Cooperation Agreement
of the BALTIC FAB
Air Navigation Service Providers

concluded between
Valstybės įmonė "Oro Navigacija" – State Enterprise "Oro Navigacija"

and

Polska Agencja Żeglugi Powietrznej – Polish Air Navigation Services
Agency
WHEREAS

The Single European Sky (SES) initiative was launched in order to enhance current air safety standards, to contribute to the sustainable development of the air transport system and to improve the overall performance of air traffic management and air navigation services for general air traffic in Europe, with a view to meeting the requirements of all airspace users, calling for the States to, inter alia, establish functional airspace blocks;

Establishment of Baltic Functional Airspace Block is supported by the results of the Feasibility Studies for the establishment of Baltic Functional Airspace Block and is justified by its overall added value, including an optimum use of financial, technical, environmental and human resources;

On 17th of July 2012 the Agreement on the Establishment of the Baltic Functional Airspace Block between the Republic of Lithuania and the Republic of Poland has been signed in order to meet the requirements arising under the SES legislation and Implementing Rules;

Cooperation between the Parties has been long lasting in different ATM and CNS fields;

There are mutual interests in achieving sustainable and efficient development in operations and service provisions, technical areas and environmental protection, while maintaining high level of safety;

The Parties, acting on the basis of the Article 18 of the Agreement on the Establishment of the Baltic Functional Airspace Block between the Republic of Lithuania and the Republic of Poland,

have agreed as follows:

**Article 1**

**Definitions and Interpretation**

1. In this Agreement, unless otherwise required by the context, the following terms shall mean:

1) “Agreement” means this Agreement, including its Annexes, and any amendments thereto, unless otherwise indicated;

2) “Airspace concerned” means the airspace over the territories of the Contracting Parties and the airspace under their responsibility in accordance with the International Civil Aviation Organization (ICAO) rules;

3) “ANS” means Air Navigation Services;

4) “ANSP” means Air Navigation Service Provider;

5) “ATM” means Air Traffic Management;

6) “ASD” means Airspace Design;

7) “ASM” means Airspace Management;

8) “Baltic FAB” means the Functional Airspace Block established under the Agreement on the Establishment of the Baltic Functional Airspace Block
between the Republic of Lithuania and the Republic of Poland, signed on 17.07.2012.;

9) “CEO's” means Chief Executive Officers of the Parties;
10) “CNS” means communication, navigation and surveillance services;
11) “Cooperation” means the cooperation agreed among the ANSPs under this Agreement;
12) “EU Requirements” means all requirements under the European Law which directly or indirectly establish rights and/or duties of air navigation services providers, training organizations, air traffic controllers or other organizations or staff in the ATM/ANS domain;
13) “Governance Bodies” means the Baltic FAB Council and Baltic FAB Board;
14) “NSA” means National Supervisory Authority;
15) “Parties” means Parties to this Agreement: Polish Air Navigation Services Agency and the State Enterprise “aro Navigacija”;
16) “Performance Scheme” means the system of rules and target values established and amended as appropriate according to the Article 11 of the Framework Regulation at European, FAB, regional and/or national level, as the case might be;
17) “R&D” means Research and Development;
18) “States” means Republic of Lithuania and Republic of Poland.

2. Unless the contrary intention appears or the context otherwise requires, words and expressions used in this Agreement, in the decisions taken on the basis of this Agreement or in any other document generated in the performance of this Agreement shall be construed in accordance with their use and interpretation in the Saltic FAS Agreement, the NSA Cooperation Agreement, international and EU law.

3. In case of a conflict between a rule established in this Agreement and any strict rule or requirement established by the national laws of the Parties the latter shall prevail.

4. In case of conflict between the provisions in the main body of the Agreement and the Annexes, if any, the provisions in the main body shall prevail.

Article 2
Legal disclaimer

1. The Cooperation hereby agreed shall be a bilateral only and shall establish rights and obligations of the Parties. Nothing in this Agreement shall construe or be interpreted as creating any entity having a legal personality separate from the Parties.

