

EXP-S01:0076337/2012

Número original: NOTA DICOL 304

Título: PROYECTO DE MOU SOBRE ASISTENCIA TECNICA E/ ANAC Y FAA (NAT-1-9402)

Depositario	Área o usuario	Desde
Área	LZSECGEN@minplan - Secretaria General (Dgltya - Anac)	25-Sep-2012 16:22:53

Información histórica

Transferencias				
Emisor	Transferido a	Envío	Recepción o cierre	Remito
lzajanac@minplan - D. Asuntos Jurídicos (Dgltya - Anac)	lzsecgen@minplan - Secretaria General (Dgltya - Anac)	25-Sep-2012 14:20:37	25-Sep-2012 16:22:53	RTO-S01:0677161/2012 Aceptado
lgleteca@minplan - Dg.Legal, Tec.y Admin.(Anac)	lzajanac@minplan - D. Asuntos Jurídicos (Dgltya - Anac)	20-Sep-2012 12:06:18	25-Sep-2012 14:18:39	RTO-S01:0668823/2012 Aceptado
	lgleteca@minplan - Dg.Legal, Tec.y Admin.(Anac)	20-Sep-2012 12:06:03	20-Sep-2012 12:06:03	Actualización de depositario
lzsycomu@minplan - D. Sist.y Comunic.(Dgltya - Anac)	lzajanac@minplan - D. Asuntos Jurídicos (Dgltya - Anac)	16-Mar-2012 13:07:01	16-Mar-2012 13:24:06	RTO-S01:0173892/2012 Aceptado
lzajanac@minplan - D. Asuntos Jurídicos (Dgltya - Anac)	lzsycomu@minplan - D. Sist.y Comunic.(Dgltya - Anac)	14-Mar-2012 15:24:59	15-Mar-2012 11:40:55	RTO-S01:0166819/2012 Aceptado
lzsecgen@minplan - Secretaria General (Dgltya - Anac)	lzajanac@minplan - D. Asuntos Jurídicos (Dgltya - Anac)	06-Mar-2012 16:41:57	06-Mar-2012 16:43:52	RTO-S01:0144826/2012 Aceptado
lzenanac@minplan - Area Mesa de Entr.(Dgltya - Anac)	lzsecgen@minplan - Secretaria General (Dgltya - Anac)	06-Mar-2012 12:47:28	06-Mar-2012 15:51:22	RTO-S01:0143006/2012 Aceptado

- Las entradas que aparecen en color rojo se corresponden con una actualización de depositario.
- Las entradas que aparecen con fondo en color amarillo corresponden a remitos revertidos.

Acuerdo ANAC - FAA

Usuario: asantoro@minplan - Analia Rita Santoro |
 Área: LZAERONA@minplan - Dpto. As.Ae.,In.y S.Aer.(Dgltya-Anac)

22-Feb-2013 12:32:05

**MEMORANDUM OF AGREEMENT
NAT-I-9402**

BETWEEN THE

**FEDERAL AVIATION ADMINISTRATION
DEPARTMENT OF TRANSPORTATION
UNITED STATES OF AMERICA**

AND THE

**NATIONAL ADMINISTRATION FOR CIVIL AVIATION
MINISTRY OF FEDERAL PLANNING, PUBLIC INVESTMENT AND SERVICES
ARGENTINE REPUBLIC**

WHEREAS, the Federal Aviation Administration ("FAA") of the Department of Transportation of the United States of America is directed to encourage the development of civil aeronautics and the safety of air commerce, and is authorized to furnish on a reimbursable basis to foreign governments certain technical assistance to that end; and

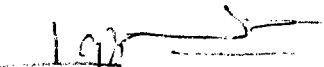
WHEREAS, the National Administration for Civil Aviation (Administración Nacional de Aviación Civil ("ANAC")) of the Ministry of Federal Planning, Public Investment and Services of the Argentine Republic has requested that such technical assistance be provided;

