

AGREEMENT

BETWEEN

THE PORTUGUESE REPUBLIC

AND

THE KINGDOM OF SPAIN

ON THE ESTABLISHMENT OF THE

SOUTH WEST FUNCTIONAL AIRSPACE BLOCK (SW FAB)

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PREAMBLE

The Portuguese Republic

and

the Kingdom of Spain,

hereinafter referred to as “Parties”,

TAKING INTO CONSIDERATION the European Union law on the creation of the single European sky, and in particular Regulation (EC) No 550/2004 of the European Parliament and of the Council of 10 March 2004, on the provision of air navigation services in the single European sky, as amended by Regulation (EC) No 1070/2009 of the European Parliament and of the Council of 21 October 2009 amending Regulations (EC) No 549/2004, (EC) No 550/2004, (EC) No 551/2004 and (EC) No 552/2004 in order to improve the performance and sustainability of the European aviation system, and Regulation (EU) No 176/2011 of the Commission of 24 February 2011 on the information to be provided before the establishment and modification of a functional airspace block;

WHEREAS by creating the South West Functional Airspace Block (henceforth the SW FAB) regardless of existing boundaries, the Parties aim to optimise capacity, effectiveness and efficiency of the Air Traffic Management network, minimise the environmental impact while maintaining a high level of safety and achieve positive general public economic interests;

RECOGNISING the Parties' obligations as signatories to the Convention on International Civil Aviation, opened for signature at Chicago, on 7 December 1944;

RECOGNISING that the Parties shall comply with conditions stemming from regional agreements concluded within the International Civil Aviation Organization (ICAO) and with regional agreements in existence on the date of entry into force of Regulation (EC) No 1070/2009 of the European Parliament and of the Council of 21 October 2009, amending Regulations (EC) No 549/2004, (EC) No 550/2004, (EC) No 551/2004 and (EC) No 552/2004 in order to improve the performance and sustainability of the European aviation system, in particular those involving third countries;

RECOGNISING that the conclusion of an Agreement between States regarding the establishment of a Functional Airspace Block shall not prejudice the principle that every State has complete and exclusive sovereignty over the airspace above its territory or the capacity of every State to exercise its prerogatives with regard to security and defence in its national airspace;

RECOGNISING that the National Supervisory Authorities of each Party shall establish appropriate arrangements for a close cooperation with each other to ensure an adequate oversight of Air Navigation Service Providers within the airspace of the SW FAB;

RECOGNISING the statement by the Member States of the European Union on military issues related to the single European sky (OJ L 96/9 of 31.03.2004), together with the safeguard on essential security and defence policy interests of EU Member States as stated in Article 13 of the Regulation (EC) No 549/2004 of the European Parliament and of the Council of 10 March 2004, laying down the framework for the creation of the single European sky, as amended by regulation (CE) N.º 1070/2009 of the European Parliament and of the Council of 21 October 2009 amending Regulations (EC) No 549/2004, (EC) No 550/2004, (EC) No 551/2004 and (EC) No 552/2004 in order to improve the performance and sustainability of the European aviation system;

RECOGNISING the Parties obligations as part of the North Atlantic Treaty Organization (NATO);

RECOGNISING that the creation of the South West Functional Airspace Block necessarily implies a closer cooperation by the Air Navigation Service Providers and the improved and increasing cross border provision of air navigation services;

HAVING REGARD TO the *Memorandum of Understanding between Instituto Nacional de Aviação Civil (INAC, I.P.), Dirección General de Aviación Civil (DGAC), Agencia Estatal de Seguridad Aérea (AESA), Navegação Aérea de Portugal – NAV Portugal – E.P.E. and Entidad Pública Empresarial Aeropuertos Españoles y Navegación Aérea (Aena)* signed on March 17th, 2009 at Amsterdam.

HAVING REGARD TO the *Spanish and Portuguese Civil NSA Cooperation Agreement for the carrying out of Joint civil NSA functions in the framework of the single European sky* signed on February 25th, 2010 at Madrid and the *Agreement between the civil National Supervisory Authorities of the Portuguese Republic and the Kingdom of Spain regarding the establishment of the SW FAB* signed on May 17th 2012, at Madrid;

HAVING REGARD TO the existing framework for cooperation between the two main air traffic service providers, *Entidad Pública Empresarial Aeropuertos Españoles y Navegación Aérea (Aena)* and *Navegação Aérea de Portugal - NAV Portugal - E.P.E.*, built upon the *Memorandum of Cooperation* signed on May 16th, 2001 at Madrid and the *Framework Agreement for the establishment of the South West Functional Airspace Block between Navegação Aérea de Portugal - NAV Portugal - E.P.E. and Entidad Pública Empresarial Aeropuertos Españoles y Navegación Aérea (Aena)*, signed on June 18th, 2012 at Madrid

HAVING REGARD TO the existing framework between the Spanish Air Force and the Portuguese Air Force in the “*Cooperation Protocol between the Ministry of National*

Defence of the Portuguese Republic and the Ministry of Defence of the Kingdom of Spain", signed on October 26th 1998 at Lisbon, the "*Technical Agreement of cooperation and mutual support between Air Defence System of the Kingdom of Spain and the Portuguese Republic*" signed on May 5th, 1997, at Lisbon and May 13th 1997 at Madrid and the "*Technical Agreement in relation with facilities of mutual over flight and landing of military aircraft of the Kingdom of Spain and the Republic of Portugal*" signed on November 4th 2004 at Madrid and on November 24th 2004, at Lisbon.

