

# **Internal Cooperation Agreement**

## **for the SESAR Deployment Framework Partnership Agreement**



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## **Parties, Effective Date**

This Internal Cooperation Agreement (the “**Agreement**”) is made and entered into as of 31 May 2015 (the “**Effective Date**”) by and between the following partners within the meaning of the SESAR Deployment FPA (hereinafter referred to individually as a “**Party**” and collectively as the “**Parties**”):

Société Air France, a French Société Anonyme, having its headquarters at 45 rue de Paris 95747 Roissy Charles de Gaulle Cedex, registered at Bobigny under n°420 495 178 (“**Air France**”);

Austro Control Österreichische Gesellschaft für Zivilluftfahrt mit beschränkter Haftung, a company organised and existing under the laws of Austria, whose registered office is at Schnirchgasse 11, A-1030 Wien, Austria, commercial register entry number (FN) 71000m (“**ACG**”);

Croatia Control Ltd, a state owned company organised and existing under the laws of Croatia, whose registered office is at Rudolfa Fizira 2, Velika Gorica, Croatia, company number 080328617 (“**Croatia Control**”);

Deutsche Lufthansa Aktiengesellschaft, a German company, whose registered office is at Von-Gablenz-Strasse 2-6, D-50679 Köln, company number HR B 2168 (“**LH**”);

The State of France, Ministry of ecology, sustainable development and energy, DGAC (Direction Générale de l’Aviation l’Aviation Civile), DSNA (Direction des Services de la Navigation Aérienne), a government entity organised and existing under the laws of France, with registered office at 50 rue Henry Farman, 75720 Paris cedex 15, France (“**DSNA**”);

DFS DEUTSCHE FLUGSICHERUNG GmbH a limited liability company registered under number: HRB 34977 and located at Am DFS-Campus 10, 63225 Langen Germany (“**DFS**”);

easyJet Airline Company Limited, whose registered office is at Hangar 89, London Luton Airport, Luton, Bedfordshire, LU2 9PF with company number 3034606 (“**easyJet**”);

ENAIRES, (formerly AENA, which has changed its legal name to ENAIRES according to Article 18 of Act (Ley) 18/2014, of 15<sup>th</sup> October 2014, which will continue existing with the same nature and legal regime as previously established) a Business Public Entity organized and

existing under the laws of Spain, with registered office at Arturo Soria, 109, 28042, Madrid, Spain ("**ENAIRE**");

ENAV S.p.A. a company organized and existing under the laws of Italy, having as single shareholder the Italian State, with registered office at Via Salaria 716, 00138 Rome, Italy ("**ENAV**");

British Airways plc, whose registered office is at Waterside, PO Box 365, Harmondsworth, UB7 0GB, England with company registration number 1777777 ("**British Airways**");

Irish Aviation Authority (IAA), a state owned company organised and existing under the laws of Ireland, whose registered office is at Times Building, 11-12 D'Olier street Dublin, Ireland, company number 211082 ("**IAA**");

Lufftartsverket, a state enterprise organised and existing under the laws of Sweden, whose registered office is at Vikboplan 11, 601 79 Norrköping, Sweden, company number 202195-0795 ("**LFV**");

NATS (En Route) PLC, whose registered office is at 4000 Parkway, Whiteley, Fareham, Hampshire, England, PO15 7FL Company Number 4129273 ("**NATS**");

Naviair, a state owned company organised and existing under the laws of Denmark, whose registered office is at Naviair Allé 1 2770 Kastrup, Denmark, company number EAN5798000893375 ("**NAVIAIR**");

Polish Air Navigation Services Agency, a state legal entity organised and operating under the Act of 8 December 2006 on Polish Air Navigation Services Agency, National Business Registry Number: 140886771, tax identification number: 522283832, located at Wieżowa 8 street, 02-147 Warszawa, Poland ("**PANSA**");

Sesar Related Deployment Airport Operators Grouping, GEIE, Rue Montoyer 10, 1000 Brussels ("**SDAG**");

Each of the above also referred to individually as the "**Coordinating Partner**", and collectively as the "**Coordinating Partners**" as defined in the SESAR Deployment FPA.

## **WHEREAS**

The Coordinating Partners have concluded a Framework Partnership Agreement ("**SESAR Deployment FPA**") with the European Commission (the "**Commission**") acting on behalf

of the European Union (“EU”) for the purpose of a timely, coordinated and synchronised deployment of ATM Functionalities developed through the SESAR programme and have by the same act become the Deployment Manager and the coordinator of the SESAR Deployment FPA;

The partners in the SESAR Deployment FPA are requested to conclude an internal co-operation agreement regarding their operation and co-ordination, by virtue of Article I.5 of the SESAR Deployment FPA Agreement, in order to make appropriate internal arrangements for the proper implementation of the grants awarded and expected to be awarded to them, by virtue of Article II.1.1(e) of the SESAR Deployment FPA and as defined in the Call for Proposal no. MOVE/E2-2014-717/SESAR FPA and the respective Explanatory Memorandum;

The partners of the SESAR Deployment FPA are required to agree on their operation and coordination, related to the management of the Deployment Programme, including synchronising, coordinating and assessing the performance of the implementation of the projects to be executed in the framework of this FPA;

In order to effectively implement the SESAR Deployment governance set-up as provided for in the Commission Implementing Regulation (EU) No 409/2014, in the Call for Proposal no. MOVE/E2-2014-717/SESAR FPA and the respective Explanatory Memorandum, the partners of the SESAR Deployment FPA should agree on one set of provisions that will apply to the SESAR Deployment Manager acting as coordinator of the SESAR Deployment FPA, laying down the mechanisms necessary for execution of its tasks, and another set of provisions establishing the working arrangements with other partners, who are not in the SESAR Deployment Manager (“the Agreement”);

This Agreement is also required to include the mechanism for the financing of the SESAR Deployment Manager by the Implementing Partners, in its role of coordinator of the Framework Partnership (“FPA Coordinator’s tasks”);

The Parties intend that this Agreement shall act as the Internal Cooperation Agreement;

and

The Parties are committed to an effective cooperation for the timely, synchronised and coordinated deployment of ATM functionalities developed through the SESAR Programme.