NOW, THEREFORE, the FAA and ANAC (collectively, the "Parties," and individually, a "Party") mutually agree as follows:

ARTICLE I—OBJECTIVE

A. This Memorandum of Agreement, including its annexes and appendices (the "Agreement"), establishes the terms and conditions under which the FAA may provide technical assistance to ANAC in developing, modernizing, operating, or maintaining the civil aviation infrastructure in Argentina. For this purpose, the FAA shall, subject to the availability of appropriated funds and necessary resources, provide personnel, resources, and services to assist ANAC to the extent called for in the annexes and appendices to this Agreement.

B. The FAA's ability to furnish the full scope of technical assistance provided for under this Agreement depends on the use of systems and equipment in Argentina that are similar to those used by the FAA in the U.S. National Airspace System. To the extent that other systems



and equipment are used in Argentina, the FAA may not be able to support those other systems and equipment under this Agreement.

ARTICLE II—IMPLEMENTATION

A. Specific technical assistance to be provided by the FAA for ANAC shall be delineated in annexes and appendices to this Agreement. When signed by the duly authorized representatives of the Parties, such annexes and appendices shall become part of this Agreement. Such annexes and appendices shall describe the technical assistance to be performed by the FAA, the personnel and other resources required to accomplish the tasks, the estimated costs, implementation plans, and duration.

B. The designated office at the FAA for the coordination and management of this Agreement, and to which all requests for services under this Agreement should be made, is:

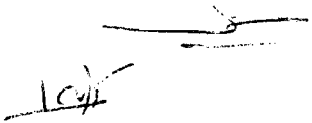
Federal Aviation Administration
Office of International Aviation
800 Independence Ave., S.W.
FOB-10B, 6th Floor East
Washington, D.C. 20591

Telephone: +1-202-385-8900
Facsimile: +1-202-267-5032

ARTICLE III—DESCRIPTION OF SERVICES

A. The technical assistance provided by the FAA at the request of ANAC may include, but is not necessarily limited to, the following:

1. Providing technical and managerial expertise to assist ANAC in developing, modernizing, operating, and maintaining its civil aviation infrastructure, standards, procedures, policies, training, and equipment;
2. Providing training for ANAC personnel in the United States or in Argentina, or in such other location as may be specified in the applicable annex or appendix;
3. Inspecting and calibrating ANAC-owned or -operated equipment and air navigation facilities; and



4. Providing resources, logistical support, software, and equipment.

B. Technical assistance in these and other areas, as mutually agreed to, may be accomplished by appropriate short- and long-term in-country assignments or by other assistance offered by the FAA.

ARTICLE IV—STATUS OF FAA PERSONNEL

The FAA shall assign personnel to perform the services agreed upon in the annexes and appendices to this Agreement. The personnel assigned may be employees of the FAA, another U.S. Government agency, or a contractor to the FAA. FAA or other U.S. Government personnel assigned to any activity shall retain their status as U.S. Government employees. The supervision and administration of the personnel shall be in accordance with the policies and procedures of the FAA as an agency of the U.S. Government. The assigned personnel shall perform at the high level of conduct and technical execution required by the FAA.

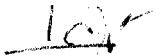
ARTICLE V—HOST PARTY SUPPORT

The support by ANAC necessary for accomplishing the FAA technical assistance shall be described in the appropriate annex or appendix to this Agreement. If for any reason ANAC is unable to provide fully the support specified in each annex or appendix, the FAA shall, in coordination with ANAC, arrange for the support and charge the actual costs for such support to ANAC, provided, however, that the cost of such support shall not exceed five thousand US dollars (US\$5,000.00) without the prior written consent of ANAC. ANAC shall pay all such costs upon receipt of a statement of account from the FAA. In the event the FAA cannot make suitable arrangements for substitute support, the FAA shall immediately notify ANAC and postpone or cancel the assistance project, as appropriate under the circumstances.