HAVING REGARD TO the *Agreement on the Establishment of the South West Functional Airspace Block (SW FAB) between the Instituto de Meteorologia, I.P. Portugal*, currently designated Instituto Português do Mar e da Atmosfera, I.P. and *Agencia Estatal de Meteorología (AEMET)* signed on June 15th 2012 at Lisbon and on June 20th at Madrid;

TAKING INTO ACCOUNT the *Joint Declaration between Instituto Nacional de Aviação Civil (INAC, I.P.), and Dirección General de Aviación Civil (DGAC) on the SW FAB initiative* signed on May 17th, 2012 at Madrid;

CONSIDERING THAT the aim of this Agreement is to create an adequate high level FAB legal framework enabling the necessary agreements and arrangements for implementation and day-to-day operations in the SW FAB and be used by the SW FAB partners for achieving the agreed SW FAB objectives and expected benefits;

CONSIDERING THAT the SW FAB covers the airspace which is under the Parties responsibility within the ICAO EUR region and in addition for the Kingdom of Spain, the particularity of the airspace under their responsibility within ICAO AFI region (*Africa-Indian Ocean Region*) and considering also the need of ensuring the successful integration of the traffic flows between the North and South Atlantic;

CONSIDERING the differences between the SW FAB operational airspace blocks as well as the variety from an operation and technical point of view;

CONSIDERING THAT the Flight Information Region (FIR) of Santa Maria (Santa Maria FIR) covers oceanic airspace outside the ICAO EUR region, the Portuguese Republic reserves the right to review the implications of the eventual integration of the Santa Maria FIR in the SW FAB, yet continue to encourage air navigation services providers to optimize capacity and efficiency with this FIR and all levels of flight in the airspace of SW FAB initiatives and operational techniques as well as from the standpoint of the Air Traffic Management (ATM); and

AIMING AT the creation of the legal and institutional basis for the establishment of the SW FAB between the Parties,

Agree as follows:

CHAPTER 1: GENERAL PRINCIPLES

ARTICLE 1 - Purpose and Scope of this Agreement

1. The Parties hereby agree to establish a South West Functional Airspace Block (SW FAB).
2. This Agreement shall take into account in particular the need for continued coordination between the Parties and potential on-going development of the SW FAB further to its establishment.
3. This Agreement does not create an international organisation with international legal personality.
4. This Agreement defines the rights and obligations of the Parties related to the creation of the SW FAB.
5. This Agreement defines the general conditions and the governance under which the Parties have to ensure air traffic management and the provision of air navigation services in the SW FAB airspace.
6. This Agreement shall not affect the search and rescue obligations of the States. The provisions of this Agreement shall be without prejudice to the competences of the Parties relating to essential security and defence policy interests.
7. This Agreement shall not affect the relations regarding ownership and control issues between air navigation services providers.
8. The following issues are reserved by each Party and are not subject to this Agreement:
 - a) Sovereignty;
 - b) State aircraft within the meaning of Article 3 of the Convention on International Civil Aviation, done at Chicago, on 7 December 1944;
 - c) National security and defence including training and any other operational activities;
 - d) Search and rescue operations;
 - e) Ownership and control issues of the air navigation service providers; and
 - f) Involvement by either Party without the other in any other FAB.

ARTICLE 2 - Definitions

1. For the purposes of this Agreement:

- a) **“Air Navigation Service Provider (ANSP)”** means any public or private entity, providing Air Navigation Services for General Air Traffic;
- b) **“Air Navigation Services (ANS)”** means air traffic services; communication, navigation and surveillance services; meteorological services for air navigation; and aeronautical information services;
- c) **“Air Traffic Control (ATC) service”** means a service provided for the purpose of:
 - i) Preventing collisions:
 - Between aircrafts; and
 - On the manoeuvring area between aircraft and obstructions; and
 - ii) Expediting and maintaining an orderly flow of air traffic;
- d) **“Air Traffic Management (ATM)”** means the aggregation of the airborne and ground-based functions (air traffic services, airspace management and air traffic flow management) required to ensure the safe and efficient movement of aircraft during all phases of operations;
- e) **“Air Traffic Services (ATS)”** means the various flight information services, alerting services, air traffic advisory services and air traffic control (ATC) services (area, approach and aerodrome control services);
- f) **“Air Traffic Services Unit (ATS unit)”** means a unit, civil or military, responsible for providing air traffic services;
- g) **“Applicable airspace”** means, with respect to each Party, the airspace under the Party’s responsibility and determined by such Party as part of the SW FAB;
- h) **“Chicago Convention”** means the Convention on International Civil Aviation, opened for signature at Chicago, on 7 December 1944 and includes:
 - i) Any amendment thereof that has been ratified by the Parties and has entered into force under Article 94, paragraph a of the Convention; and
 - ii) Any Annex or any amendment thereto adopted under Article 90 of the Convention, insofar as the international Standards referred to in Article 37 of the Convention in such Annex or amendment are at any given time effective for the Parties;

