



ICAO

*International Civil Aviation Organization***The Ninth Meeting of System Wide Information Management Task Force (SWIM TF/9)***Bangkok, Thailand, 14 – 17 May 2024*

Agenda Item 4: Development of Asia/Pacific Regional SWIM Implementation Guidance Document (IGD)

**COMMENTS ON TECHNICAL MEMORANDUM OF COOPERATION (TMC)
DOCUMENT FOR ATM INFORMATION EXCHANGE THROUGH SWIM**

(Presented by NEW ZEALAND)

SUMMARY

This paper presents New Zealand's comments on the draft Technical Memorandum of Cooperation (TMC) document for ATM Information Exchange through SWIM, presented at SWIM/TF/8 meeting.

1. INTRODUCTION

1.1 As captured in the ICAO APAC SWIM TF/8 Final Report under Action Item 8-2, States/Administrations were requested to review the draft Technical Memorandum of Cooperation (TMC) document and provide feedback to ICAO by 29 February 2024.

1.2 New Zealand provided our comments to ICAO APAC Office, who advised New Zealand to submit a working paper to the SWIM/TF/9 meeting for discussion.

2. DISCUSSION

2.1 It is noted with appreciation that Malaysia had taken the time to draft the SWIM TMC to assist States in bilateral cooperation/agreement for ATM Information Exchange through SWIM.

2.2 It is noted that the draft SWIM TMC is a guidance document that can be used as a template for discussion between ANSPs. Thus, we would like to suggest some proposals to the draft SWIM TMC for consideration by States/Administrations intending to use the draft SWIM TMC as a model document to base their bilateral collaboration/agreements.

2.3 Reference to Paragraph 10, section 10.1, a more structured dispute resolution clause may be required to help prevent any prolonged disputes between States/Administrations including the proposed number of days (which can be amended to suit each States/Administrations). The suggested text is shown at clause 10 in the proposed version of the draft SWIM TMC attached to this paper.

2.4 Reference to Paragraph 11, section 11.1, there may be laws in countries that requires an organisation to provide notification of a release/dissemination of documentation on certain information. Therefore, we would like to propose adding a sentence which specifically allows for release of the

information ‘where required by law’ even without consent from the other State/Administration. Consideration on how the other State/Administration is informed of the ‘released information’ can be captured in the individual agreement, depending on the legal environment in each State. The suggested text is shown at clause 11 in the proposed version of the draft SWIM TMC attached to this paper.

2.5 Paragraph 13, section 13.2 suggests a binding nature. We would like clarification of which legal jurisdiction would apply to these governing / binding paragraphs, given that original Paragraph 10 makes reference to no recourse to courts.

2.6 If the intention is for the SWIM TMC to be a guidance document, which States/Administrations can make amendments to support the bilateral agreement, then it may not matter when this document is adopted by the meeting.

2.7 Also, there may have further changes to the SWIM TMC after the SWIM demonstration scheduled for end May 2024 thus it is proposed that the finalisation of the SWIM TMC be discussed at the next SWIM meeting.

3. ACTION BY THE MEETING

3.1 The meeting is invited to:

- a) discuss the points raised for the draft SWIM TMC;
- b) note the information contained in this paper; and
- c) discuss any relevant matter as appropriate

TECHNICAL MEMORANDUM OF COOPERATION

BETWEEN

<ANSP #1>

AND

<ANSP #2>

**FOR AIR TRAFFIC MANAGEMENT (ATM) INFORMATION
SHARING THROUGH SYSTEM WIDE INFORMATION
MANAGEMENT (SWIM)**

[To be filled in (Date of SWIM TMC)]

SWIM TF/9
Appendix A to WP06

Revision History

[illegible]

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TECHNICAL MEMORANDUM OF COOPERATION

BETWEEN

<ANSP #1>

AND

<ANSP #2>

**FOR AIR TRAFFIC MANAGEMENT (ATM) INFORMATION SHARING
THROUGH SYSTEM WIDE INFORMATION MANAGEMENT (SWIM)**

This Technical Memorandum of Cooperation is made between **<ANSP #1>** and **<ANSP #2>** hereinafter collectively referred to as the “Participants” and singularly as the “Participant”.

