

Cooperation Agreement on the
Operation of the
North European Functional Airspace Block
between

Avinor AS

(DronningEufemias gate 6, 0154 Oslo, Norway)
Organisation number/ID: 985 198 292
A limited company

Lennuliiklusteeninduse AS (Estonian Air Navigation Services – EANS),

(Kanali tee põik 3, Rae küla, Rae vald, Harjumaa 10112, Estonia)
Organisation number/ID: 10341618
Public limited company

Finavia Corporation,

(PO Box 50, FI- 01531 Vantaa, Finland)
Organisation number/ID: 2302570-2
Public limited company

and

State Joint-Stock Company “Latvijaspaisatiksme”- LGS

(International Airport “Riga”, Marupes region, LV-1053, Latvia)
Organisation number/ID: LV40003038621
State Joint stock company

which are hereinafter collectively referred to as the **Parties** and individually as **Party**

Versions of the document:

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0.7_clean	29.11.2011	Updates after the SG meetingclean	CAGHS		
0.7	29.11.2011	Updates after the SG meeting	CAGHS		
0.6	24.11.2011	Updates during SG meeting	CAGHS		
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0.4	09.11.2011	Updates during the Oslo meeting	CAGHS		
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0.1	07.10.2011	Draft	CAGHS		
VERSION	DATE	TEXT	PREPARED	CONTROLLED	APPROVED
ORGANISATION UNIT			DOCUMENT		
Avinor			NEFAB Agreement		

Whereas EC Regulation 550/2004 on the provision of air navigation services in the single European sky, amended by EC regulation 1070/2009, has been established in order to improve the performance and sustainability of the European aviation system,

Whereas the states of Estonia, Finland, Latvia and Norway have commenced the work of finalizing a State-level Mutual Agreement (MA) by which a FAB is established,

Whereas the National Supervisory Authorities in the states of Estonia, Finland, Latvia and Norway have commenced the work of finalizing an agreement on the supervision of a FAB,

Whereas the above mentioned MA will set out principles that is to govern the establishment of specific arrangements in NEFAB and on the ensuring of FAB operations,

Whereas

The Partners have jointly developed and approved a NEFAB Feasibility Study, dated 24.08.2011, documenting supporting information for further work in order to establish legally binding arrangements on State-, National Supervisory Authority- (NSA) and Air Navigation Service Provider (ANSP) level required for a declaration of a North European FAB as defined in the Mutual Agreement between the States of Estonia, Finland, Latvia and Norway (State-level MA).

Preamble

Based upon the above, the Partners want to express their intention to develop a sound legal framework in order to establish, implement and operate a NEFAB partnership, and thereby comply with the requirements set out in the above mentioned EC Regulations and State-level MA.

1 Order of Priority

In the event of a conflict between the different references and documents constituting this Agreement, the following order of priority shall apply:

- 1) EC Regulations
- 2) MA
- 3) NSA Agreement
- 4) The main body of this Agreement
- 5) Annexes 1 – 7.

2 Purpose and Scope

The purpose of the cooperation between the Parties is to contribute to the improvement of the ANSP's performance, as well as the sustainability of the European aviation system through:

a) Conducting a dialogue in order to establish initiatives that analyse and propose ways to enhance cooperation and increase performance in the North European Functional Airspace Block in order to provide an effective contribution to increase the overall European network performance, thereby delivering substantial benefits to the airspace users.

b) Collaboration in developing a plan/road map for the stepwise implementation of initiatives in the following areas:

- Airspace
- ATS Provision
- ANS Support
- Systems Support

c) Collaboration in developing a cost-benefit analysis and risk analysis for the implementation of the initiatives.

3 Nature of the Agreement

This Agreement is not exhaustive, and nothing in this Agreement shall constitute or be deemed to constitute either a partnership or any formal business organisation or legal entity between the Parties.

Save for the powers provided for specifically in this Agreement, each Party shall act as an independent company, and unless otherwise specifically agreed, not as the agent of any of the other Parties.

Nothing contained in this Agreement shall be construed as constituting or organising the sharing of profits or losses arising out of the efforts of any other Party hereunder.

In order to achieve the purpose of this Agreement, the Parties may conclude additional agreements on integration of their activities and/or assets. In such case, explicit agreements in writing shall be required detailing the Parties' rights and obligations.