- i) **“Party”** means the Portuguese Republic, the Kingdom of Spain, as well as any other State that accesses to the present Agreement as set in Article 33 of this Agreement;
- j) **“Cross-border airspace”** means an airspace structure extending across national borders and/or the boundaries of flight information regions;
- k) **“Cross-border services”** means any situation where air navigation services are provided in one Member State by a service provider certified in another Member State;
- l) **“Delegation of air traffic services (ATS)”** means the delegation from one State (the Delegating State) to another State (the Providing State) of the responsibility for providing air traffic services in a portion of airspace extending over the territories of the former;
- m) **“Functional Airspace Block (FAB)”** means an airspace block based on operational requirements and established regardless of State boundaries, where the provision of air navigation services and related functions are performance-driven and optimised with a view to introducing, in each functional airspace block, enhanced cooperation among air navigation service providers;
- n) **“General Air Traffic (GAT)”** means all movements of civil aircraft, as well as all movements of State aircraft (including military, customs and police aircraft) when these movements are carried out in conformity with the procedures of ICAO;
- o) **“Meteorological Services (MET)”** means those facilities and services that provide aircraft with meteorological forecasts, briefs and observations as well as any other meteorological information and data provided by States for aeronautical use;
- p) **“National Supervisory Authority (NSA)”** means the body or bodies designated by the Parties, to assume the tasks assigned to it (or to them) in accordance with Article 4, paragraph 1 of Regulation (EC) No 549/2004 of the European Parliament and of the Council of 10 March 2004, as amended by regulation (CE) N.º 1070/2009 of the European Parliament and of the Council of 21 October 2009, laying down the framework for the creation of the single European sky;
- q) **“Operational Air Traffic (OAT)”** means all flights which do not comply with the provisions stated for GAT and for which rules and procedures have been specified by appropriate national authorities;
- r) **“Stakeholders”** means the neighbouring third countries to the SW FAB, relevant airspace users or groups of airspace users and staff representative bodies as

well as adjacent air navigation service providers to those in the SW FAB, airport operators and manufacturers;

- s) "**SW FAB airspace**" means the airspace encompassing the applicable airspace of each Party; and
- t) "**Territory**" means the land areas, the territorial waters adjacent thereto and the airspace over which a Party exercises sovereign rights according to international law.

ARTICLE 3 - Objectives of the SW FAB

The objectives of the SW FAB are to achieve optimal performance in the areas related to safety, environmental sustainability, capacity, cost-efficiency, flight efficiency and also military mission effectiveness, throughout the design of airspace and the organisation of air traffic management in the airspace concerned regardless of existing boundaries.

ARTICLE 4 - SW FAB Airspace

1. With respect to airspace falling under their responsibility for provision of Air Navigation Services, the Parties hereby agree to establish a Functional Airspace Block in the applicable airspace of each Party (hereinafter the SW FAB airspace) as follows:
 - a) FIR Lisboa (FL245/UNL);
 - b) UIR Madrid (FL245/UNL);
 - c) UIR Barcelona (FL245/UNL); and
 - d) UIR Canary Islands (FL245/UNL).
2. Any modification and alteration of the delineation of the SW FAB airspace shall be agreed on by the Parties and shall enter into force as provided for in Article 32 of this Agreement.
3. The Parties shall inform the European Commission of the modifications implemented following the process specified in Article 5 of Regulation (EU) No 176/2011 of the Commission of 24 February 2011 on the information to be provided before the establishment and modification of a functional airspace block.
4. The Parties shall, if they agree to modify or alter the SW FAB airspace, ensure that appropriate transitional measures and arrangements are in place.

5. With reference to the FIR Santa Maria the Portuguese Republic will decide on its inclusion in the SW FAB Airspace no later than 31 December 2014.

ARTICLE 5 - Sovereignty

This Agreement shall be without prejudice to the Parties sovereignty over the airspace above their respective territories.

ARTICLE 6 - Security and Defence

1. This Agreement shall be without prejudice to the Parties respective national interests regarding security and defence matters.
2. This Agreement shall not prevent the application of measures by a Party to the extent to which these are needed to safeguard essential security or defence policy interests.
3. Whenever the implementation of this Agreement will be detrimental to their safe and efficient performance each Party shall be entitled to safeguard security and defence operations, training and any other activities of its Operational Air Traffic in accordance with its internal law.