**NOW THEREFORE**, the Parties have agreed as follows:

## **Definitions and interpretation**

Words beginning with a capital letter shall have the meaning defined either herein or in the SESAR Deployment FPA including its schedules without the need to replicate said terms herein.

**Action** means an action as defined in Article I.1.1.3 of the SESAR Deployment FPA, i.e. either a Connecting Europe Facility (“CEF”) programme support action or an INEA Implementation Action, which can consists of one or more Implementation Projects;

**Action Coordinator** means the SESAR Deployment Manager acting as coordinator within each INEA Implementation Action;

**Action Leader** means the Implementing Partner designated by all of the Implementing Partners of a given Implementation Action as the interlocutor with the SESAR Deployment Manager and the leader of that Action for and on behalf of all Implementing Partners of such Action, and as the focal point for the flow of technical and economic information and regular updates to the Action Coordinator;

**Action Plan** means the Action Plan 2014-2020 as annexed to the SESAR Deployment FPA comprising the description of the Deployment Manager Tasks, and the Deployment Programme;

**Affiliate or Affiliated Entity** means, with respect to a particular Party, (i) several legal entities forming together one legal entity or 'sole partner' which may, or may not, have been specifically established for carrying out the Action Plan. The legal entities forming the 'sole partner' have to fulfil the eligibility, exclusion and selection criteria; or (ii) legal entities having a legal or capital link with a partner (implementing or coordinating partner), which is neither limited to the Action Plan nor established for the sole purpose of its implementation. These affiliated entities have to fulfil the eligibility and exclusion criteria.

**Agreement** means this Internal Cooperation Agreement;

**ATM Master Plan** means the European Air Traffic Management Master Plan;

**Commission** means the European Commission;

**Common Project** means projects as defined in Art. 15a of the Regulation (EC) No. 550/2004 and in Chapter II of the Commission Implementing Regulation (EU) No. 409/2013;

**Consortium** means the SESAR Deployment Alliance awarded of the role of SESAR Deployment Manager;

**Consortium Agreement** means the Consortium Agreement signed by the coordinating partners on for the purpose of the operation of the Deployment Manager.

**Coordinating Partner** means a partner of the SESAR Deployment FPA that is part of the management (level 2) and implementation (level 3) levels of the SESAR deployment governance, meaning that it forms together with the other Coordinating Partners, the Deployment Manager, and that it will also carry out implementation projects so that each Coordinating Partner is also an Implementing Partner;

**Deployment Programme** means the work programme of the SESAR Deployment framework partnership forming part of the Action Plan, as defined in Section II of Chapter III of the Commission Implementing Regulation (EU) No. 409/2013 ;

**Force Majeure** means any unforeseeable exceptional situation or event beyond a Party's control, which prevents it from fulfilling any of its obligations under this Agreement, which was not attributable to error or negligence on its part or on the part of its subcontractors, Affiliated Entities or third parties involved in the performance of obligations under this Agreement, the SESAR Deployment FPA and/or relevant SGA and which proves to be inevitable in spite of exercising all due diligence, best practice and appropriate preventative actions. Any default of a service, defect in equipment or material or delays in making them available, unless they stem directly from a relevant case of force majeure, as well as labour disputes, strikes or financial difficulties cannot be invoked as force majeure;

**FPA Coordination Fee** means the fee owed and paid to the SESAR Deployment Manager by the Implementing Partners for the performance of the FPA Coordinator's Tasks in accordance with section B paragraph 6 below;

**FPA Coordination Work-package** is the work package systematically inserted to the work breakdown structure of every SGA for an Action in accordance with Section B, paragraph 6 of this Agreement, in order for the SESAR Deployment Manager to act as Action Coordinator;

**FPA Coordinator** means the SESAR Deployment Manager acting as coordinator of the SESAR Deployment FPA, performing the Coordinator's Tasks pursuant to the Regulation, Article II.1.3 of the SESAR Deployment FPA, and as defined below;



**FPA Coordinator's Tasks** means the SESAR Deployment Manager's general obligations and role, as FPA Coordinator, under Article II.1.3 of the SESAR Deployment FPA and as described in the Agreement;

**Implementing Partner** means a partner of the SESAR Deployment FPA that is part of the implementation level, meaning that it will carry out one or more Implementation Projects; the term refers to such partners that are only part of the implementation level as well as to Coordinating Partners in their implementing role;

**Implementation Project(s)** means the specific project(s) for the implementation of air traffic management ("ATM") functionalities included in Common Projects, carried out by civil and military operational stakeholders;

**Implementation Project Leader** means the organisation leading the Implementation Project;

**Implementation Project Manager** means the person nominated by the Implementation Project Leader as accountable for managing the project and ensuring the communication with the Deployment Manager and the Action Leader, acting as focal point for the information flow about the Implementation Project;

**INEA** means the Innovation and Networks Executive Agency;

**Management Team** means the SESAR Deployment Manager's team comprising the Managing Director and the managers of the functional areas reporting directly to the Managing Director;

**Managing Director** means the person appointed by the Coordinating Partners to lead and be accountable for the activities of the SESAR Deployment Manager;

**Maximum Grant Amount** means the maximum amount specified in Article 3 of an SGA for any Implementation Project;

**New Implementing Party** means an entity whose proposal has been selected for funding and will therefore be implementing an Implementation Project, or part of it, who is not yet a party to this Agreement;

**Operational Stakeholders** means those operational stakeholders as defined in Articles 2(10) and 9 of the Regulation (EU) No 409/2013, who invest or are expected to invest in the execution of the Pilot Common Project and future Common Projects;

**Party or Parties** means any party to this Agreement;

**Regulation** means the Commission Implementing Regulation (EU) No 409/2013 on the definition of common projects, the establishment of governance and the identification of incentives supporting the implementation of the European Air Traffic Management Master Plan;

**SCP** means Stakeholder's Consultation Platform;

**SESAR** means Single European Sky ATM Research;

**SESAR Deployment FPA** means the framework partnership agreement within the meaning of Article 178 of Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 concluded between the Commission, the Coordinating Partners and the Implementing Partners dated on 5th December 2014;

**SESAR Deployment Manager** means the SESAR deployment manager as described and set out in the Commission Implementing Regulation (EU) No 409/2013 (the "Regulation") and the SESAR Deployment FPA;

**SESAR Deployment Manager General Obligations** means the tasks to be performed by the SESAR Deployment Manager according to Article 9 of the Regulation;

**Specific Grant Agreement (SGA)** means either a specific grant agreement for a "programme support action" as referred to in Article 2(7) of the Regulation (EU) No 1316/2013 establishing the Connecting Europe Facility ("CEF") awarded and managed by the Commission, or a specific grant agreement for an Action as referred to in Article 2(8) of the Regulation (EU) No 1316/2013 awarded by the Commission and managed by INEA;

**SJU** means the SESAR Joint Undertaking; and

**Supervisory Board** means the supervisory board of the SESAR Deployment Manager in accordance with Section A(2)(b) of this Agreement.