2. No Party shall have authority to act on behalf of the other Party except for common communication activities.

3. No Party shall have authority to legally bind any other Party and no Party shall present itself as having such authority.
Article 3

Purpose and Scope

1. The purpose of the Cooperation shall be to establish a collaborative framework providing for the basic principles of cooperation and setting out the main governing and financial mechanisms to the improvement of ANSP’s performance as well as to facilitate implementation of the Baltic FAB Agreement and execution of Parties’ rights and obligations under the Baltic FAB Agreement and fulfilment of decisions of the Baltic FAB Governance Bodies.

2. The Parties shall coordinate, harmonize, support, develop and improve the activities of the Parties in the areas set out in the Annex (Scope of Cooperation) with the aim to:

1) Continuously improve the safe, cost-efficient, environmentally-sustainable, optimized and performance-driven provision of ANS and all other activities within the Scope of Cooperation;

2) Support the States in the establishment, implementation and fulfilment of the Baltic FAB Agreement;

3) Ensure that the targets set out in the Performance Scheme are met; and

4) Support the Parties to meet their individual targets set out, or derived from the Performance Scheme.

3. The means eligible for the Cooperation of the Parties in accordance with the provisions of the Agreement shall include, inter alia:

1) The provision of financial and in-kind contributions of the Parties for the production of project deliverables, simulations, concepts, plans, manuals, studies, R&D and other projects and/or documents and to arrange for the support for common activities of the Cooperation;

2) The exchange of information between the Parties;

3) The cooperation and coordination, including the monitoring and evaluation of the planning, performance and other activities of the Parties, in the areas as specified in the Annex hereto;

4) The adoption of Decisions, including but not restricted to the harmonisation of policies, systems, procedures, manuals and other items and on the allocation of functions and the coordination of activities in the areas referred to in sub paragraph 3 of this paragraph;

5) The development of communication interfaces of the Parties in relation to the States, the European Commission and other EC institutions, EUROCONTROL, EASA, airspace users, social dialogue partners, ANSPs involved in other FAB initiatives and other third parties and general public; and

6) Conclusion and execution of specific agreements between Parties and between Parties and third party(-ies).
4. This Agreement shall not affect the rights of its Parties to conclude bilateral or multilateral agreements between each other and/or with third parties in areas covered by this Agreement providing that such Agreements are not in contradiction with this Agreement.

5. The Parties shall act in good faith and actively contribute to attain the purpose of the Cooperation and refrain from any action detrimental thereto.

Article 4

Governance

1. The CEOs.

1) The CEOs of the Parties shall hold the executive powers for the Cooperation under this Agreement.

2) The CEOs of the Parties shall be responsible for managing any required actions with respect to the matters under this Agreement, ANSPs tasks and responsibilities with respect to the matters under the Baltic FAB Agreement as well as other matters, including but not limited to:

   a) Coordinate the Cooperation with the Baltic FAB Governance Bodies;

   b) Provide each other in a timely and expeditious manner with all information and data which is reasonably requested by any Party, including information on business and investment plans and procurements;

   c) Take any steps necessary and/or appropriate to achieve maximum coordination of implementation of common policies, planning instruments, manuals and procedures, and their actual performance of services;

   d) Foster a culture of cooperation;

   e) Agree on the assignment of ANSP resources to the Baltic FAB Management Office, dedicated Working Groups and temporary Task Forces;

   f) Coordinate common ANSPs positions with respect to the matters of social dialogue activities and external communication;

   g) Coordinate common ANSPs positions with respect to the matters of cooperation with neighbouring FABs or ANSPs as well as representation in international fora;

   h) Decide on cooperation opportunities other than those covered by the Agreement.

3) The CEOs decisions making.

   a) For the attainment of the Cooperation’s purpose the CEOs shall take Decisions.

   b) Each Party shall have one vote.

   c) The CEOs of the Parties shall adopt Decision(s) by unanimity.
d) For matters requiring immediate or urgent response and decision making, Parties may conclude Decisions by correspondence.

e) Decisions shall be amended or repealed by other Decisions only.

f) Unless otherwise provided hereunder or in the respective Decision, Decisions shall be binding on Parties.

g) Unless otherwise provided in this Agreement, the Parties shall abide by all Decisions adopted by the CEOs of the Parties and by all other decisions made by any other body of the Cooperation to which the CEOs of the Parties entrusted decision-making powers. Each Party shall implement and/or act in accordance with any Decision, and other decisions binding on it in due time in a manner ensuring its effective implementation.

h) The Decisions of Parties shall be taken in an impartial, objective and transparent manner and shall be without prejudice to the right and obligations of the Parties at national level.

