving written notice of termination to [LICENSEE].

[3]The Point of Contact is essentially for matters involving policy and regulation. Practical matters concerning the administration of the ELPAC test on a day-to-day basis shall be addressed by the ELPAC Administrator (trained and accredited).

14.3. EUROCONTROL may also terminate this Agreement without any further notice if [LICENSEE] becomes insolvent or makes an assignment for the benefit of creditors or proceedings in voluntary or involuntary bankruptcy are instituted on behalf of or against [LICENSEE] or a Receiver or Trustee of [LICENSEE]'s property is appointed.

14.4. Notwithstanding Article 14.1. above, EUROCONTROL reserves the right to terminate this Agreement for convenience with immediate effect by sending a termination notice to [LICENSEE].

14.5. Termination notice shall be given in writing by registered mail.

14.6. [LICENSEE] shall upon termination of this Agreement promptly return ELPAC to EUROCONTROL and where applicable all local copies thereof as well as any materials and/or documentation relating thereto and provide to EUROCONTROL a written statement that this has been done.

ARTICLE 15 – DISPUTE SETTLEMENT

15.1. Any dispute, controversy or claim arising under, out of or relating to this Agreement and any subsequent amendments to this Agreement, including without limitation, its formation, validity, binding effect, interpretation, performance, breach or termination, as well as non-contractual claims, shall be referred to and finally determined by arbitration in accordance with the WIPO[4] Arbitration Rules.

15.2. The arbitral tribunal shall consist of three arbitrators.

15.3. The place of arbitration shall be Brussels (Belgium). The language to be used in the arbitral proceedings shall be English.

15.4. The dispute, controversy or claim shall be decided according to the laws of Belgium, with the exception of the rules applicable to data protection where the obligations of the Parties shall be determined in accordance with the laws applicable to each Party.

ARTICLE 16 – ENTIRE AGREEMENT AND AMENDMENTS

16.1. The terms and conditions of this Agreement including its Annex constitute the entire agreement and understanding of the Parties and supersede all previous communications whether written or oral between the Parties, including any previous agreement or understanding varying or extending the same. There are no further or other agreements or understandings, written or oral, in effect between the Parties with respect to the subject matter thereof.

16.2. This Agreement may be amended or modified only by exchange of letters between the duly authorised representatives of both Parties.

ARTICLE 17 - MISCELLANEOUS

17.1. This Agreement represents the complete agreement between [LICENSEE] and EUROCONTROL concerning the subject matter hereof and supersedes all prior agreements and representations, if any.

17.2. Any verbal agreement modifying or supplementing this Agreement shall not be binding on either of the Parties.

17.3. The Annex to this Agreement shall form an entire part of this Agreement, it being understood that in any case of divergence between the text of the Agreement and the Annex hereto the text of the Annex shall prevail.

[4] World Intellectual Property Organization

17.4. [LICENSEE] may not transfer, assign, sublicense or pledge in any manner whatsoever, any of [LICENSEE]'s rights or obligations under this Agreement and any such assignment if made will be null and void.

17.5. The Agreement is without prejudice to the privileges and immunities EUROCONTROL enjoys under the EUROCONTROL International Convention relating to Co-operation for the Safety of Air Navigation as amended at Brussels in 1981 and in accordance with public international law.

IN WITNESS WHEREOF the Parties hereto have caused this Agreement to be duly executed in duplicate on their behalf by their duly authorised officers and representatives in a manner legally binding upon them.

For EUROCONTROL	For [LICENSEE]
For and on behalf of the Director General	
Signature:	Signature:
David KRAUTHEIM	Surname NAME
Head of Procurement	Title
Date:	Date:

Annex 1

EUROCONTROL English Language Proficiency for Aeronautical Communication

ELPAC

1. DESCRIPTION OF ELPAC

1.1. ELPAC has been specifically designed for pilots, operational air traffic controllers and student air traffic controllers ("Test Takers") and has been developed to meet the English language proficiency requirements as determined by the Standards and Recommended Practices ("SARPs") of ICAO Annex 1 (Personnel Licensing) and EU regulations 805/2011 and 1178/2011.