### **Form and Purpose of the Internal Cooperation**

This Agreement sets out the provisions on the internal cooperation by and between the partners of the SESAR Deployment FPA, in order to establish the structures and mechanisms for the organisation and coordination of the SESAR Deployment FPA.

## **A. SESAR Deployment Manager structure & operation**

### **1. SESAR Deployment Manager tasks and obligations**

The SESAR Deployment Manager has the following obligations and tasks:

#### **a) SESAR Deployment Manager Tasks under Article 9 of the Regulation**

The SESAR Deployment Manager shall be responsible for the management level of the SESAR deployment governance and shall adhere to the obligations set out in Article 9 of the Regulation. To this end it shall, in particular, but without limitation:

- i. develop, propose, maintain and implement the Deployment Programme;
- ii. ensure the efficient synchronisation and overall coordination of the Implementation Projects and the related investments in line with the Deployment Programme;
- iii. monitor the achievement of the Single European Sky performance objectives;
- iv. establish and maintain appropriate cooperative arrangements at least with National Supervisory Authorities, with the Network Manager, with the designated military coordinator, with the SJU and with the manufacturing industry;
- v. establish consultation mechanisms so as to represent the views of stakeholders that are required to implement the Common Projects; and
- vi. carry out support activities as required to enable the efficient performance of the above tasks, including the coordination between the Coordinating Partners.

To perform the tasks described above, the SESAR Deployment Manager will liaise with all Action Leaders and Implementation Project Managers.

#### **b) SESAR Deployment Manager Tasks as Coordinator of the FPA**

Under Article II.1.3 of the SESAR Deployment FPA (*General Obligations and Role of The Coordinator*) the SESAR Deployment Manager, acting as FPA Coordinator, is required to coordinate the activities of the Implementing Partners (FPA Coordinator's Tasks).

##### **i. Coordination of the Implementing Partners in the SESAR Deployment FPA**

The role of the SESAR Deployment Manager as FPA Coordinator includes:

- (a) monitoring the Action Plan and Actions in the form of Implementation Projects in order to ensure they are implemented in accordance with the SESAR Deployment FPA and the Specific Grant Agreements (“SGAs”), including the relevant Annexes;
- (b) acting as the intermediary for the communications between the Implementing Partners and the Commission (as reported in the paragraph above);
- (c) providing all the necessary documents to the Commission in the event of checks and audits initiated before the payment of the balance with regard to INEA funding, and in the event of evaluation in accordance with Article II.27 of the SESAR Deployment FPA;
- (d) acting as the vehicle for the Implementing Partners of any given Implementation Project to receive the funds from INEA in accordance with the respective SGA. Section B, paragraph 5 details this process; and
- (e) providing INEA with the Action Status Reports Concerning the SGAs for Actions covering Implementation projects.

In order to enable the SESAR Deployment Manager to fulfil the above tasks, the Implementing Partners will provide information to the SESAR Deployment Manager as set out in Section C, paragraph 3 of this Agreement.

## **ii. FPA Coordination Work-package in the Implementation Action**

To perform the tasks described above at (i) the level of an Implementation Action, the SESAR Deployment Manager will act as Action Coordinator through an “FPA Coordination Work-package” that will be systematically inserted into the work breakdown structure of every Implementation Action proposal to be submitted to INEA and to any SGA for Implementation Action selected for funding by INEA in accordance with Section B, paragraph 6 of this Agreement.

This work-package will establish the link with each of the single Implementation Projects, funded through a Specific Grant Agreement, that the SESAR Deployment Manager requires to access, in order to collect with the support of the other Implementing Partners the necessary information to perform its tasks as FPA coordinator in accordance with Section A, paragraph (1)(b).

The SESAR Deployment Manager will not be responsible for the management, delivery or leadership of any Implementation Project under an SGA or the application for a project to be submitted to the Commission/INEA.

The SESAR Deployment Manager may, at its sole discretion, request Implementing Partners to support its role as Action Coordinator, carrying out specific activities on its behalf in the context of Implementation Action that are within the remit and scope of the SESAR Deployment Manager as FPA Coordinator. Where it chooses to do so, and subject to the agreement of the relevant FPA partner and providing information to the Commission, funding will be made available by the SESAR Deployment Manager to these Implementing Partners to cover 100% of their costs incurred by this activity in supporting the SESAR Deployment Manager as Action Coordinator. This provision applies with regard to the SESAR Deployment Manager Tasks as reported within the FPA Coordination Work-package.

## **2. SESAR Deployment Manager governance**

### **a. General Principle**

The SESAR Deployment Manager is seated in Brussels and organised in three distinct levels:

- Level A: The Supervisory Board
- Level B: The Management Team
- Level C: The Functional Areas

### **b. Supervisory Board (Level A)**

The Supervisory Board is the formal decision-making body of the SESAR Deployment Manager.

The three groupings of operational stakeholders: airspace users, airport operators and air navigation service providers, which together form the SESAR Deployment Manager, are represented in the Supervisory Board.

Each of these three groupings of operational stakeholders shall have one vote in any decision of the Supervisory Board.