4) Meetings of the CEOs.

a) Ordinary meetings of the CEOs of the Parties shall take place at least one time per half a year. The first meeting shall take place immediately after Agreement entry into force.

b) Location of the meetings shall be determined by CEOs.

c) The hosting Party shall be responsible for determining agenda of the meeting, chairing the meeting and drafting the results of the meeting, Protocol of Decisions as well as secretariat and administrative support.

d) Director and Vice-director of Baltic FAS Management Office shall attend the meetings of CEOs as well. Experts and representatives of the Parties may attend meetings as invited by CEOs.

e) The meetings shall be held in English, with English also being the authoritative language for all written communication.

f) Draft Decision and Working Papers shall be available at least 5 working days before the meeting, allowing adequate time for review and proper decision making.

g) During each meeting, the chairperson shall keep a Protocol of Decisions with the precise wording of any Decisions taken by the CEOs of the Parties for the purpose of documentation. At the end of each meeting, all Parties shall sign the Protocol of Decisions to confirm its correctness and completeness. In case of a meeting where not all the Parties are present in person, the correctness and completeness of the Protocol is confirmed at the next meeting. Reservations of the Parties with respect to the wording of the Decisions, unless solved through the corrections, will be duly noted in the Protocol of Decisions.

h) Each Party shall be entitled to convene an extraordinary meeting whenever considers it necessary and appropriate for the attainment of the purpose of Cooperation.
i) Each Party may deliver a written vote on any agenda item of a meeting to the chairperson either by mail or electronic means. Each CEO may give the power of attorney to another person to vote on his/her behalf.

2. Working Groups

1) To ensure the fulfillment of the activities to attain the purpose of Cooperation as well as to support CEOs decision making and Baltic FAB Management Office activity, the CEOs of the Parties shall establish:

a) Operational and Technical Working Group to deal with airspace, ATM and CNS initiatives to improve performance within the Baltic FAB;

b) Safety Working Group to deal with safety issues to ensure enhanced cooperation for safety management within the Baltic FAB;

c) Strategic and Economic Working Group to deal with strategic and performance aspects within the Baltic FAB;

d) If required, the CEOs shall decide on the establishment of other dedicated working groups or temporary task forces.

2) Working Groups shall develop supporting papers, prepare comments and recommendations to be used by CEOs as well as other documents as tasked by the CEOs for the attainment of the purpose of Cooperation.

3) Working Groups shall be composed of experts of appropriate seniority and expertise in all relevant areas of Cooperation, including but not limited to safety, operational, technical, legal, procurement, financial, performance, human resources, training issues. Working Group members shall liaise within their own organizations in order to ensure a correct implementation of decisions taken by CEOs.

4) Working Groups shall be chaired by one of the Parties for period of six months. First chairing person shall be assigned during the 1st meeting of the Working Group. Representative of chairing Party shall act as a chairperson and the representative of subsequent State as a deputy chairperson.

5) The Rules of Procedure of Working Groups shall be defined and adopted by CEOs not later than 45 days from the entry into force of this Agreement.

3. Baltic FAB Management Office

1) For the execution of Baltic FAB Governance bodies decisions on the establishment of Baltic FAB Management Office the Parties shall support the establishment and running of Baltic FAB Management Office, in particular:

a) designate duly authorized representatives to perform duties of Director and Vice-Director of Baltic FAB Management Office;

b) designate duly authorized representatives to act as experts of Baltic FAB Management Office;

c) allocate experts on ad-hoc basis to provide appropriate expertise;
d) provide facilities, office supplies, telecommunication, IT and etc support;

e) provide finance advise, contractual and legal support;

f) assign budget to manage its day-to-day activities, contract external resources and all other tasks assigned to it by CEOs under the Agreement.