ARTICLE 7 - Reserved Matters

1. All issues concerning the relationships with third parties, related to the international airspace of the ICAO NAT Region under the jurisdiction of the Portuguese Republic, shall be of the sole competence of the Portuguese Republic.
2. All the issues concerning the relationships with third parties, related to the AFI region of the SW FAB under the jurisdiction of the Kingdom of Spain, shall be of the sole competence of the Kingdom of Spain.

CHAPTER 2: SAFETY

ARTICLE 8 - SW FAB Safety

1. The Parties shall commit to cooperate and take the appropriate measures to ensure that the SW FAB will be established and managed safely.
2. The Parties shall jointly ensure the development and establishment of a common safety policy in the SW FAB.

CHAPTER 3: Bodies and Operation

ARTICLE 9 - Bodies of the SW FAB

1. The SW FAB shall be composed by the following bodies:
 - a) Council;
 - b) Supervisory Authorities Committee; and
 - c) Operational Board.
2. The above mentioned bodies have no legal personality.

ARTICLE 10 - Council

1. The Council is established as a joint decision-making body for the purposes of the implementation, operation and further development of this Agreement.
2. The Council is composed of the following representatives from each Party:
 - a) One (1) representative from the authority responsible for civil aviation; and
 - b) One (1) representative from the authority responsible for military aviation.
3. Upon invitation by the Council, representatives of the Supervisory Authorities Committee and the Operational Board as well as other participants may attend the Council meetings as observers.
4. The Council shall be chaired alternately in annual terms by the representative appointed by each Party.
5. The chair of the Council will designate the Point of Contact (PoC) of the SW FAB during this period.
6. The decisions of the Council shall be adopted by unanimity.
7. The decisions of the Council shall become effective two months after the day of their adoption, unless otherwise agreed.
8. If one Party informs the other Party within this period that it can implement the decision only with the agreement of its national authorities, then the decision shall become effective one day after the Party concerned has informed the other Party that the agreement of its national authorities has been obtained.

9. The rules of procedure, adopted by the Council at its first meeting, shall set out the arrangements, in particular for the convening of meetings, the prior dispatch of the agenda, the appointment and term of office of the Chair and the possibility of taking decisions by correspondence.
10. The Council shall meet, at the invitation of its Chairman, at least twice a year and as and when required. Each Party shall be entitled to request the convening of a meeting.

ARTICLE 11 - Functions of the Council

1. In order to meet the commitments of the Parties under this Agreement, the Council shall govern the SW FAB and *inter alia* shall take decisions to:
 - a) Define the policy and strategic objectives for the development of the SW FAB, assess the results achieved in terms of performance and take appropriate measures if required;
 - b) Ensure the implementation of this Agreement and review the progress on the fulfilment of the objectives of the SW FAB;
 - c) Ensure that the SW FAB is established, developed and governed in accordance with all applicable requirements laid down in the single European sky legislation and each Party's national legislation;
 - d) Define the development of the civil and military coordination;
 - e) Define the modalities of the cooperation on the application of the concept of flexible use of airspace;
 - f) Support the harmonisation of relevant rules and procedures;
 - g) Approve the SW FAB common safety policy proposed by the Supervisory Authorities Committee;
 - h) Agree on the common airspace management policy for the SW FAB airspace;
 - i) Facilitate the joint designation process of the air navigation service providers setting the foundations for the establishment of the joint designation mechanisms;
 - j) Ensure the development and coordination of contingency plans within the SW FAB airspace;

- k) Adopt its own rules of procedure and terms of reference and approve the rules of procedure and terms of reference of the Supervisory Authorities Committee, the Operational Board and the Stakeholders Consultation Forum;
 - l) Ensure the coordination of the SW FAB with adjacent functional airspace blocks;
 - m) Coordinate the positions of the Parties with regard to the application of international agreements concerning the work of ICAO, EUROCONTROL, the European Commission, the European Aviation Safety Agency (EASA) and any other international organisation in the field of air navigation services;
 - n) Ensure the consultation with the SW FAB stakeholders where appropriate, through the Stakeholders Consultation Forum;
 - o) Propose amendments to this Agreement;
 - p) Approve the proposals of the Committees and Working Groups established under this Agreement; and
 - q) Approve the SW FAB annual report prepared by the Operational Board taking also into consideration the views expressed by the Supervisory Authorities Committee in relation to that annual report draft.
2. The Council may approve the creation of other Committees and Working Groups.
 3. The Committees and Working Groups shall be composed of civil and/or military representatives appointed by the Parties.
 4. Upon invitation of the Committees and Working Groups, other participants may attend their meetings as observers.

ARTICLE 12 - Stakeholders Consultation Forum

1. The Stakeholders Consultation Forum shall be established as a consultative body of the Council and shall meet at least once a year.
2. The role of this body shall solely be to advise the Council on the implementation of the SW FAB when required.
3. SW FAB stakeholders shall be invited to the Stakeholders Consultation Forum.
4. The Chair of the Council will chair the Stakeholders Consultation Forum.