The following decisions of the Supervisory Board require unanimity, such as, without limitation:

- i. To propose amendments of the Consortium Agreement (including, without limitation, accession, withdrawal and dismissal of parties, and termination of the SESAR Deployment Manager);

- ii. To propose conversion of the Consortium into another type of entity, especially incorporation of a common legal entity;
- iii. Appointing to, and removing from post the members of the Management Team, including the Managing Director;
- iv. Executive endorsement for submission of proposals to the Commission for the revision of Common Projects contents or new contents;
- v. Executive endorsement for submission of proposals to the Commission on modifications of the Deployment Programme contents;
- vi. Executive endorsement for submission of proposals to the Commission on mitigation measures e.g. incentive mechanisms for implementation of the Deployment Programme;
- vii. Procurement decisions of outsourcing functions and tasks of the SESAR Deployment Manager (in excess of the Managing Director delegated financial authority);
- viii. Adoption of, change to, or deviation from the Business Plan (Action Plan and annual budget of the SESAR Deployment Manager);
- ix. Entry into/amendment of strategic agreements with third parties (e.g. SJU, Network Manager, etc.);
- x. Nature and content of the delegation of tasks/powers to the Managing Director;
- xi. Endorsement of the annual accounts; and
- xii. Adoption of the Supervisory Board TOR or any amendment thereto.

The Supervisory Board may expand this list by unanimous vote. All other decisions not set out in the above list or identified elsewhere in this Agreement as unanimous decisions shall be adopted by simple majority vote. To avoid doubt, the Supervisory Board has no authority to amend this Agreement.

**c. Management Team (Level B)**

The Management Team is responsible for the day-to-day management of the SESAR Deployment Manager's Tasks and FPA Coordinator's Tasks under the SESAR Deployment FPA and this Agreement.

The Management Team comprises the Managing Director and the managers reporting directly to the Managing Director.

**d. Functional Areas (Level C)**

The SESAR Deployment Manager is initially organised into seven (7) functional areas:

- i. "Financial sustainability", covering the development of network and local levels cost and benefit analysis, the identification and development of financial mechanisms such as incentives or alternative ways to fund the implementation projects within the common projects and the assessment of their actual contribution to performance improvements;
- ii. "Operational and Technical Deployment", covering (1) the development, maintenance and realisation of the Deployment Programme (2) review and evolution of Common Projects;
- iii. "Standardisation, regulation and industrialisation", covering the analysis and monitoring of the consistency between the Deployment Programme and Common Projects as well as regulation and standardisation roadmaps, necessitating the liaison on regulation and standardisation matters with the relevant bodies, and including the analysis and monitoring of the alignment between the Deployment Programme and Common Projects with activities in the industrialisation phase;
- iv. "ATM Master Plan Alignment", covering the task of ensuring consistency and alignment between the Deployment Programme, the Common Projects and the ATM Master Plan;
- v. "Stakeholder relationship management", referring to the tasks of external communication related activities, consultation platform's management, and management of cooperative arrangements with third parties;
- vi. "Internal Consortium coordination", covering the aspects of Finance & Budget (reporting process of costs associated to the SESAR Deployment Manager activities in order to manage the funding of the SESAR Deployment Manager

associated to paragraph 1 (a) above), human resources management and effort reporting (staff recruiting/selection), administrative services (administrative support, logistics, facilities, IT), legal affairs & contracting (management of legal items/issues, including subcontracting/secondment), internal auditing, and internal communication related activities; and

vii. “SESAR Deployment FPA coordination”, covering the activities to fulfil the role of FPA Coordinator in accordance with paragraph 1(b) above.

### **3. Management of risks**

The SESAR Deployment Manager will establish and maintain a risk register, deriving from the assessment of the risk associated to the execution of the Implementation Projects as reported by the Implementing Partners, and which will serve for the development of mitigation actions by the SESAR Deployment Manager.

### **4. Reporting to the Commission**

The SESAR Deployment Manager shall report regularly to the Commission upon the overall progress of the Deployment Programme and the FPA including providing the “SESAR Deployment Annual report” upon the progress of the deployment of SESAR, as requested by the Commission.

### **5. Financing of the SESAR Deployment Manager**

The Commission has stated that it shall finance the tasks set out in Article 9 of the Regulation up to 100%, such funding being realised through the relevant SGAs for the specific CEF programme support actions.

The FPA Coordinator’s Tasks performed within each Implementation Action through the FPA Coordination Work-Package – shall be partly funded (up to 50%) by the award of specific grants for each Implementation Action and the remaining portion (at least 50%) by the Implementing Partners contributing to the financial costs of the SESAR Deployment Manager through an FPA Coordination Fee as set out in section B, paragraph 6 of this Agreement.

### **6. Consultation mechanism**

The SESAR Deployment Manager will establish a Stakeholder’s Consultation Platform (“SCP”) for the purpose of consulting all the Operational Stakeholders. The scope of the consultations will consist of (i) SESAR Deployment Manager’s proposals for the



Deployment Programme; and (ii) support to the Commission initiative on Common Project revision/definition.

The purpose of the SCP is to seek stakeholders' opinion on SESAR Deployment Manager's proposals prior to their endorsement by SESAR Deployment Manager's Supervisory Board (SB) and their submission to the European Commission (Commission).

Stakeholders' opinions shall consist of a set of comprehensive recommendations adopted by the SCP and provided to the SESAR Deployment Manager for consideration. SESAR Deployment Manager's proposals could be amended so as to incorporate SCP's recommendations partially or totally. In any case, SCP's recommendations will be forwarded to the SB together with SESAR Deployment Manager's amended proposals so that the SB could assess the level of buy-in with the operational investors' community prior to endorse or reject SESAR Deployment Manager's proposal.

The proposed SCP will avoid overlapping with the existing consultation processes established at policy level of the SESAR deployment governance for the actions related to the Pilot Common Project/new Common Projects adoptions/revisions.

## **7. Accession to SESAR Deployment Manager of the SESAR deployment governance**

- a. A party may apply for accession to the SESAR Deployment Manager (Management level of the SESAR deployment governance). Any such party wishing to accede must comply with the definition of operational stakeholder as set out in Articles 2(10) and 9 of the Regulation, and successfully pass the accession procedure described hereafter.
- b. The SESAR Deployment Manager in an effort to maintain a secure and stable membership, foresees that there will be two occasions at which accession could be available; these are:
  - i. After publication of Commission's decision selecting Implementation Projects as a result from the INEA call 2014;
  - ii. Upon the update of the Deployment Programme following the adoption of a revision of Pilot Common Project or new Common Project by the Commission;
- c. Candidates shall apply in writing to the Chair of the Supervisory Board – to the published address of the SESAR Deployment Manager – to join one of the three

groupings of operational stakeholders: Airport Operators, Airspace Users or Air Navigation Service Providers.