WHEREAS the Participants wish to jointly establish an SWIM Technical Infrastructure (“SWIM TI”) connection between **<Country ANSP #1>** and **<Country ANSP #2>** to support the Air Traffic Management (ATM) Information Exchange through the use of International Civil Aviation Organization (“ICAO”) System Wide Information Management (“SWIM”).

AND WHEREAS the Participants have successfully completed the SWIM Technical Infrastructure (SWIM TI) Trial in preparation for a smooth ATM Information Exchange through SWIM implementation.

THE PARTICIPANTS HAVE REACHED THE FOLLOWING UNDERSTANDINGS:

PARAGRAPH 1 – CITATION

This S W I M Technical Memorandum of Cooperation will hereinafter be referred to as the “SWIM TMC”.

PARAGRAPH 2 – PURPOSE

The Participants, agree to establish and implement ATM Information Exchange through SWIM between **<Country ANSP #1>** and **<Country ANSP #2>**, subject to the terms and conditions of this SWIM TMC and the laws, rules, regulations and national policies from time to time in force in their respective States.

PARAGRAPH 3 – FINANCIAL TERMS

Each participant shall be responsible respectively for all costs and expenses arising from the connection from its SWIM Technical Infrastructure (SWIM TI) to the international connection points provided by its telecom carriers and all equipment, software and associated costs required for the ATM Information Exchange operation through SWIM.

PARAGRAPH 4 – SWIM TECHNICAL INFRASTRUCTURE DEFINITION

4.1 The SWIM TI will be based on the EUROCONTROL Specification for SWIM Technical Infrastructure (TI) Yellow Profile (EUROCONTROL-SPEC 170 Edition 1.1).

4.2 The network connectivity between Participants SWIM TI will be based on mutually agreed telecommunication provider.

PARAGRAPH 5 – CONTINGENCY ARRANGEMENTS

5.1 The Participants will ensure that fallback procedures in the event of circuit or other failure affecting the flow of network traffic between them are established and supported by their respective alternative setup.

5.2 The Participants will, through regular meetings and other appropriate means, review and exchange information on their respective procedures and the support arrangements and assist each other to strengthen these contingency arrangements.

PARAGRAPH 6 – SWIM TI TEST

6.1 To enable the establishment of the ATM Information Exchange through SWIM under this SWIM TMC, the SWIM TI trial has been conducted to evaluate the basic connectivity, interoperability, functionality, and integrity of the SWIM TI between the Participants.

6.2 The tests conducted under the SWIM TI trial are as follows:

Tests	Test Dates
Network Connectivity Bilateral Tests	[TBD]
SWIM EMS Interoperability Tests	[TBD]
SWIM Information Service Tests	[TBD]
SWIM Application Tests	[TBD]

6.4 The details of the tests and the test procedures for the test cases are set out in **Annex 1**.

6.5 The test results for each of the test cases conducted according to the test procedures in **Annex 1** are recorded and compiled in the test report provided in **Annex 2**.

6.6 The achievements, problems, and lessons learnt from the tests-related activities are also set out in **Annex 2**.

PARAGRAPH 7 – UNDERSTANDING

7.1 The Participants will use all reasonable endeavours to carry out their respective responsibilities and will cooperate to ensure the effectiveness and reliability of the SWIM TI between <Country #1> and <Country #2>.

7.2 In furtherance of this understanding, the Participants will conduct additional tests using additional test cases, if so, agreed by the Participants and subject to paragraph 8 of this SWIM TMC.

7.3 If a Participant assesses that any additional test in sub-paragraph 7.2 or any change in SWIM requirement or service detail is not affordable or not cost effective to implement, that Participant may decline to undertake that additional test or carry out that requirement or service detail but will nevertheless continue to cooperate with the other Participant to reach a mutually acceptable outcome.

PARAGRAPH 8 – REVISION, MODIFICATION AND AMENDMENTS

8.1 No revision, modification, or amendment to this SWIM TMC will be effective unless made in writing and signed by both Participants.

8.2 Such revision, modification or amendment shall come into effect on such date as may be agreed by the Participants and specified in the document made in accordance with sub-paragraph 8.1, taking into consideration all domestic procedures that have to be complied with.

8.3 Any revision, modification or amendment shall not affect the rights and obligations arising from or based on this SWIM TMC prior to the effective date of such amendment.

PARAGRAPH 9 – SWIM TI COMMENCEMENT DATE

The SWIM TI between <Country #1> and <Country #2> under this SWIM TMC will commence one (1) month from the date this SWIM TMC comes into force under paragraph 14.1.