4 Commitments

1.1 General

Each Party hereby undertakes with respect to the other Parties to use all reasonable endeavours to perform and fulfil, promptly, actively and on time, all of its obligations under this Agreement and/or the State-level MA and the NSA Agreement to the extent such obligations apply directly to the Parties under said Agreements or are implied by such.

1.2 Submission of Information

Each Party undertakes to use all reasonable endeavours to supply promptly via the Programme Management Office all such information or documents as the governance boards need to fulfil any obligations pursuant to this Agreement, the State-level MA and NSA Agreement and upon request of the relevant EC Bodies.

Furthermore, any information and documents required to be submitted on behalf of the Parties under the MA and NSA Agreement and/or to the NEFAB Governance Body shall be submitted to the Programme Management Office well in advance and at least one (1) week prior to such information or document being due.

To the extent a document or information shall be submitted directly to the NEFAB Governance Body by each Party and not via the Programme Management Office, such document and information shall be submitted directly and on time to the NEFAB Governance Body by each Party.

1.3 Undertakings of the Parties towards each other

Each Party undertakes to use all reasonable endeavours in order to:

- i to promptly notify the other Parties via the Programme Manager of any significant information, risk, fact, problem or delay likely to affect the cooperation; and
- ii to inform other Parties of relevant communications it receives from Third Parties in relation to the cooperation activities.

Each Party shall use all reasonable endeavours to ensure the accuracy of any information or materials it supplies hereunder or to the NEFAB Governance, and promptly to correct any error therein of which it is notified. The recipient Party shall be entirely responsible for the use to which it applies such information and materials.

In addition to the obligations specified below in Article 11 (Intellectual Property Rights) of this Agreement, the Parties are committed not to use any information, whether given orally or in writing, for any other purpose or way than strictly for the purpose of this Agreement and the preparation, establishment and implementation of NEFAB as set out herein, ref. article 2 (Purpose and Scope).

The Partners recognise that being in breach of the provisions of this article may imply legal actions.

1.4 Cooperation

The Parties undertake to act in good faith and to loyally make their best effort to fulfil the intention of this cooperation, as referred to in article 2 (Purpose and Scope) above, and refrain from any action detrimental thereto.

1.5 Appointment of Personnel and In-Kind Contributions

The Parties undertake to appoint qualified personnel and representatives with appropriate authority and competence who hold the necessary power of attorney for their In Kind Contributions and participation in the NEFAB organisation, ref. article 5 (Governance) below.

The Parties undertake to provide their In-Kind Contributions as detailed per decisions made by the NEFAB CEO Board and in accordance with the provisions set out in the articles in this and in the Annexes attached hereto.

1.6 Financial Contributions

The Parties undertake to provide their financial contributions as detailed per decisions in the NEFAB CEO Board, ref. article 5 (Governance) below and in the Annexes attached hereto.

5 NEFAB ANSP Governance

5.1 Management Organisation of NEFAB

5.1.1 General Structure

The initial organisation structure of NEFAB shall comprise the following:

- i **NEFAB CEO Board** as the ultimate decision-making body of the cooperation.
- ii **NEFAB Management Board** is the supervisory body for the performance and execution of the Work and the Business Plan, accompanied by the Detailed Plan of Activities; it shall report and be accountable to the CEO Board under the conditions set forth in this Agreement and its annexes.
- iii **NEFAB Programme Management Office** is responsible for the Programme Management, including but not limited to, information exchange, the controlling and the day to day interface management for the performance and the execution of the Work and the Business Plan, accompanied by the Detailed Plan of Activities, such as execution of common FAB Level activities and projects.

5.1.2 The Parties' Representatives

Each Party agrees to nominate representatives to the NEFAB Management Bodies with due authorisation to discuss, negotiate and decide on matters or actions proposed.

5.2 Responsibilities and Authority

The responsibilities and authorities of the different NEFAB ANSP Governance bodies as identified above are described in Annex 1 Business Model, attached hereto.

5.3 Rules of Decision Making

5.3.1 General

Unless otherwise specified herein or in one of the Annexes of the Agreement, decisions under this Agreement require full consensus of all Parties. Each Party has one vote.