- d. Upon receipt of an application by a party to accede to one of the three groupings of operational stakeholders, the Chair of the Supervisory Board shall inform the Commission and the grouping identified by the applicant, or in the event that a grouping is not identified to all three groupings, without undue delay. The relevant grouping shall then consider the application on the basis of the agreed criteria listed below, and, if considered favourably by that grouping on the basis of the accession criteria listed below, the application will thereafter be brought for consideration of the Supervisory Board. For the application to accede to the SESAR Deployment Manager to be successful, the application will need to be accepted by the unanimous vote of the Supervisory Board.
- e. The Coordinating Partners' respective groupings as represented in this Agreement and the Supervisory Board hereby agree and commit to consider any application for accession to their respective grouping in an open and transparent way.
- f. The Coordinating Partners will accept applications to accede to their respective groupings from any legal person, who can demonstrate the fulfilment of the following requirements:
  - i. they intend to commit to this Agreement for the full duration of the SESAR Deployment FPA;
  - ii. they are Implementing Partners with a significant level of investment in the active or soon to be launched Implementation Projects that contribute to the implementation of the Pilot Common Project and/or any other future Common Project;
  - iii. they have in their own possession skills, knowledge and/or experience which add value to SESAR Deployment Manager and the management of the deployment of SESAR and that these skills, knowledge and/or experience are important and required by the SESAR Deployment Manager for the delivery of its tasks and that these skills, knowledge and/or experience complement and improve those already possessed by the SESAR Deployment Manager;
  - iv. they are able and willing to provide these required skills, knowledge and/or experience with appropriate resources as a significant contribution to the tasks of the SESAR Deployment Manager and the management of the deployment of ATM functionalities;

- v. they have experience in international multi-stakeholder implementation and coordination programmes; and
- vi. their accession to the SESAR Deployment Manager will continue to keep the size of SESAR Deployment Manager at a level that maintains and promotes effective and efficient operations.

The Chair of the Supervisory Board shall inform the Commission on the result of the board evaluation of that application.

Upon decision by the Supervisory Board to approve the accession and as agreed by the Commission, an amendment to the FPA shall be signed to formalise accession of the new Coordinating Partner.

## **B. Working arrangements with Implementing Partners**

### **1. Realisation of the Deployment Programme**

The realisation of the Deployment Programme comprises the synchronisation, the coordination and the performance assessment of the Implementation Projects in the Deployment Programme.

The SESAR Deployment Manager, the Action Leaders and all the Implementing Partners agree to cooperate in order to facilitate the timely execution of the Deployment Programme.

To this end, (a) the SESAR Deployment Manager will perform the tasks for the coordination of the SESAR Deployment FPA outlined in Section A above, and (b) the Action Leaders and Implementing Partners agree to carefully and reasonably consider recommendations made by the SESAR Deployment Manager to their respective Implementation Projects with the objective to de-risk the overall execution of the Deployment Programme.

The Implementing Partners shall take responsibility and leadership for technical, financial and performance driven coordination and synchronization of their Implementation Projects. They shall coordinate with the Action Leader and the Action Coordinator.

### **2. Implementation Project funding through Specific Grant Agreements (SGA)**

The Implementing Partners will be able to partly fund Implementation Project(s) through EU funding, which will be managed by INEA, and which will be awarded through SGAs.

These SGAs shall also partly fund the tasks of the SESAR Deployment Manager as Action Coordinator, being the FPA Coordinator's Tasks embedded in a dedicated "FPA Coordination Work-package" included in all applications to INEA's calls for Implementation Projects.

### **3. Mandate to the SESAR Deployment Manager**

The Implementing Partners mandate the SESAR Deployment Manager or any individual Coordinating Partner acting on behalf of the SESAR Deployment Manager, through the signature of the FPA, to be the sole recipient of the EU funds awarded for such Implementation Project and to subsequently distribute these funds in accordance with the respective SGA.

#### **4. No financial responsibility of the SESAR Deployment Manager**

The SESAR Deployment Manager will not be financially responsible for the proper execution of the Implementation Projects by the Implementing Partners. The SESAR Deployment Manager will only be responsible for the delivery of the FPA Coordination Work-package as part of the Implementation Project (as defined at paragraph 6 below).

#### **5. Action Coordinator; financial payments**

- a. The flow of financial payments for the Implementing Partners of any Implementation Project will be between the SESAR Deployment Manager in its role of Action Coordinator and the Implementation Project partners of the Implementation Project.
- b. The Implementing Partners shall provide SESAR Deployment Manager with their bank account details, and any updates, to be used to receive all applicable payments from the SESAR Deployment Manager to the Implementing Partners under the specific SGA.
- c. The SESAR Deployment Manager shall provide INEA, upon request, of a receipt of payment upon the realization of the relevant fund transfers for the implementing partners.
- d. Finally, the Implementation Project partners shall notify the SESAR Deployment Manager of good receipt of this financial payment made to this bank account without undue delay and in writing.
- e. Payment by the SESAR Deployment Manager in its role of Action Coordinator, following receipt of payment from INEA, to the bank account of the Implementation Project partners indicated in the SGA shall constitute a good discharge of the performance of the SESAR Deployment Manager in its role of FPA Coordinator and the SESAR Deployment Manager generally of its obligations regarding payment of the INEA funds to the Implementing Partners.

#### **6. Payment of FPA Coordination Fee to SESAR Deployment Manager**

- a. The Implementing Partners hereby agree that the SESAR Deployment Manager shall be entitled to receive an FPA Coordination Fee (as further described below) in consideration for services performed by the SESAR Deployment Manager under the terms of the SESAR Deployment FPA and this Agreement on behalf of the Implementing Partners as reported at point A(1)(b) (collectively referred herein to as “FPA Coordination Work-package”) and fed by the FPA Coordination Fee.