ARTICLE 13 - Supervisory Authorities Committee

1. The Supervisory Authorities Committee shall be composed by one representative of each NSA, including the military authorities if not established as NSA, and the aeronautical meteorological supervisory authorities of the Parties.
2. The Supervisory Authorities Committee shall be alternately chaired, in annual terms, by the representative of the civil NSA responsible for ATS of one of the Parties and co-chaired by the representative of the civil NSA also responsible for ATS of the other Party.
3. The Supervisory Authorities Committee shall address all matters related to the supervision, performance and harmonisation of the SW FAB and shall execute other tasks entrusted to it by the Council.
4. The Supervisory Authorities Committee shall assist the Council in particular on the implementation of Articles 15, 19, 23 and 24.
5. The Supervisory Authorities Committee shall report to the Council on issues related to the above paragraphs and in particular on:
 - a) The implementation and the achievement of the performance targets; and
 - b) The coordination of the implementation of performance plans between the Parties.
6. The Supervisory Authorities Committee shall propose to the Council the establishment of its working groups and committees.
7. The Supervisory Authorities Committee shall submit for approval by the Council its rules of procedure for its work and the terms of reference.

ARTICLE 14 - Operational Board

1. The Operational Board shall be established to manage the technical and operational functioning of the SW FAB.
2. The Operational Board shall be composed by:
 - a) One (1) representative of the en-route ATS provider of each Party;
 - b) One (1) military representative designated by each Party; and
 - c) One (1) representative of the aeronautical meteorological service providers of each Party.

Other participants may also attend as observers at the invitation of the Operational Board that should inform previously to the Council, pursuant to paragraph k) of paragraph 4 of this Article.

3. The Operational Board shall be chaired alternatively, in annual terms, by the representative from the en-route ATS provider from each Party.
4. The Operational Board shall:
 - a) Ensure the implementation of the policies and objectives defined by the Council;
 - b) Ensure the cooperation between en-route air traffic service providers aiming to obtain an improved and increased cross borders provision of air traffic services;
 - c) Support the Network Manager in the development and on-going activities of the Network Strategic Plan and Network Operations Plan;
 - d) Ensure the development of the civil and military coordination;
 - e) Propose to the Council the modalities of the cooperation on airspace management, including the application of the concept of flexible use of airspace;
 - f) Ensure the operational coordination of the SW FAB with adjacent functional airspace blocks;
 - g) Propose, develop and implement a Common Plan for Projects Development within the scope of the SW FAB to be approved by the Council;
 - h) Prepare and coordinate the SW FAB annual report;
 - i) Propose and define a common management airspace policy to be further approved by the Council;
 - j) Assist the Council on the implementation of this agreement and in particular of Articles 16, 17, 18, 21 and 22; and
 - k) Report to the Council.
5. The Operational Board shall propose to the Council the establishment of its working groups and committees.
6. The Operational Board shall submit for approval by the Council its rules of procedure for its work and the terms of reference.

CHAPTER 4: HARMONISATION

ARTICLE 15 - Harmonisation of rules, standards and procedures

1. The Parties shall, when feasible, ensure regulatory synergies and consistent approaches with regard to the rules, standards and procedures applied within the SW FAB.
2. Until such harmonised rules and procedures referred to in paragraph 1 have been established, the rules and procedures of the Party in which the air navigation service is provided shall apply.
3. Without prejudice to paragraph 2 and with regard to the air navigation services provision in the cross-border airspace, the national rules, standards and procedures in the Party that certified the ANSP providing the air navigation services shall apply.

CHAPTER 5: AIRSPACE

ARTICLE 16 - Airspace Design and Management of the SW FAB

1. The Parties shall ensure the coordination of the design and management of a seamless SW FAB airspace as well as the implementation of coordinated air traffic flow and capacity management (ATFM) taking international collaborative processes and national security and defence aspects and requirements into consideration regardless of existing boundaries.
2. The Parties shall ensure in particular:
 - a) The development of the common airspace management policy, in close cooperation between civil and military authorities;
 - b) The harmonisation of the airspace structure of the SW FAB to facilitate a seamless airspace;
 - c) The design of the SW FAB airspace structure according to main traffic flows ensuring optimum airspace utilisation and ensuring also military mission effectiveness;
 - d) The joint examination of modifications concerning the SW FAB airspace and affecting the performance at the SW FAB level; and
 - e) The coordinated establishment of cross-border areas and the accomplishment of the arrangements for the delegation of ATS between air traffic service providers.

3. The Parties shall ensure civil and military collaboration in cooperative decision-making (CDM) processes to be engaged with the Network Manager by:
 - a) Formulating consolidated views related to the network functions;
 - b) Supporting the review the European Route Network Plan;
 - c) Supporting the review the European Route Network Improvement Plan; and
 - d) Implementing the applicable measures resulting from these network related Plans.