1.2. ELPAC has been developed by EUROCONTROL at the request of the members of the Human Resources Team ("HRT"). Details of ELPAC development can be found at www.elpac.info

1.3. It is hereby emphasised that the security aspects of ELPAC are very important and that [LICENSEE] must strictly and unambiguously abide to all terms and conditions outlined in this Agreement prior to receiving access to the ELPAC database and any associated materials.

1.4. ELPAC shall be available on a web server.

2. DELIVERY

2.1. [LICENSEE] shall nominate an ELPAC Administrator.

2.2. Access to ELPAC shall be granted by EUROCONTROL only to those employees or agents of [LICENSEE] who are ELPAC Administrators or Examiners.

2.3. EUROCONTROL shall provide to the ELPAC Administrator and Examiner all guidelines and other materials necessary for the efficient and correct running of ELPAC.

3. SPECIAL TERMS AND CONDITIONS FOR THE UTILISATION OF ELPAC

In the event of [LICENSEE] wishing to undertake testing using ELPAC for or on behalf of a third party's licensed and/or student air traffic controllers and military air operations controllers, prior written permission shall be obtained from EUROCONTROL. Such permission is subject to the following conditions:

a) the persons providing ELPAC for and on behalf of [LICENSEE] must have completed successfully ELPAC accreditation, and

b) all matters regarding potential remuneration of services provided in relation to ELPAC shall be arranged directly between [LICENSEE] and the relevant third party.

4. TRAINING

4.1. Accreditation training for ELPAC Administrators shall be organised by the EUROCONTROL Aviation Learning Centre in Luxembourg, or by a training institute approved by EUROCONTROL.

4.2. Accreditation training for ELPAC Administrators given at the EUROCONTROL Aviation Learning Centre in Luxembourg shall be free of charge. A self-study preparation is a pre-requisite and must be completed by each participant before attending the course.

4.3. Refresher training for ELPAC Administrators shall be organised by the EUROCONTROL Aviation Learning Centre, or by a training institute approved by EUROCONTROL. It is recommended to attend ELPAC refresher training at a three (3) year interval.

5. ACCESS TO ELPAC TEST DATABASE BY THE ELPAC ADMINISTRATOR

5.1. This Agreement permits [LICENSEE] to access the ELPAC database for the purpose of storing Test Taker's profiles, setting up testing sessions, administering Paper 1 (Listening Comprehension) via the internet, marking Paper 1, setting up the administration for Paper 2 (Oral Interaction) and Paper 3 (L6) and recording all Test Taker's test results. The information accessible in ELPAC to [LICENSEE] remains confidential and is made available only to [LICENSEE] and/or its appointed ELPAC Administrator. For the purpose of marking of Paper 1 tests, the ELPAC Paper 1 marker shall have access to the ELPAC test system.

5.2. [LICENSEE] may not copy ELPAC or any parts of data thereof from the database to a computer hard disk or any other permanent electronic storage device but [LICENSEE] may print sufficient paper copies of the textual files as are required for the administration of ELPAC (subject to the security required for all ELPAC test materials).

ANNEX 2

PERSONAL DATA PROCESSING TERMS

The Parties have agreed on the following terms in order to adduce adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals for exchange between [LICENSEE] and EUROCONTROL of the Personal Data as processed pursuant to this Agreement.

Article 1 – Definitions

For the purpose of this Annex, the following definitions apply:

ELPAC Test Data	shall mean Personal Data generated through the use of ELPAC by the Test Taker in response to the test questions and tasks, in particular ELPAC scores (e.g. raw score data on item level, total number of correct/incorrect items, total number of skipped items, total test time etc.) and which is used for the purpose determining the final score of the Test Taker and for test validation required by EUROCONTROL to enable and develop ELPAC;
Controller	shall mean the natural or legal person, public authority, agency or any other body which determines the purposes and means of the Processing of Personal Data carried out under his or her authority;
Data Processing Principles	shall mean the Principles outlined in the Appendix, based on the legislation protecting the fundamental rights of freedom of individuals and, in particular, their right to privacy with respect to the Processing of Personal Data as set-out in the law applicable to the [LICENSEE] in the Member State in which the [LICENSEE] is established and the Data Protection framework applicable to EUROCONTROL;
Data Protection Framework	shall mean the framework comprising primarily of the EUROCONTROL Regulation on Personal Data Protection as well as all executive decisions EUROCONTROL's Director General is authorised to take with regard to the implementation of the Regulation;
Processing	shall mean any operations or set of operations which is performed upon Personal Data, whether or not by automatic means, such as collection, recording, organisation, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction;
Processor	shall mean a natural or legal person or any other body, which is authorised to process Personal Data on behalf of EUROCONTROL or of the [LICENSEE];
Security Measures	shall mean those technical and organisational measures aimed at protecting Personal Data against accidental or unauthorised destruction or loss, as well as against non-authorised access, alteration or transmission;
Subprocessor	shall mean any Processor engaged as contractor by a Processor to process Personal Data in accordance with the Data Processing Principles set out in the Appendix and with the terms of the Agreement;