- b. The FPA Coordination Work-package led by the SESAR Deployment Manager will be added to the work breakdown structure of every application to an INEA call for Pilot Common Project / Common Projects related Implementation Projects.
- c. The FPA Coordination Work-package costs will be recovered at 100% as follows:
- i) As it will be part of the relevant SGA, the FPA Coordination Work-package is directly eligible for up to 50% Commission co-funding.
  - ii) The remaining cost of the FPA Coordination work-package which is not funded directly by the Commission under a SGA shall be funded directly from the Implementing Partners, by the SESAR Deployment Manager collecting from the Implementing Partners the FPA Coordination Fee.
  - iii) The total cost of the work-package shall comprise 1% of the total cost of the Implementation Action.
  - iv) The FPA Coordination Fee will be levied upon the remaining Implementing Partners in order to receive the additional funding required to cover the remaining work-package's cost. This additional funding will be deducted from the grants to be received by the other partners in the Implementation Projects independently of the success, delay or failure of the project itself.
  - v) The FPA Coordination Fee shall be deducted by the SESAR Deployment Manager from the first payment received from INEA in relation to an Implementation Project.
  - vi) FPA Coordination Fee shall be collected as a fraction to be deducted from the co-funding to the other Implementation Project partners proportionally to their respective contribution to the Implementation Project, as reported in the SGA budget.
  - vii) The grant monies relating to an Implementation Project less the FPA Coordination Fee shall be forwarded to each Implementing Partner involved in the Implementation Project in accordance with the procedure set out in Section B paragraph 5 above.
  - viii) Should the budget for Implementation Projects be significantly revised, or effort and extra costs associated to the Action Coordinator role differ significantly from the above estimation, the SESAR Deployment Manager will propose a revised amount to be applied to each Implementation Project budget.

- ix) Being the FPA coordination task performed for all Implementation Projects and organised as a general function with costs predominantly occurring for infrastructure and services which are shared between all implementing projects, a distribution key will be applied to the sum of all incurred costs related to the FPA coordination tasks, and will be used as the basis for the justification of the costs actually incurred for the Action Coordinator role. The SESAR Deployment Manager shall ensure that the cost funded by the Commission under SGA for programme support actions and the cost for Action coordinator role are separately and distinctly accounted. The appropriate share of fixed costs (IT, Office accommodation, etc.) are allocated to the relevant Implementation Project via the FPA Coordination work package.
  - x) Equal treatment is given as first applying proportionality to the value of each project. Since the SESAR Deployment Manager does not know now the value and number of the Implementation Projects, the estimation started from the overall estimated value of the Pilot Common Project over the period of the action (2014-2020). Fast track projects have been included.
  - xi) Transparency and proportionality principles are also secured by the ending balance cost statement that will include the actual costs incurred by the SESAR Deployment Manager for the coordination tasks dedicated to each Specific Grant Agreement for Implementation Projects.
- d. The FPA Coordination Fee is not intended to be retained indefinitely by the SESAR Deployment Manager. Even if deducted in total upfront following the scheme described above, the SESAR Deployment Manager will provide the Commission with duly justification of the costs actually incurred for the Action Coordination role. Balance statement will be produced at the end of each project for the avoidance of profit margin.
- e. The consumed quota of the FPA Coordination Fee is non-refundable, including in the event of the cancellation, failure, significant delay, withdrawal from the SGA by any party or other matter affecting the implementation or success of the Implementation Project, or where the Commission exercises its right to reduce the grant initially provided for, in line with the actual implementation of the action under Article II.25.4 of the SESAR Deployment FPA due to an Implementation Project not being implemented or being implemented poorly, partially or late, and such implementation or non-implementation is not attributable in full to error or negligence on the part of the SESAR Deployment Manager.

## **7. Flow of information and documentation**

### **a. Request for technical and economic information and regular updates**

The Implementing Partners of any given Implementation Project will identify within their application to the INEA call one Implementing Partner as the Action Leader. Such appointment will be formally communicated to the Managing Director of the SESAR Deployment Manager.

The flow of technical, progress and economical information will be between the SESAR Deployment Manager, the Action Leaders with the support of the Implementing Partners and in particular of the Implementation Project Leaders. They will cooperate with and promptly respond to the SESAR Deployment Manager's requests for:

- i. information and regular updates about the status of an Implementation Project;
- ii. information in compliance with the requirements of the SESAR Deployment FPA and the SGA(s);
- iii. utilisation of technical, progress and economical reporting tools, templates and procedures set by the SESAR Deployment Manager;
- iv. any relevant record to support qualification and/or validation of the information managed by the SESAR Deployment Manager within the deployment programme to assess coordination and synchronisation, cost and benefit analysis or incentive mechanisms; and
- v. any event occurring at one implementing partner side likely to affect or delay the implementation of an action, for which a specific grant was awarded, of which the SESAR Deployment Manager is aware.

The flow of information between the Action Leader and the other Partners in a particular Implementation Action is outside the scope of this Agreement.

### **b. Provision of reports**

Each Action Leader will provide its reports to the SESAR Deployment Manager promptly and regularly using the templates, processes and documentation required by the SESAR Deployment Manager.

Each Action Leader will promptly and in due time and in any event no later than the 15<sup>th</sup> of March of each year provide the SESAR Deployment Manager with the Action



Status Report final, fulfilled in all its parts both on technical and economic sections and supported by all Member States' endorsement, necessary for it to submit the FPA Action Status Report by the 31<sup>st</sup> of March each year.

Therefore, the Action Leader will be responsible to the best effort of collecting all the relevant Action Status Report data from its implementing partners to provide the final Action Status Report to the SESAR Deployment Manager as Action Coordinator.

Each Action Leader will further provide the SESAR Deployment Manager with additional clarifications and information necessary to create the SESAR Deployment Annual report on the status of the deployment of SESAR, to be released to the Commission for approval by 30<sup>th</sup> June.

c. Provision of information

In order to enable the SESAR Deployment Manager to act as intermediary for all communications between the Implementation Projects and INEA, except where provided otherwise in the SESAR Deployment FPA or an SGA, each Implementation Project member will provide promptly all information and documentary evidence requested, by the SESAR Deployment Manager that it reasonably requires in order for it to perform its tasks, and in particular, each Implementation Project partner shall:

- i. immediately provide the SESAR Deployment Manager in its role of Action Coordinator with the information related to any change in the name, address, legal representative as well as in the legal, financial, technical, organisational or ownership situation of itself or of its Affiliated Entities; and
- ii. bear responsibility for the timely supply of all documents and information to the SESAR Deployment Manager, as requested by the SESAR Deployment Manager and as required under the SESAR Deployment FPA or an SGA, unless differently defined within the present ICA.

d. Documentation

Each Implementation Project partner shall keep all original documents, especially accounting and tax records, stored on any appropriate medium, including digitalised originals when it is authorised by the applicable national law and under the conditions defined within FPA and SGAs and laid down therein, for a period of five (5) years starting from the date of payment of the balance for the action concerned.

e. Audits and evaluations

Each Action Leader will bear responsibility for providing all the necessary documents to the SESAR Deployment Manager, provided by the Implementation Project Partners in the event of checks and audits initiated before the payment of the balance, and in the event of evaluation in accordance with Article II.27 of the SESAR Deployment FPA.