CHAPTER 6: PROVISION OF AIR NAVIGATION SERVICES

ARTICLE 17 - Provision of Air Navigation Services and functions

1. The following air navigation services and functions shall be provided in the SW FAB:
 - a) Air Traffic Services (ATS);
 - b) Communication, navigation and surveillance services (CNS);
 - c) Meteorological services (MET);
 - d) Aeronautical information services (AIS);
 - e) Air Space Management (ASM); and
 - f) Air Traffic Flow Management (ATFM).
2. The Parties shall encourage close cooperation among air navigation service providers and entry into written agreements regarding operational and technical arrangements of relevance for the provision of air navigation services within the SW FAB.
3. The Parties shall work towards harmonised and interoperable technical systems on a cost-efficient deployment of infrastructure for the provision of air traffic management and communication, navigation, surveillance and meteorological services by the civil and military air navigation service providers.
4. The Parties shall cooperate in the field of aeronautical information and coordinate the provision of aeronautical information services.
5. The Parties, through the relevant air navigation service providers, shall ensure smooth and flexible transfer of responsibility for air traffic control between ATS units.

6. In case of written agreements or equivalent legal arrangements between air navigation service providers of the SW FAB Parties and other air navigation services providers of neighbouring States, the Party concerned shall ensure that such written agreements do not affect this Agreement and are communicated to the Council.

ARTICLE 18 - Cross-Border Air Navigation Service Provision

1. Based on operational needs, the Operational Board may propose to the Council, after endorsement by the Supervisory Authorities Committee, the establishment of cross-border airspace within the SW FAB airspace. The decision of the Council shall apply after the approval by each Party following the respective national rules and procedures.
2. In the cross-border airspace established in accordance with paragraph 1 above, the air navigation services shall be provided based on specific written arrangements concluded between the designated ANSPs and endorsed by the Supervisory Authorities Committee.
3. The Parties shall ensure that their NSAs conclude appropriate arrangements for the supervision of air navigation services provided in the established cross-border airspace.
4. The existing arrangements between ANSPs for the provision of air navigation services in the established cross-border airspace which are in operation on the date of entry into force of this Agreement shall be assessed for possible revision in accordance with the provisions set out in this Agreement.

CHAPTER 7: CERTIFICATION AND OVERSIGHT

ARTICLE 19 - Certification and Oversight

1. The Parties shall ensure that their civil NSAs conclude appropriate arrangements for the cooperation on the supervision and oversight of ANSPs within the SW FAB airspace and that their practices are harmonised.
2. The arrangements providing for the detailed conditions of the exercise of the rights and obligations of the civil NSAs under this article and for the exchange and dissemination of safety related information shall be communicated by the NSAs to the Council.
3. The Parties shall ensure that the ANSPs facilitate the work of the Parties and/or their NSAs, as the case may be, in monitoring and verifying compliance with regulatory

requirements. This shall include providing all relevant evidences to demonstrate compliance at the request of the NSAs and facilitating inspections and surveys by the NSAs.

4. The Parties shall mutually recognise the supervisory tasks of the NSAs of the other Party and the results of these tasks.
5. The civil NSA that issued the certification to an ANSP providing cross-border services in the SW FAB shall be in charge of the supervision of that ANSP in close cooperation with the civil NSA of the other Party concerned.
6. The Parties may allow the provision of air navigation services in all or part of their applicable airspace to ANSPs without certification in cases where the provider of such services offers them primarily to aircraft movements other than General Air Traffic.

CHAPTER 8: DESIGNATION

ARTICLE 20 - Designation of Air Traffic and Meteorological Services Providers

1. The Parties shall establish a common mechanism for the joint designation of the air traffic service providers of the SW FAB and their areas of responsibility.
2. Until such a common mechanism has been established, any air traffic service provider designated by one Party shall be deemed jointly designated by the Parties as from the date of notification of the designation to the other Party.
3. Each Party shall be entitled to repeal or amend such designation of one or more air traffic service provider(s) to provide air traffic services in its applicable airspace wholly or partially.
4. The Parties shall inform one another on the rights and obligations of the designated air traffic service providers and meteorological service providers at national level and of any change in their certification or their legal status.
5. The Parties shall jointly inform the European Commission and other Member States of any decision taken under this article concerning the designation of air traffic service providers and meteorological service providers in SW FAB.
6. The Parties shall ensure cooperation among providers of aeronautical meteorological services. Each Party may designate providers of the aeronautical meteorological services on an exclusive basis in all or part of the airspace under responsibility and inform the Council thereof.

CHAPTER 9: CIVIL AND MILITARY COOPERATION

ARTICLE 21 - Civil-Military Coordination

1. The Parties shall ensure that appropriate consultation and coordination mechanisms between the competent civil and military authorities and between these authorities and the relevant stakeholders on issues of common interest affecting the SW FAB are formalized.
2. For the provision of cross-border services in the SW FAB airspace, the Parties shall ensure close coordination between civil ANSPs and military authorities.