2) Baltic FAB Management Office shall support Baltic FAB Board in FAB related activities as well as shall be responsible for coordination and execution of the day-to-day management of Baltic FAB, deal with SES and EUROCONTROL developments and activities related to FAB etc.

3) Under Article 24 of Baltic FAB Agreement the detailed Working Arrangements of Baltic FAB Management Office shall be adopted by Baltic FAB Board.

4) The Parties shall authorize Director and Vice-Director of Baltic FAB Management Office as plenipotentiary of the CEO in order to conclude agreements, buy goods and services to satisfy the Baltic FAB activity needs:

a) any body or activity with regard to the purpose of Cooperation may be supported via contracting;

b) the goods, works and services provided by third parties shall be procured in accordance with the specific national provisions of the Parties;

c) every contract shall be initiated by the Director of Baltic FAB Management Office. The Director shall prepare an appropriate information containing the scope, functional objectives and estimated costs as well as proposed tendering procedures;

5) In addition to the provisions of this paragraph for the purpose of Cooperation the Parties shall task Baltic FAB Management Office with:

a) report once a quarter of a year on financial issues;

b) call the meeting of the Working Groups, Task Forces and other groupings as necessary to fulfil obligations referred in the Agreement;

c) provide a guidance to Working Groups on the scope of work;

d) coordinate the activities' progress among Working Groups on a permanent or ad-hoc basis;

e) monitor the Working Groups progress;

6) The Parties shall retain the right to assign additional tasks and responsibilities for Baltic Management Office which do not contradict to the Working Arrangements of Baltic FAB Management Office adopted by Baltic FAB Board.
Article 5

Financial issues

1. Budgeting period

1) The first budgeting period shall start with the entry into force of this Agreement.

2) Each subsequent budgeting period shall be identical to the calendar year.

2. Budget

1) The budget shall cover the cost of Baltic FAB Management Office, shall be used to finance the allocated tasks under the Baltic FAB Agreement as well as this Agreement, including administrative and operational expenses, internal and third parties consultant services.

2) The annual budget shall be in disposal of Director and Vice Director of the Baltic FAB Management Office.

3) The CEOs shall establish rules and procedures for the preparation and management of the budget.

3. Contributions and benefits

1) In-kind contributions and non-monetary benefits shall be provided by the Parties as required to perform a specific tasks unless otherwise provided in this Agreement or by the common Decision of the CEOs of the Parties.

2) Financial contributions and benefits shall be allotted amongst the Parties for any year “n” according to the number of en-route service units allocated by the EUROCONTROL Central Route Charges Office to the individual areas of responsibility of the Parties for year “n-2”, unless otherwise provided in this Agreement or by decision of the CEOs of the Parties.

Article 6

Term and Termination

1) The Cooperation Agreement is signed for an indefinite period of time.

2) This Agreement can be terminated by the written agreement of the Parties.

3) Each Party may withdraw from this Agreement by giving written notice of termination to other Party. A Party shall have the right to withdraw from this Agreement at the end of each following calendar year with six (6) months prior notice in accordance with the national law of the Contracting Party which has designated the ANSP.
Article 7

Miscellaneous

1. Confidentiality

1) No Party shall disclose or divulge any information classified by any other Party as confidential which it may acquire in connection with this Agreement to any third party without prior written consent of the respective Party unless such information is publicly available.

2) The CEOs of the Parties shall adopt rules on the rights and duties of the Parties with regard to non-disclosure of confidential information.

2. Exclusivity

3) Unless otherwise provided by decision of the CEOs of the Parties, nothing in this Agreement shall be construed as to establishment of an exclusive cooperation of the Parties.

4) Third parties can accede to this agreement in accordance with Article 19 of the Baltic FAB Agreement, taking into account relevant EU regulations.

3. Intellectual Property

Unless otherwise provided in this Agreement or by Decision of the CEOs of the Parties, the Parties hereby grant to each other royalty-free, perpetual and irrevocable copyright licenses with respect to any material produced, or otherwise gained, within the remit of the Cooperation. Such licenses shall be deemed granted for the purpose of internal use by the Parties and use in accordance with the purpose and scope of this Agreement. Such licenses shall be issued in writing, the scope of exploitation shall be defined and if needed other provisions required by law shall be included.