Third Party	shall mean any party who is not a Data Subject, Controller, Processor or Subprocessor under this Annex.

Any other defined terms will have the same meaning as in the Agreement.

Article 2 – Purposes of Processing / Controller of the Data

2.1. EUROCONTROL processes Test Taker Data and Test Data, which is used for the purpose of determining the final score of the ELPAC Test Taker and for test validation required by EUROCONTROL to enable and develop ELPAC. Moreover, EUROCONTROL processes Examiner Test Data, which is used for the purpose of accrediting and annually validating Examiners' performance.

2.2. More specifically, EUROCONTROL and [LICENSEE] shall process the data generated under the Agreement only for the following purposes:

a) Test Taker Data and Test Data shall be processed for the purpose of determining the level of English language proficiency in accordance with ICAO SARPs and the relevant EU legislation for air traffic controllers and pilot licencing;

b) Examiner Test Data shall be processed for verification of Examiners performance and in order to monitor integrity, validity and reliability of the ELPAC Test and Examiners;

c) Test Data shall be processed for the purposes of the validation/evaluation of the ELPAC tests. EUROCONTROL shall be a Controller of such data together with the [LICENSEE];

d) Personal Data related to ELPAC Administrators, Examiners and Test Takers shall be processed by EUROCONTROL only for the purposes of maintain the working relationship necessary for the execution of this Agreement.

Article 3 – Obligations of [LICENSEE]

3.1. [LICENSEE] shall use any Personal Data made available to [LICENSEE] under this Agreement or otherwise processed by it for the purposes of this Agreement in strict accordance with the terms of this Agreement. [LICENSEE] shall in particular maintain full confidentiality on all Personal Data and protect it in accordance with the data protection laws applicable to it.

3.2. [LICENSEE] shall make sure that the Processing, including the transfer itself, of the personal data has been and will continue to be carried out in accordance with the relevant provisions of the Data Processing Principles set out in the Appendix and with the terms of this Agreement.

3.3. The [LICENSEE] shall comply with its information obligations to the Data Subject under the data protection laws applicable to the [LICENSEE] and in particular provide adequate privacy notices about the Processing of the Personal Data of the Test Takers

3.4. The [LICENSEE] shall respond in a reasonable time to any enquiries from the Data Subject concerning the Processing of his Personal Data by EUROCONTROL.

Article 4 – Obligations of EUROCONTROL

4.1 EUROCONTROL shall process the Personal Data transferred by the [LICENSEE] and the Personal Data generated by the Test Takers and by the Examiners when they take the accreditation training in compliance with its Data Protection Framework, the Data Processing Principles set out in this Annex and with the terms of the Agreement.

Information Obligations

4.2. EUROCONTROL shall provide the [LICENSEE], upon request of [LICENSEE], with the following information:

a) all relevant details regarding the Processing by EUROCONTROL;

b) the aspects of the Processing for which EUROCONTROL relies or intends to rely on the services of a Processor and a Subprocessor, as well as the identifying information of the Processor and Subprocessor, including the location of its main establishment;

c) geographical details of Processing locations, including back-up and redundancy facilities;

d) the technical and organisational security measures it and its Processor(s) have implemented, which shall include but not be limited to:
   (i) commonly accepted industry standards and best practices and the means to comply therewith;
   (ii) the information security policies;
   (iii) the relevant security risk assessments with regard to the Processing of Personal Data;
   (iv) the confidentiality obligations imposed on personnel authorised to process the Personal Data;
   (v) the identity of a single point of contact.