ARTICLE VI—FINANCIAL PROVISIONS

Each annex or appendix shall describe the specific financial arrangements for the technical assistance to be provided. However, all financial arrangements shall be subject to the following:





A. Prior to the performance of any services by the FAA, ANAC shall pay to the FAA the estimated cost of providing the services and an administrative overhead charge in accordance with the provisions set forth in this Agreement and its annexes and appendices.

1. In the event that the FAA does not receive the payment within the time specified in the applicable annex or appendix, the FAA shall automatically terminate the technical assistance project and forward a statement of account for the actual costs, including an administrative overhead charge, incurred in preparing to provide the technical assistance. ANAC shall pay any such statement of account.

2. The FAA may, in its sole discretion and on a case-by-case basis, waive the required prepayment. In such cases, the FAA shall submit a statement of account to ANAC for all costs, including an administrative overhead charge, incurred by the FAA in providing the services.

B. The FAA may, in its sole discretion and on a case-by-case basis:

1. Waive reimbursement by ANAC of all or a portion of the cost of providing services, including the administrative overhead charge, under the annexes and appendices to this Agreement. The details of any such waiver shall be set forth in the appropriate annex or appendix.

2. Accept payment from a third party (or another agency of the U.S. Government) in lieu of payment by ANAC of all or a portion of the cost, including the administrative overhead charge, of providing services under the annexes and appendices to this Agreement. The details of any such acceptance of payments shall be set forth in the appropriate annex or appendix.

C. The FAA has assigned agreement number NAT-I-9402 to identify this Agreement. This number and the billing number assigned to each annex or appendix, if applicable, shall be referenced in all correspondence and bills related to this Agreement.

D. Upon completion of the services, the FAA shall submit a statement of account to ANAC detailing the actual cost of providing the services, including an administrative overhead charge. Each statement of account will be delivered to the address specified in the respective annex or appendix.

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1. If the statement of account shows that the actual cost of providing the services is greater than the estimated cost paid by ANAC, ANAC shall pay the balance due to the FAA.

2. If the statement of account shows that the actual cost of providing the services is less than the estimated cost paid by ANAC, the FAA shall either refund the difference to ANAC, apply the difference to any unpaid balances owed by ANAC under the Agreement, or hold the balance as a deposit against any future work under this Agreement, as agreed to by the Parties.

E. Payment of a balance due must be received by the FAA within sixty (60) days after the date the FAA issues a statement of account. In the event that payment is not received by the FAA within such time, the FAA shall assess late payment charges – i.e., interest, penalties, and administrative handling charges – in accordance with U.S. Treasury Department regulations. The FAA shall assess additional late payment charges for each additional thirty (30) day period, or portion thereof, during which payment is not received. ANAC shall pay any such late charges.

F. All payments shall be made in U.S. dollars and may be made either by check or electronic funds transfer. Checks shall be drawn on a U.S. bank and forwarded to the FAA at the address specified in the applicable annex or appendix. Electronic funds transfers shall be made in accordance with the instructions set forth in the applicable annex or appendix. All payments shall include a reference to the assigned agreement number and billing number.

G. The FAA reserves the right to suspend all work under this Agreement if there is an outstanding balance for work performed or services rendered under any of its annexes or appendices.

H. In the event of a termination by either Party under Article X of this Agreement, ANAC shall pay:

1. All costs incurred by the FAA in providing, or in preparing to provide, the technical assistance prior to the date of such termination, including an administrative overhead charge; and

2. All termination costs incurred by the FAA during the 120-day close-out period.



ARTICLE VII—INDEMNITIES AND LIABILITY

A. The United States, including the FAA and all other agencies and instrumentalities of the United States (collectively “the United States”), assumes no liability for any claim, loss, damage, injury, or death arising out of or relating to this Agreement.