4. Amendments

Amendments to this Agreement shall be valid only if agreed and executed in writing by the Parties.

5. Assignment

No Party shall have the right to assign or transfer any or all of its rights and obligations under this Agreement without prior written approval by the CEOs of the other Party.

6. Notices and Delivery

All notices and communications among the Parties as well as the Parties and the Cooperation shall be made in writing and in the English language by e-mail, facsimile transmission with confirmation of transmission, delivery in person (including courier service) or registered mail to the appropriate correspondence addresses set forth below.
Each Party shall be entitled to change its correspondence address by written notice to the other Parties.

7. Severability

1) The invalidity of any provision of this Agreement shall not affect the validity of any other provision of this Agreement which is not related to that provision.

2) Invalid provisions shall be deemed amended to the extent necessary to ensure their validity. In the event that such amendment is not possible invalid provisions shall be deemed replaced by valid provisions which correspond to the Parties intentions and approximate the meaning of the invalid provisions to the closest extent possible.

8. Settlement of disputes

1) The Party shall be barred from making any claim or filing any lawsuit against other Party arising under this Agreement prior to having negotiated in good faith all disputed issues with all possible parties to a lawsuit. Consequently, the Party shall provide other Party with all information the latter may reasonably request.

2) If the dispute arising out of or relating to this Agreement cannot be settled within a period of three months through direct negotiations between the Parties the dispute shall be settled to the Saltic FAS Council. If the Saltic FAS Council has failed to settle this dispute, it shall be settled at the request of the claimant Party in the court of the State of the respondent Party.

Article 8

Languages

All documents, notices and meetings of the Cooperation shall be drawn up or conducted in English. If and to the extent the execution of a document in another language is required by any competent authority, such document shall be executed both in English and the other language. Where appropriate, any of these versions may be replaced by a certified translation.
Article 9

Entry into force

1. This Agreement shall come into force upon signature by both Parties, and ratification of Agreement on the Establishment of the Baltic Functional Airspace Block between the Republic of Lithuania and the Republic of Poland, whichever is later.

2. This Agreement may be subject to amendments in written form. Such amendments shall enter into force on the day of signature unless otherwise specified.

3. Done in Vilnius on 19th of November, 2012 in two (2) original copies, each having equal legal force, in English language, a copy for each Party. Copies in Lithuanian and Polish languages shall be used for internal purposes of each Party. In case of divergent interpretation, the English text shall prevail.

In witness whereof the undersigned, being duly authorized, have signed this Agreement and affixed their seals

ON BEHALF OF
Polish Air Navigation Services Agency

Krzysztof Banaszek
President

ON BEHALF OF
State Enterprise “Oro Navigacija”

Algimantas Raščius
Director General
Annex – Scope of Cooperation

1. General definition of the Scope of Cooperation

1) The Agreement shall apply to all activities of the Parties in the areas of:
   a) ANS,
   b) ASD,
   c) Technical infrastructure services and facilities,
   d) Contingency services,
   e) Safety and quality management,
   f) Training of staff required for purposes of ANS, ATFCM ASM, ASD, training and examination, safety and quality management to the extent of ANSPs competences and administrative functions like, e.g., air traffic controllers, technical staff, trainers, examiners, financial experts etc,

2) Including, without limitation, ancillary functions performed by the Parties such as, for example,
   a) Planning processes concerning annual plans, business plans, ANSPs’ performance plans and other planning or steering documents including the detailed information and data underlying such documents,
   b) Human resources management and conduct of social dialogues,
   c) Procurement of goods and services,
   d) Research, development and performance of analyses and simulations, and
   e) Stakeholder consultations.

3) In particular, and without limiting the generality of the foregoing, the Cooperation shall ensure the timely and efficient conduct of all activities:
   a) Defined in the various implementation projects;
   b) Otherwise necessary or beneficial to develop and/or implement the Baltic FAB;
   c) Necessary or beneficial to further assess and develop other Baltic FAB scenarios;
   d) Otherwise necessary or beneficial to further develop, implement and operate the Baltic FAB to the benefit of the airspace users,

If and to the extent such activities are not expressly allocated to, or legally reserved for, the State level and its public authorities.