4.3. EUROCONTROL shall inform the [LICENSEE] of any changes that may have a substantial impact on compliance with its information obligations outlined above.

4.4. EUROCONTROL shall comply with its information obligations to the Data Subject and in particular provide adequate privacy notices about the Processing of the Personal Data of Test Takers and of the Examiners sitting for the accreditation test.

Processing - Specific Obligations

4.5. When Processing the Personal Data transferred by the [LICENSEE], EUROCONTROL shall adhere to the following obligations and restrictions:

a) EUROCONTROL and its Processor(s) shall only process Personal Data for the purposes determined in the Agreement, and in compliance with the Data Processing Principles set out in the Appendix;

b) Where EUROCONTROL's Processor(s) use Subprocessors, it shall ensure that the Processing activities entrusted to Subprocessors enjoy a level of protection equivalent to the one provided by its Processor(s);

c) EUROCONTROL shall ensure that all of its staff and the staff of any Processor are suitably qualified and trained for Processing Personal Data as well as informed of the obligations contained in these Personal Data Processing Terms, in the Data Processing Principles set out in this Annex and with the terms of this Agreement;

d) [LICENSEE] shall have the right to request an independent audit to inspect and audit the Processing activities undertaken by EUROCONTROL and by any Processor on behalf of EUROCONTROL; in such a case [LICENSEE] and EUROCONTROL shall agree on an independent consultancy firm, the scope and timing of the audit, with due regard to any recent or contemporaneous independent audit conducted on data Processing activities carried out at EUROCONTROL. EUROCONTROL shall not unreasonably withhold its consent to such audit, it being understood that the same Processing activities shall not be subject to more than one audit in any period of 24 months. In the event of an audit EUROCONTROL shall comply with all reasonable requests made or directions given by the auditors. The cost of the audit shall be borne by [LICENSEE].

4.6. EUROCONTROL shall deal promptly and properly with all reasonable inquiries from the [LICENSEE] or the Data Subject relating to his Processing of the Personal Data subject to the transfer.

Data Retention Periods

4.7. The Parties agree that the data will be kept for a reasonable period of time only, and that the Parties will exercise a yearly review of the data to assess whether their storage is in line with the purposes for Processing as described in Article 2 above.

The table below provides an overview of the specific data retention periods per each category of data.

	EUROCONTROL	[LICENSEE]
Test Taker Data	10 years as from the last ELPAC test completion date except if Test Takers achieve ELPAC level 6, which is kept for 50 years.	Xxx
Examiner Test Data	10 years as from the last ELPAC test completion date except if Test Takers achieve ELPAC level 6, which is kept for 50 years.	Xxx
Test Data	Will be anonymized after 10 years as from the last ELPAC test completion date except if Test Takers achieve ELPAC level 6, which is kept for 50 years.	Xxxx
Examiner Data	10 years as from the last ELPAC test completion date except if Test Takers achieve ELPAC level 6, which is kept for 50 years.	xxxx

Article 5 – Rights of the Data Subject

5.1. With respect to any request from Data Subjects regarding their rights referred to in the Appendix concerning the Processing of Personal Data pertaining to them by EUROCONTROL, by the [LICENSEE] and/or by their Processor(s), the Parties shall cooperate to:

a) inform each other of any request made by a Data Subject with regard to the Personal Data addressed to one of them and/or its Processor(s);

b) promptly comply with any request made by the Data Subject who wishes to exercise its rights of access, rectification, erasure or blocking.

5.2. The Data Subject shall be provided with information on action taken on a request under this Article without undue delay and in any event within one month of receipt of the request. This period may be extended by 2 (two) further months where necessary, taking into account the complexity and number of the requests.

Article 6 – Confidentiality and Security and Data Breach Reporting

6.1. When Processing Personal Data the Parties and every Processor shall take all necessary technical and organisational Security Measures to ensure the safety, availability, integrity and confidentiality of the Personal Data processed.

6.2. The Parties shall cooperate in good faith with each other in order to mitigate the adverse effects of a security incident impacting Personal Data processed by one of them and/or its Processor(s).