For the avoidance of doubt, decisions of the following issues shall always require unanimity:

- i. appointment of the chairman of the NEFAB CEO Board
- ii. appointment of the alternate chairman of the NEFAB CEO Board,
- iii. the approval of the NEFAB development plan, including budget, target, and performance requirements
- iv. the approval of the Financial Instructions, including the Joint Budget and distribution of benefits
- v. the assignment or transfer of any rights under this Agreement
- vi. amendment of this Agreement, and
- vii. to forward a proposal for a premature completion/termination of the NEFAB cooperation

No Party shall obstruct a decision voted in favour of by the other Parties unless the obstructing Party demonstrates:

- i. the likeliness of a substantial threat to the principle of Sovereignty (ref. the Chicago Convention and other instruments of International Law)
- ii. the likeliness of a substantial threat to the principles of Party's domestic law the likeliness of a substantial threat to the State's Public Security and Defence
- iii. the likeliness of a substantial threat to its commercial or strategic interests which cannot be resolved by any other measure, or
- iv. that the decision affects significantly the obstructing Party's Budget and obligations under this Agreement.

In all other issues, the votes of a qualified majority of at least three Parties representing at least seventy five (75) per cent of the Parties represented at the meeting are required.

5.3.2 Quorum

For ordinary and extraordinary meetings which have been duly convened there will be a quorum if all Parties are present or duly represented by proxy. If the quorum is not met, the chairman shall convene another meeting not earlier than one (1) week after with the same agenda. In this meeting, decisions provided for in the agenda of the first meeting may be taken regardless of any quorum in case the same Party or Parties is/are absent.

6 Financial Provisions

6.1 Joint Budget

For the joint activities, a joint budget will be established.

6.2 Budget Period

Each Budget Period shall be identical to the calendar year.

6.3 Financial Planning and Reporting Data

The contents of this article 6.3 are to be further detailed and included in Annex 3 which is to be completed prior to 01.07.2012.

The Parties shall deliver to the Programme Management Office all relevant financial data including but not limited to the application of the budget use and received payments needed for financial planning, its execution and accountability towards the cooperation, based upon their financial system and this Agreement. This data shall be delivered to the Programme Management Office at least thirty (30) calendar days prior to 01.04. every year.

The format of these data has to comply with the requirements set out in Annex 3 and any formats agreed upon by the CEO Board, within the boundaries given by the accorded financial system of the Parties.

Each Party shall be solely liable for its own financial data. No other Party, including the Programme Management Office acting within the scope of this Agreement, may change these data without express written permission of the Party concerned.

Each Party shall maintain accurate and separate accounts and financial records adequate to reflect the sources and uses of funds to finance the NEFAB cooperation, and each Party shall retain such accounts and records for five (5) years after the last financial transaction between the Parties.

6.4 Resources, Contributions and Benefits

6.4.1 Resources and Contributions

The Parties will make available the resources as agreed for the implementation of the Business Plan. These resources may take the form of money, capacities of any nature, (Gross/Total) In-Kind Contributions, etc.

Resources made available shall be valued and budgeted in financial terms only if:

- i. the costs arising from the respective activities will be submitted for cost reimbursement through EC funding, or
- ii. the Parties have explicitly agreed upon the cost sharing of those resources.

In all other cases, the costs arising from resources and participation in any activities under this Agreement shall be fully borne by the respective Party.

6.4.2 Financial Benefits/Revenue

Yearly benefits shall be allotted amongst the Parties according to principles that are to be further defined and included in Annex 3.

7 Defaults, Liabilities and Remedies

7.1 Defaults and Remedies

7.1.1 Procedures and Consequences

Without prejudice to Article 7.2 (Liabilities and Indemnification) below, each Party is responsible for its responsibilities, Tasks, Contributions and Deliverables within the scope of this Agreement or a defined Project derived of this cooperation, and nothing in this Agreement shall construe or imply any collective responsibility towards another Party or any third party.

If a risk of default becomes apparent, the Parties shall attempt to solve such risk at Programme Management Office level. If the Programme Manager is notified of any significant problem or delay likely to affect a Project, the Programme Manager shall send a written notice to the relevant Party requiring that such breach be remedied within a certain time to the extent

remediable. If the breach is irreparable or if it remains un-remedied after the expiration of such time limit, the Parties shall use their best efforts to solve the issue among themselves. Any queries relating to the redistribution of funds and costs in connection with such remedies process shall be resolved upon by the NEFAB CEOBoard unless it can be solved between the affected Parties.

7.2 Liabilities and Indemnification

7.2.1 Liability and Indemnification between the Parties

In the event that one or several of the Parties incur liabilities or costs due to a Party's Default or mal-performance, and which the suffering Party has not been reimbursed for according to Article 7.1 (Defaults and Remedies) above, the suffering Party(-ies) shall be indemnified by the Defaulting Party (including accrued interest).