B. ANAC agrees to indemnify the United States and any current or former officer or employee of the United States for any judgments, settlements, or awards paid by them and all costs (including attorneys’ fees) incurred by them as a result of any claim or legal proceeding of any kind brought by a third party, ANAC, or the Government of the Argentine Republic arising out of or relating to this Agreement.

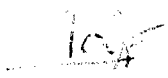
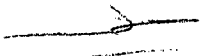
C. Acts by the United States or any current or former officer or employee of the United States arising out of or relating to this Agreement that are determined by agreement of the Parties (i) to constitute intentional misconduct (including fraudulent or criminal acts) or gross negligence, and (ii) to have resulted in personal injury, death, or property damage, shall not be considered within the scope of ANAC’s obligation to indemnify the United States or any current or former officer or employee of the United States under paragraph B of this Article. For the purposes of this Agreement, gross negligence means the willful, wanton, and reckless disregard for the safety of life and property, not ordinary negligence.

ARTICLE VIII—AMENDMENTS

The Parties may amend this Agreement or its annexes or appendices. The Parties shall document the details of any such amendment in a written agreement signed by both Parties.

ARTICLE IX—RESOLUTION OF DISAGREEMENTS

The Parties shall resolve any disagreement regarding the interpretation or application of this Agreement or its annexes or appendices in consultations between the Parties. The Parties shall not refer any such disagreement to an international tribunal or third party for settlement.



ARTICLE X—ENTRY INTO FORCE AND TERMINATION

A. This Agreement shall enter into force on the date of the last letter in an exchange of letters between the Parties indicating that they have completed the necessary internal procedures for entry into force of this Agreement and shall remain in force until terminated.

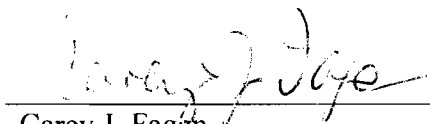
B. Either Party may terminate this Agreement or its annexes or appendices at any time by providing thirty (30) days' notice in writing to the other Party. Termination of this Agreement shall not affect obligations of ANAC under Articles IV, VI, VII, and IX of this Agreement. The FAA shall have one hundred twenty (120) days to close out its activities following any termination of this Agreement or its annexes or appendices. Termination of this Agreement also shall terminate all annexes and appendices concluded by the Parties pursuant to this Agreement.

ARTICLE XI—AUTHORITY

The FAA and ANAC agree to the provisions of this Agreement as indicated by the signatures of their duly authorized representatives.

FEDERAL AVIATION ADMINISTRATION
DEPARTMENT OF TRANSPORTATION
UNITED STATES OF AMERICA

NATIONAL ADMINISTRATION FOR
CIVIL AVIATION
MINISTRY OF FEDERAL PLANNING,
PUBLIC INVESTMENT AND SERVICES
ARGENTINE REPUBLIC

BY: 
Carey J. Fagan

BY: 
Alejandro Agustin Granados

TITLE: Executive Director for International
Affairs

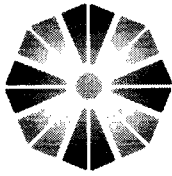
TITLE: Director General

DATE: September 25, 2012

DATE: 25/SEPT/2012

PLACE: Buenos Aires, Argentina

PLACE: Buenos Aires, Argentina



ANAC

Administración Nacional
de Aviación Civil
Argentina

BUENOS AIRES,

EXPTE. N° S01:0076337/2012

AL ADMINISTRADOR NACIONAL DE AVIACIÓN CIVIL:

Se requiere la intervención de esta Dirección de Asuntos Jurídicos en el expediente de referencia, mediante el cual se propicia la suscripción de un "Memorando de Acuerdo" con la Administración Federal de Aviación de los Estados Unidos de Norteamérica (FAA), con el propósito de regular su asistencia técnica para el desarrollo, la modernización, la operación o el mantenimiento de la aviación civil de la República Argentina.