ARTICLE 22 - Flexible Use of Airspace

1. The Parties shall cooperate at legal, operational and technical level for the efficient and consistent application of the concept of flexible use of airspace taking into account both civil and military requirements.
2. The Parties shall ensure that common agreements and harmonized procedures are set up between civil and military air traffic service providers.
3. The Parties shall ensure that civil and military authorities coordinate at the strategic, pre-tactical and tactical levels of airspace management.
4. This Agreement does not affect the right of each Party to apply the flexible use of airspace concept when reserving, restricting or otherwise organizing defined volumes of airspace extending across its applicable airspace, for exclusive or specific use of military users and/or aircraft operated as Operational Air Traffic.

CHAPTER 10: PERFORMANCE

ARTICLE 23 - Performance

1. The Parties aim at elaborating and adopting a joint performance plan for the SW FAB consistent with the European Union-wide performance targets and an appropriate incentive scheme, taking security and defence needs into account.
2. In case a decision for the joint elaboration of a performance plan at SW FAB level is taken, the Parties shall agree on the appropriate arrangements regarding elaboration, performance elements and targets definition, adoption, implementation and monitoring of the performance plan, taking into account the regional singularities of the different areas pertaining to the SW FAB.

3. Until such a time a joint performance plan is elaborated, the Parties shall ensure that aggregated performance targets at SW FAB level are determined from the respective National Performance Plans for Air Navigation Services of the Parties and communicated for information to the European Commission.

CHAPTER 11: CHARGING

ARTICLE 24 - Charging Zones

1. The Parties shall strive to develop and apply common principles governing charging policy within the SW FAB, taking into account the possibility of national exemptions.
2. In the meantime, the Parties hereby conclude and agree that all existing charging zones within the SW FAB airspace shall remain in effect until otherwise agreed upon by the Parties.

CHAPTER 12: ACCIDENTS AND SERIOUS INCIDENTS

ARTICLE 25 - Safety Investigation of Accidents and Serious Incidents

1. A Party will institute a safety investigation into the circumstances of accidents or serious incidents occurring in its territory and areas under its responsibility. In case a military aircraft is involved in accidents or serious incidents, applicable national regulations shall be observed.
2. At its request, the Party in which the accident or serious incident occurred shall be provided with and have access to the necessary materials from the Parties ATS Units and authorities involved (e.g. radar data recordings, tape transcriptions) in order to enable the conduct of a safety investigation into the accident or serious incident.
3. To enable the efficient and unimpeded inquiry, a Party shall allow the other Party conducting the inquiry to carry out the necessary safety investigations in its territory.
4. A Party shall be given the opportunity to appoint observers to be present at the safety investigation initiated by the Party over which territory the accident or serious incident occurred.

ARTICLE 26 - Accident and Incident Reporting and Information Dissemination

1. The Parties shall have in place appropriate accident and incident reporting mechanisms in conformity with international and European regulations, and shall foster an enhanced open reporting / Just Culture environment.
2. In the event of an accident or a serious incident occurring in the SW FAB, the Party conducting the safety investigation shall immediately inform the Council if it identifies shortcomings at the SW FAB level.
3. The Party conducting the inquiry shall provide the other Party, at its request and subject to national legislation with the report and findings of the safety investigation concerning the provision of air traffic services within the SW FAB that are of relevance for the flight safety.
4. The accident and incident reports submitted by one Party to the other Party shall be treated at the same level of secrecy and confidentiality that applies to them under the legislation of the Party in which they were originally drawn up.

CHAPTER 13: CONTINGENCY PLANS

ARTICLE 27 - Contingency Plans

1. The air navigation service providers designated by the Parties shall coordinate their contingency plans for the air navigation services provided within the SW FAB in particular establishing the procedures among the ATS units, aeronautical meteorological service providers and authorities concerned. The contingency plans shall be developed in compliance with, *inter alia*, the requirements of the single European sky and national legislation.
2. The Parties shall establish adequate arrangements in order to ensure that contingency modes of operations do not affect the smooth and flexible transfer of responsibility for ATC between ATS units.

CHAPTER 14: CIVIL LIABILITY

ARTICLE 28 - Civil Liability

1. The Parties are liable for damages caused by them or by one of its agents or of any other person acting on its behalf in the execution of any activities under this Agreement, in cases of wilful misconduct or negligence.

2. A Party may bring a claim against other Party to apply for redress for any costs incurred as a result of damages caused by it or by one of its agents or any other person acting on its behalf in the execution of any activities under this Agreement, in cases of wilful misconduct or negligence.
3. Unless otherwise agreed by the Parties, the law applicable to disputes regarding civil liability shall be the internal law of the Party where the damages were caused.

CHAPTER 15: FINAL PROVISIONS

ARTICLE 29 - Relation with other international conventions

The provisions of this Agreement shall not affect the rights and obligations deriving from other international conventions, to which the Parties are party, namely the provisions of the Chicago Convention.

ARTICLE 30 - Consultations

The Parties may, at any time, request consultations regarding the application of this Agreement.