In the event that one or several of the Parties faces loss of profit or revenue and/or incur liabilities or costs, including but not limited to direct, indirect, consequential or incidental loss or damage, due to a Party's inability to fulfill the objectives set out in SPR Article 9a, including but not limited to the performance targets, the suffering Party(-ies) shall be indemnified by the Defaulting Party (including accrued interest).

Unless otherwise stipulated above or elsewhere in this Agreement, the Parties shall not be liable to each other for any direct, indirect, consequential or incidental loss or damage, except in case of gross negligence or wilful misconduct.

7.2.2 Liability and indemnification in the event of claims from Third Parties

For the avoidance of doubt, this Agreement does not establish any claims or the legal basis for any damage claims from Third Parties.

Each Party shall be solely liable for any loss, damage or injury to Third Parties resulting from the execution of its assigned tasks in the cooperation, from its Background and Foreground and any claims regarding infringement of any Third Party's Intellectual Property Rights.

In any case where a Party or Parties other than the Defaulting Party is deemed to be liable for a claim from a Third Party, each compensating Party shall be entitled to seek full indemnification from the Defaulting Party (including accrued interest).

7.3 Insurance

The Parties shall as a minimum, provide and maintain sufficient insurance in order to cover its responsibilities and liabilities as a service provider providing services within the scope of the FAB-Cooperation.

The policies shall state that the insurers as far as legally permissible waive all rights of subrogation against the other Parties.

8 Force Majeure

Each Party will notify the other Parties in writing of any Force Majeure as soon as possible. The Parties shall discuss in good faith the possibilities of a transfer of tasks affected by the event. Such discussions shall commence as soon as reasonably possible.

9 Information and Confidentiality

The Parties commit themselves to treat this Agreement confidential and will not forward to Third Parties any information, documents etc. which are directly or indirectly related to the scope of the NEFAB cooperation or this Agreement.

Furthermore, the Parties are committed not to use any information, whether given orally or in writing, for any other purpose or way than strictly for the purpose of and within the Scope of this Agreement as described above.

Nevertheless, the provision of this Article shall not prevent the Parties from disclosing confidential information to any governmental authority or institution, parent institution, or when imposed by governmental authority or institution or required by law or regulations.

For the purpose of any additional or further regulation of access to and protection of data and/or Confidentiality, a sample Non-Disclosure Agreement is incorporated in Annex 5 attached hereto.

The Partners recognise that being in breach of the provisions of this article may imply legal actions.

10 Communication with Third Parties

Subject to Article 9 (Information and Confidentiality) above, and unless otherwise provided for in an individual decision or a general directive on publication issued by the CEO Board, each Party shall be free to publish information on, or in connection with, its participation in the NEFAB provided that

- i the information published is correct and coherent with the NEFAB Communication Strategy, included in Annex 6, attached hereto (*Estimated completion date 01.07.2012*);
- ii the publishing of such information does not denigrate, or otherwise run counter to the interests of another Party; and
- iii the publishing Party abides to all rules derived from the MA and/or this Agreement.

11 Intellectual Property Rights

Nothing in this Agreement shall imply the transfer of any Intellectual Property Rights from one Party to the others.

The terms of Annex 4 Intellectual Property Rights (IPR) shall apply to the Parties of the Agreement.

12 Exclusivity

Nothing in this Agreement shall be construed so as to establish an exclusive cooperation of the Parties.

Not being in lieu of the above, the Parties have by signature of this Agreement, agreed to loyally make their best effort to fulfil the intention of this cooperation, as referred to above, and not to enter into parallel discussions or negotiations with other partners in order to seek the establishment of a FAB with other ANSPs than the Parties to this Agreement.

13 Term

This Agreement shall come into effect on and from the date on which all Parties have signed it.

The cooperation is established for an indefinite period of time.

14 Termination and Withdrawal

14.1 General

This Agreement may be terminated by written agreement between the Parties or by a decision made by the CEO Board pursuant to the States' decision to terminate the MA.

14.2 Withdrawal

Pursuant to the States' decision of withdrawal, a Party may withdraw from this Agreement by giving a 6 months' prior written notice of termination to all other Parties. The withdrawal will not take effect until 1. January the following year. The first opportunity to withdraw from this Agreement is by the end of 2011.