## **8. Suspension or delay of Implementation Projects**

Each Action Leader will immediately notify the SESAR Deployment Manager of any delay or possible delay in, and of any suspension or possible suspension of their contribution to the Implementation Project, as soon as it has reason to believe that such delay or possible delay will occur and the Action Leader shall also provide to the SESAR Deployment Manager within thirty days of such notice being provided an action plan setting out both the mitigation actions that the respective Implementing Partners are committed to undertaking and the timetable for such mitigating actions to be completed.

### **Subcontracting**

- a. The following provisions are in addition to the Implementing Partners' obligations with regard to subcontracting under the SESAR Deployment FPA, including but not limited to Articles II.9 and II.10 thereof.

Where an Implementing Partner subcontracts any part of an Implementation Project to a third party, or otherwise involves any third parties in an Implementation Project, the Implementing Partner shall remain fully responsible and liable for the performance of its obligations to the SESAR Deployment Manager under this Agreement and for the performance of their subcontractors or third parties.

- b. The Implementing Partners shall ensure that any subcontractor or third party of the Implementing Partners shall cooperate and comply with regard to their specific subcontracted task, with any request of the SESAR Deployment Manager as if they were an Implementing Partner in accordance with this Agreement and the SESAR Deployment FPA.
- c. Where an Implementing Partner is subcontracting or otherwise involving a third party in an Implementation Project, the Implementing Partner shall be responsible for the acts, errors and omissions of the subcontractor and/or third party.
- d. Subject to Article I.7 of the SESAR Deployment FPA (*ARTICLE I.7 – ADDITIONAL PROVISIONS ON SUBCONTRACTING*), notwithstanding the provisions of Article II.1.3,

second subparagraph of the SESAR Deployment FPA, the FPA Coordinator may subcontract support tasks related to the technical, financial and administrative coordination of the action in accordance with the provisions in Article II.10 of the SESAR Deployment FPA. The SESAR Deployment Manager retains sole responsibility for the EU funding and for compliance with the obligations under the SESAR Deployment FPA.

## **9. Implementing Partner Accession to / Withdrawal from SESAR Deployment FPA and ICA**

### **a. Accession to the SESAR Deployment FPA and the ICA**

An entity partnering in a proposal that has been selected for funding and will therefore be implementing an Implementation Project, or part of it, who is not yet party to this Agreement (the **"New Implementing Party"**) must enter into the SESAR Deployment FPA and, for the purposes of the accession of this Agreement, a accession form, substantially in the form attached hereto as Annex hereto (the **"Accession Form"**), with the existing Parties of this Agreement prior to or at the same time as executing any SGA, agreeing to observe, perform and be bound by the terms of this Agreement and the SESAR Deployment FPA. No funding for the New Implementing Party shall be transferred to the Implementing Partner of an Implementation Project where such partner is a New Implementing Party until a duly completed Accession Form has been entered into.

### **b. Withdrawal**

An Implementing Partner wishing to withdraw from an existing SGA and/or the SESAR Deployment FPA and this Agreement shall promptly notify the Action Leader and the Action Coordinator on notice of not less than fourteen (14) days of its intention to withdraw from the SGA and/or the SESAR Deployment FPA.

An Implementing Partner who wishes to withdraw from participating in any and all Implementation Projects and therefore this Agreement and the SESAR Deployment FPA, shall not be released from any liability in respect of any obligations under this Agreement, the SESAR Deployment FPA or the SGA(s) to the SESAR Deployment Manager arising before its effective withdrawal.

## **10. Services to New Implementing Parties to facilitate joining the SESAR Deployment FPA**

New Implementing Parties will have to accede to the SESAR Deployment FPA and to this Agreement (in accordance with the procedures set out in art 9, paragraph a), Section B above) if awarded a grant by means of the respective SGA.

The SESAR Deployment Manager will perform the following services to facilitate New Implementing Parties becoming Implementing Partners of the SESAR Deployment FPA (or where applicable, where they also become Coordinating Partners, following the accession procedure set up in art 7.)

- a. The SESAR Deployment Manager shall ensure that the process for, and conditions governing the accession of New Implementing Parties, are open and evaluative and shall ensure equal treatment to all applicants. To accomplish this the SESAR Deployment Manager shall promote the SESAR Deployment FPA and Deployment Programme to potential New Implementing Parties and shall raise awareness within the potential New Implementing Party community of how and when to become parties to the SESAR Deployment FPA (via its website and general publications). In addition, the SESAR Deployment Manager shall fairly, openly and appropriately support all Implementing Partners (including potential New Implementing Parties) which are bidding in respect of an INEA call for proposal on a timely basis and in line with priorities of the SESAR Deployment Manager in the Deployment Programme.
- b. the SESAR Deployment Manager shall prepare a New Implementing Party package to explain:
  - i. the SESAR Deployment FPA and this Agreement, together with an explanation of the terms and conditions of the SESAR Deployment FPA and this Agreement, including, without limitation, the governance structure;
  - ii. details and roles of the Parties to the SESAR Deployment FPA and this Agreement;
  - iii. the role of the SESAR Deployment Manager within the SESAR Deployment FPA;
  - iv. the relationship between INEA calls and the SESAR Deployment FPA and the accession mechanism to the SESAR Deployment FPA and this Agreement;
  - v. the obligations to be undertaken by New Implementing Parties on accession to the SESAR Deployment FPA, in particular the requirement to become a party to this Agreement and the inclusion of the SESAR Deployment Manager as Action

Coordinator in the proposal to INEA in connection with each Implementation Project;

- vi. the obligations to be undertaken by New Implementing Parties on accession to the SESAR Deployment Manager, in case of positive assessment of its candidature by the Supervisory Board on the basis of the procedure set forth in art 7, in particular the requirement to become a party of the SESAR Deployment Manager;
- vii. the timetable in relation to an INEA call for proposal being the preparation of a response, selection and, if selected, accession to the SESAR Deployment FPA by the New Implementing Party;

The SESAR Deployment Manager shall respond to any questions raised by New Implementing Parties in relation to New Implementing Party package, the SESAR Deployment FPA and this Agreement on a timely basis.