6.3. In particular, in the event of a security incident, the Party suffering the incident shall promptly notify the other Party of the occurrence of a security incident, and it shall inform it at regular intervals of the details of the security incident as they come to light, the mitigating measures already taken, any notifications made or to be made to other entities involved as well as any response procedures the Party suffering the incident intends to follow; the Party suffering the incident shall require its Processor to provide it with the same information should a security incident take place at the Processor; the information received from the Processor should be promptly relayed to the other Party.

6.4. The Party suffering the incident and its Processor(s) shall be held to modify their information security policies after the occurrence of a security incident in order to ensure that such an incident can be avoided in the future.

6.5. In the event of data breaches, the Parties shall assist each other and shall provide each other all information required in order to comply with their respective data breach reporting obligations.

Article 7 – Liability

7.1. The Parties agree that any Data Subject, who has suffered damages as a result of any breach by any Party of the obligations related to the protection of personal data contained in this Agreement, is entitled to receive compensation from the Party who is responsible for the data breach.

7.2. The Parties agree that they shall indemnify each other and hold each other harmless against any claim brought by a Data Subject who has suffered damage as a result of any breach of the obligations related to the protection of personal data contained in this Agreement. The indemnity shall cover all direct damages suffered by the non-breaching Party resulting from such a claim, including legal expenses and expenses incurred for damage assessments up to a limit of one thousand euro (1,000 EUR) per Data Subject and occurrence. This limitation shall not apply to damages resulting from gross negligence or wilful misconduct.

7.3. The Parties acknowledge and agree that any breach of the terms contained in this Annex shall constitute a material breach of the Agreement.

Article 8 – Resolution of Disputes

In the event of a dispute with a Data Subject, or a claim brought by a Data Subject concerning the Processing of the Personal Data against either or both Parties, the Parties shall inform each other about any such dispute or claim, and shall cooperate to settling them amicably in a timely fashion.

APPENDIX

DATA PROCESSING PRINCIPLES

1. **Purpose Limitation**
Personal Data may be processed and subsequently used or further communicated only for explicit and legitimate purposes communicated to the Data Subject and no further processed in a way incompatible with those purposes. Data must not be kept longer than necessary for the purposes for which they are originally collected and/or further processed.

2. **Data Quality and Proportionality**
Personal Data must be accurate and, where necessary, kept up to date. The Personal Data must be adequate, relevant and not excessive in relation to the purposes for which they are originally collected and/or further processed.

3. **Transparency**
Data Subjects must be provided with information necessary to ensure fair Processing (such as information about the purposes of Processing and about the transfer) and the identity of the data Controllers, namely EUROCONTROL and the [LICENSEE] and any other information necessary to ensure fair Processing.

4. **Security and Confidentiality**
Technical and organisational security measures must be taken by EUROCONTROL and by the [LICENSEE] that are appropriate to the risks, such as against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, presented by the Processing. Any person acting under the authority of the Parties, including a Processor, must not process the data except on instructions received from them.

5. **Rights of Access, Rectification, Erasure and Blocking of Data**:
The Data Subject must have a right of access to all data relating to the Data Subject that are processed subject only to the limitations set out in the law and, as appropriate, the right to the rectification, erasure or blocking of data the Processing of which does not comply with the principles set out in this Annex, in particular because the data are incomplete or inaccurate. The Data Subject should also be able to object to the processing of the data relating to her/him on compelling legitimate grounds relating to her/his particular situation.

6. **Restrictions on Onward Transfers**:
Further transfers of Personal Data from EUROCONTROL to another Controller established in a third country not providing adequate protection may take place only if either:

   a) The Data Subjects have given their unambiguous consent to the onward transfer
   The minimum information to be provided to Data Subjects must contain in a language understandable to them:

      (i) the purposes of the onward transfer,

      (ii) the categories of further recipients of the data and the countries of destination, and

      (iii) an explanation that, after the onward transfer, the data may be processed by a Controller established in a country where there is not an adequate level of protection of the privacy of individuals; or

b) The [LICENSEE] and EUROCONTROL agree to the adherence to this Appendix of another Controller established in a third country, which thereby becomes a party to the Appendix and assumes the same obligations as the Parties.