- I -

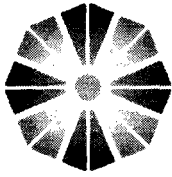
ANTECEDENTES

De los antecedentes obrantes en las presentes actuaciones, surge que a fs. 1/2 obra la Nota N° 304 de fecha 6/3/2012 emitida por el Ministerio de Relaciones Exteriores, Comercio Internacional y Culto mediante la que se acompaña el proyecto de acuerdo explicitado en el párrafo anterior.

Dicha cartera de Estado formuló asimismo una serie de recomendaciones, a tener en cuenta con relación a la redacción definitiva del articulado de la propuesta.

A fs. 3/9 se adjuntó el texto del proyecto de Memorando de Entendimiento, identificado como NAT-I-9402.

A fs. 10/6 obra copia de un acuerdo similar al que se propicia (número NAT-I-3433), suscripto el 25/9/2000 entre el Comando de Regiones Aéreas de la Fuerza Aérea Argentina y la FAA.



ANAC

Administración Nacional
de Aviación Civil
Argentina

Finalmente, a fs. 17 se requiere la intervención de esta Dirección, adjuntándose una nueva versión del proyecto de MOA de fs. 18/24.

- II -

MARCO NORMATIVO

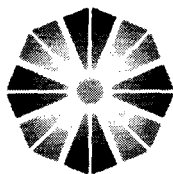
Cabe recordar que la función asesora de la Dirección de Asuntos Jurídicos se circunscribe al análisis de los aspectos estrictamente jurídicos de los temas que se someten a su opinión; en consecuencia, no se expide sobre aspectos técnicos, financieros o económicos, ni sobre la equidad de las fórmulas contractuales o respecto de cuestiones de naturaleza política (Dictámenes 213:105; 221:69; 222:23; 223:126, entre otros).

Con tal salvedad, resulta del todo claro que el proyecto de "Memorando de Acuerdo" N° NAT-I-9402 que se propicia actualiza -en forma adecuada- el interés de la Administración Nacional de Aviación Civil en el cumplimiento cabal de las obligaciones asumidas por la República Argentina como Estado Parte del Convenio sobre Aviación civil Internacional (Chicago, 1944).

Por tal motivo, no existen objeciones jurídicas a la suscripción del presente, teniendo principalmente en consideración la experiencia y los medios de que dispone el Organismo que procura favorecernos con su asistencia.

En cuanto a la exactitud técnica de las cláusulas contenidas en el convenio, esta Dirección concuerda con el criterio sustentado por el Ministerio ya citado, sugiriendo su modificación en el sentido que se respalda fs. 1.

Respecto de la competencia para la suscripción del convenio propiciado, el artículo 2° inciso 1) del Decreto N° 1.770 de fecha 29/11/2007 establece que la Administración



ANAC

Administración Nacional
de Aviación Civil
Argentina

Nacional de Aviación Civil ejercerá las acciones necesarias competentes a la autoridad aeronáutica derivadas del Código Aeronáutico, las Regulaciones Aeronáuticas, Convenios y Acuerdos Internacionales, Reglamento del Aire y demás normativas y disposiciones vigentes. Por tal motivo, se concluye que el Administrador Nacional es competente para la firma del mismo.

- III -

CONCLUSIONES

Por lo expuesto y a reserva de sugerir que se adecúe la redacción del proyecto de acuerdo con las observaciones efectuadas por el Ministerio de Relaciones Exteriores, Comercio Internacional y Culto, no existen objeciones jurídicas que formular a la suscripción del "Memorando de Acuerdo" N° NAT-I-3433 con la Administración Federal de Aviación de los Estados Unidos de Norteamérica (FAA), con el propósito de regular su asistencia técnica para el desarrollo, la modernización, la operación o el mantenimiento de la aviación civil de la República Argentina.

DIRECCIÓN DE ASUNTOS JURÍDICOS

DICTAMEN N°