PARAGRAPH 10 - SETTLEMENT OF DISPUTE

10.1 Any difference or dispute between the Participants concerning the interpretation and/or implementation and/or application of any of the provisions of this SWIM TMC shall be settled amicably through mutual consultation and/or negotiations between the Participants ~~without reference to any court, international tribunal or other third party for settlement.~~

10.2 The Participants will use their best efforts to resolve the difference or dispute in accordance with clause 10.1. If the difference or dispute is not resolved within a further [10] Business Days, the dispute will be escalated to the Head of the Organisation of each Participant.

10.3 If a difference or dispute is not resolved under clause 10.2 either Participant may, by written notice to the other, refer the difference or dispute to mediation. The mediation will be conducted by a single mediator in accordance with the terms of the [Resolution Institute Standard Mediation Rules] and at a fee to be agreed by the Participants. If the Participants fail to agree on the identity of the mediator or the mediator's fee within [20] Business Days of referral of the dispute to mediation, the mediator will be chosen, and the mediator's fee determined, by the chairperson for the time being of the [Resolution Institute] (or his, or her or their nominee).

10.4 Nothing in this clause 10 will preclude either party from taking immediate steps to seek urgent relief before a [State] Court.

PARAGRAPH 11 – CONFIDENTIALITY

11.1 Each Participant undertakes to the confidentiality and secrecy of documents, information and other data received or supplied to the other Participant during the period of the implementation of this SWIM TMC or any other arrangements made pursuant to this SWIM TMC. Except to the extent required by any applicable laws, neither Participant shall disseminate such information to a third party or use this information for any purposes including administrative, editorial, prosecutorial or judicial purposes without the prior written consent of the other Participant.

11.2 Both Participants agree that sub-paragraph 11.1 shall survive the expiry or termination of this SWIM TMC.

PARAGRAPH 12 – SUSPENSION

Each Participant reserves the right for reasons of national security, national interest, public order or public health to suspend temporarily, either in whole or in part, the implementation of this SWIM TMC which suspension shall take effect immediately after written notification has been given to the other Participant.

PARAGRAPH 13 - EFFECT OF THIS COOPERATION

13.1 This SWIM TMC serves only as a record of the Participants' intentions and does not constitute or create, or is not intended to constitute or create, legally binding rights or obligations under domestic or international law and will not give rise to any legal process and will not be deemed to constitute or create any legally binding or enforceable obligations, express or implied.

13.2 Notwithstanding anything in sub-paragraph 13.1, paragraph 3 (Financial Terms), paragraph 8 (Revision, Modification and Amendment), paragraph 10 (Settlement of Disputes), paragraph 11 (Confidentiality) and paragraph 12 (Suspension) shall be binding on the Participants.

PARAGRAPH 14 - EFFECTIVE DATE, DURATION AND TERMINATION

14.1 This SWIM TMC will come into effect on the date of last signature by both Participants and will continue to have effect for a period of five (5) years.

14.2 Thereafter, this SWIM TMC may be extended by mutual agreement of the Participants made in writing in accordance with paragraph 8.

14.3 Notwithstanding anything in this paragraph, either Participant may terminate this SWIM TMC by giving no less than sixty (60) days' prior written notice to the other Participant.

14.4 Any termination of this SWIM TMC will not affect the implementation of on-going projects and/or programmes, which have been agreed upon by the Parties prior to the effective date of the termination of this SWIM TMC.

PARAGRAPH 15 - SIGNATURE IN COUNTERPARTS

To facilitate execution, this SWIM TMC and each of its annexes and addenda, if any, may be executed in counterparts, each of which will be an original, but all of which together will constitute one and the same agreement.

PARAGRAPH 16 - AUTHORITY

The Participants agree to the provisions of this SWIM TMC as indicated by the signatures of their duly authorised representatives below.

The foregoing record represents the understandings reached between the <ANSP #1> and the <ANSP #2> upon the matters referred to therein.

Signed by the Participants' duly authorised representatives on the dates set out below in two (2) original texts in the English language.

**<ANSP #1> Authorised
Representative**

**<ANSP #2> Authorised
Representative**

Name
Designation

Date:

Name
Designation

Date:

ANNEX 1: DETAILS OF THE TESTS AND THE TEST PROCEDURES

ANNEX 2: THE TESTS RESULT