14.3 Suspension of a Party with immediate effect

The CEO Board may forward a proposal to the State level to suspend a Party;

- i. Who has failed to implement the obligations arising out of a valid decision made by a NEFAB body
- ii. Whose certificate as an approved Service Provider is revoked
- iii. Provided the relevant State's suspension or termination of the MA

- iv. Who is in breach of its obligations included herein, and has failed to remedy such breach within 6 months' notice from the CEO Board to remedy such breach
- v. Who has seriously threatened the fulfilment of the cooperation and its purpose, and has failed to remedy such threat within 6 months' notice from the CEO Board to remedy such breach

A Party subject to suspension, withdrawal, termination or deprivation of its rights or expulsion hereunder, shall not be entitled to any compensation other than its portion of its eligible financial contributions provided in advance for the remaining part of the budgeting period after the decision of suspension or withdrawal.

Furthermore, any and all Access Rights granted to a Defaulting Party or a Party subject to suspension, withdrawal or termination by the other Parties shall cease immediately.

15 Amendments

Any amendments to this Agreement are to be decided upon by the NEFAB ANSP CEO Board. Any such amendments shall be formalised in an amendment agreement which shall be signed by each Party in order to be valid.

16 Notices

Any notice to be given under this Agreement shall be in writing to the addresses and recipients as listed in Appendix 7 (Recipients for Notices).

or to such other address and recipient as a Party may designate in respect of that Party by written notice to the others.

17 Language

This Agreement is drawn up in English, which language shall govern all documents, notices and meetings for its application and/or extension or in any other way relative thereto.

18 Applicable Law

This Agreement shall be construed according to and governed by Norwegian Law.

19 Settlement of Disputes

All disputes or differences arising in connection with this Agreement which cannot be settled amicably shall be finally settled by arbitration under the rules of arbitration of the Norwegianlaw of Arbitration (LOV 2004-05-14 nr 25: Lovomvoldgift).The language to be used in the arbitral proceedings shall be English.

The award of the arbitration shall be final and binding upon the parties concerned.

The Parties may instead elect to resolve by mediation a dispute or difference arising in connection with this Agreement which cannot be settled amicably.

20 Annexes

Annex 1 Definitions

Annex 2 NEFAB Business Model (to be finally agreed upon and inserted by 01.07.2012)

Annex 3 NEFAB Financial Instructions (to be finally agreed upon and inserted by 01.07.2012)

Annex 4 Intellectual Property Rights (IPR)

Annex 5 Sample Non-Disclosure/Confidentiality Agreement

Annex 6 NEFAB Communication Strategy (to be finally agreed upon and inserted by 01.07.2012)

Annex 7 Recipients of Notices

21 Entire Agreement

Should any provision of this Agreement prove to be invalid or incapable of fulfilment, or subsequently become invalid or incapable of fulfilment, whether in whole or in part, this shall not affect the validity of the remaining provisions of this Agreement. In such a case, the Parties shall be entitled to demand that a valid and practicable provision be negotiated which mostly fulfils the purpose of the invalid or impracticable provision.

This Agreement with annexes the MA and, and when such exist, any Complementary Contracts, constitute the entire agreement between the Parties in respect of the NEFAB cooperation, and supersede all previous negotiations, commitments and writings concerning the NEFAB cooperation including any memorandum of understanding between the Parties (whether or not with others) which relate to the NEFAB initiative.

22 Copies

This Agreement may be executed in any number of copies, each which shall be deemed an original, but all of which shall constitute one and the same instrument.

23 Signatures

AS WITNESS the Parties have caused this Agreement to be duly signed by the undersigned authorised representatives the day and year first above written.

Authorised to sign on behalf of

AVINOR AS

Signature

.....

Mr. Knut M. Skaar
Name

Chief Executive, Air Navigation Services, Avinor
Title

Date

Authorised to sign on behalf of

LENNULIIKLUSTEENINDUSE AS (Estonian Air Navigation Services – EANS)

Signature

.....

Tanel Rautits
Name

CEO and Chairman of the Management Board
Title

Date

Authorised to sign on behalf of

FINAVIA Corporation

Signature

.....

RaineLuojus

Vice president, Head of ANS

Name

Title

Date

Authorised to sign on behalf of

State Joint-Stock Company "Latvijasgaisatiksme"- LGS

Signature

.....

Mr DAVIDS TAURINS

Chairman of the Board

Name

Title

Date