ARTICLE 31 - Settlement of Disputes

1. Any dispute concerning the interpretation or application of this Agreement shall be settled, if possible, through negotiation, through diplomatic channels.
2. If the dispute cannot be settled within six months, it shall be submitted, at request by one of the parties to the dispute, for decision to an *ad hoc* arbitral tribunal.
3. The arbitral tribunal shall be constituted of three arbitrators, appointed as follows:
 - a) Each party shall appoint an arbitrator within two months of the receipt of the written request for arbitration;
 - b) The two arbitrators so appointed shall together within two months appoint, a national of a third State with which both parties have diplomatic relations, as president of the arbitral tribunal.
4. If the arbitral tribunal is not constituted within four months of the receipt of the written request for arbitration, either party may request the President of the International Court of Justice to make the necessary appointments.

5. If the President of the International Court of Justice is a national of one of the parties or is prevented from making the appointments for any other reason, the next member in the hierarchy of the International Court of Justice who is not a national of either party or who is not prevented shall be requested to make the appointments.
6. The arbitral tribunal shall determine its own rules of procedure and shall render its decisions in accordance with the provisions of this Agreement and with the applicable International Law.
7. The decisions of the arbitrator are taken by majority vote and its decisions shall be binding for all parties.
8. In the event of a dispute regarding the meaning and scope of a decision, it is up to the arbitral tribunal to interpret it, by request of any of the parties.
9. Each Party shall bear the costs of the respective arbitrator, as well as the appropriate representation before the arbitral tribunal, including the fees and expenses, while the expenses regarding the President and the Court will be supported in equal parts.

ARTICLE 32 - Amendment

1. This Agreement may be amended by request of one of the Parties or following a proposal of the Council.
2. The amendments shall be subject to ratification, acceptance or approval by the Parties.
3. The amendments shall enter into force in accordance with the terms specified in Article 34 of this Agreement.
4. The Parties shall inform the European Commission and, if necessary, adjacent FABs and neighbouring States of the amendments to this Agreement.

ARTICLE 33 - Accession

1. This Agreement shall be open for accession from the date on which the Agreement enters into force.
2. States which are not Party to this Agreement may accede to it by submitting a request to the Council through the point of contact for the SW FAB.

3. Accession shall be accepted by mutual agreement of the Parties.
4. The conditions of accession and any resultant adjustments to this Agreement shall be subject of an agreement between the Parties and the requesting State.
5. The Parties and the requesting State shall agree upon a common budget covering the expenses for the accession.
6. This Agreement shall enter into force for the acceding State thirty days after the date of the receipt of its notification to the Parties.

ARTICLE 34 - Entry into Force

1. This Agreement shall enter into force thirty days after the date of the receipt of the latter of the notifications, in writing through diplomatic channels, conveying the completion of the internal procedures of each Party required for that purpose.
2. The Parties shall inform the European Commission and adjacent FABs and neighbouring States of the entry into force of this Agreement and the date of the entry into operation of the SW FAB.

ARTICLE 35 - Suspension

1. Each Party may temporarily suspend the application of this Agreement, wholly or partially, on grounds of public order, public health and national security.
2. The suspension of this Agreement, as well as its termination, shall be immediately notified, in writing and through diplomatic channels, to the Parties and to the European Commission.
3. The suspending Party shall make its best endeavours to terminate the suspension as soon as practicably possible.
4. The suspending Party shall bear the costs resulting from such suspension.
5. The financial consequences resulting from the suspension shall be determined in a special agreement between the Parties.

ARTICLE 36 - Withdrawal of this Agreement

1. Any Party may, at any time, withdraw from this Agreement upon a notification, in writing and through diplomatic channels, of its intention to withdraw, with at least twelve months notice.
2. The withdrawing Party shall bear the costs resulting from that withdrawal.
3. The financial consequences resulting from the withdrawal shall be determined in a special agreement between the Parties.
4. The withdrawing Party shall immediately inform the European Commission and adjacent FABs and neighbouring States of its decision to withdraw from the SW FAB.

ARTICLE 37 - Termination

1. This Agreement may be terminated by written agreement between the Parties, in which they shall agree upon the date from which this Agreement will cease to be in force.
2. The Parties shall jointly determine and allocate the cost resulting from the termination of this Agreement.
3. The SW FAB Council shall immediately inform the European Commission and adjacent FABs and neighbouring States of the termination of this Agreement.

ARTICLE 38 - Notices

All notices under this Agreement shall be in English and in writing unless otherwise agreed.

ARTICLE 39 - Registration

This Agreement shall be registered with ICAO in accordance with the provisions of Article 83 of the Chicago Convention.

IN WITNESS WHEREOF the undersigned, having been duly authorised by their respective Governments, have signed this Agreement.

Done at Lisbon, on 17th of May 2013, in two originals, in the Portuguese, Spanish and English languages, all texts being equally authentic.

For the Portuguese Republic

For the Kingdom of Spain

Mr. Álvaro Santos Pereira
Ministry of Economy and Employment

Ms. Ana Pastor
Ministry of Public Works