- c. The SESAR Deployment Manager may facilitate as required contacts between the New Implementing Parties and other Partners, in particular, those partners who may also be participating in the Implementation Project, if any, resulting from any call to proposal in respect of which the New Implementing Party is proposing to participate and other relevant stakeholders.
- d. The SESAR Deployment Manager will explain to the new implementing parties the relationships it has developed with other civil and military stakeholders, National Supervisory Authorities, the Network Manager, the SESAR JU, manufacturing industry and third parties it has appointed to assist in performing its role as SESAR Deployment Manager.
- e. The SESAR Deployment Manager will prepare the FPA Coordination Work-package led by the SESAR Deployment Manager to be inserted in the work breakdown structure of every application to an INEA call which will incorporate the Implementing Partner's role, including details of its standard work package and the principles relating to the FPA Coordination Fee payable to the SESAR Deployment Manager.
- f. The SESAR Deployment Manager will provide indications to the candidate Action Leaders to adapt the generic bid model documents and facilitate the alignment of the response to the relevant call for proposal to the Commission and INEA with priorities set by the SESAR Deployment Manager in the Deployment Programme, including developing the role which the New Implementing Party is to undertake in relation to

the Implementation Project resulting from the call and advising on the terms of the SGA.

- g. It is anticipated that the SESAR Deployment Manager will fulfil its tasks under this section B paragraph 11 by undertaking one (1) campaign each year in respect of calls for proposals issued INEA by:
  - i. Updating the New Implementing Party Package prior to the call; and
  - ii. Supporting candidate Implementation Projects Leaders to ensure the alignment of the response to priorities set by the SESAR Deployment Manager in the Deployment Programme during an INEA call.

## **c. General Provisions**

### **1. Term and Termination**

#### **a. General**

This Agreement shall become valid at the Effective Date and shall continue in full force and effect until the end of the SESAR Deployment FPA which shall be December 31, 2020, unless the SESAR Deployment FPA is terminated or the Parties agree in writing to terminate this Agreement earlier, whichever is the earlier, or the Parties agree to extend the duration of this Agreement.

Where an Implementing Partner withdraws from the SESAR Deployment FPA then this Agreement shall automatically terminate in respect to that Implementing Partner only.

For the avoidance of doubt, such Implementing Partner's liability to another Party or the SESAR Deployment Manager prior to its withdrawal (or if applicable dismissal) arising out of any act, omission, event or circumstance or series of acts, omissions, events or circumstances relating to this Agreement or with respect to the matters contemplated herein, for which this Implementing Partner is responsible, shall not be limited or excluded.

#### **b. Cancellation of funding for the SESAR Deployment Manager**

Since the SESAR Deployment Manager is run on a not for profit basis in the event that funding for the tasks of the SESAR Deployment Manager is suspended, interrupted, cancelled or changed then the SESAR Deployment Manager reserves the right, and the Implementing Partners hereby agree that the SESAR Deployment Manager may on reasonable notice suspend, interrupt, cancel or change its activities according to the level of funding that it has received for the relevant activities to ensure that the SESAR Deployment Manager makes neither a profit nor a loss.

#### **c. Continuity of work**

Notwithstanding paragraphs a and b above, any work of the SESAR Deployment Manager in its role of FPA coordinator, including as partner in an Implementation Projects, or of the Implementing Partners initiated under an SGA signed before December 31, 2020, shall continue to be carried out by the SESAR Deployment Manager or Implementing Partners in accordance with the applicable SGA. In that event, the provisions of this Agreement such as, but not limited to Section B,

paragraph 5 continue to apply to the extent that they relate to the SESAR Deployment Manager in its role of FPA coordinator.

## **2. Force Majeure**

- a. A Party faced with force majeure shall formally notify the Managing Director of the SESAR Deployment Manager without delay, stating the nature, likely duration and foreseeable effects.
- b. The Parties shall take the necessary measures to limit any damage due to force majeure. They shall do their best to resume the performance of their obligations under this Agreement as soon as possible.
- c. The Party faced with force majeure shall not be held to be in breach of its obligations under this Agreement if it has been prevented from fulfilling them by force majeure.

## **3. Information obligations**

- a. The following provisions are in addition to the Action Leaders' obligations with regard to providing information under the SESAR Deployment FPA, including but not limited to Articles II.1.2, II.27.2, II.27.3, and II.27.4 of the SESAR Deployment FPA.
- b. Each Party shall use all reasonable endeavours to ensure that the SESAR Deployment Manager is able to comply with its information obligations to the Commission including but not limited to under Articles II.1.3 (b) and (c) and II.27.3 of the SESAR Deployment FPA by providing information, where required, requested by the Commission to the Managing Director of the SESAR Deployment Manager.
- c. Each Party shall use reasonable endeavours to ensure the accuracy of any information or materials it supplies to the other Parties. However, in respect of any information or materials supplied by one Party to another under the Implementation Project, no warranty or representation of any kind is made, given or implied as to the sufficiency or fitness for purpose.
- d. Each Party acknowledges that, to the extent a Party does not comply with the obligations under Article II.27.3 of the SESAR Deployment FPA and the Commission withholds funding as a result, the Party who is in breach of Article II.27.3 shall not be able to recover their costs related to the information provided or not provided to the Commission.

## **4. Conflict of interest**



The Parties shall, and shall procure that their employees, officers, directors and agents shall, take all necessary measures to avoid any risk of conflict of interest relating to economic interests, political or national affinities, family or emotional ties or any other interests liable to influence the impartial and objective performance of the SESAR Deployment Manager under this Agreement and the SESAR Deployment FPA.

The Parties must notify the Managing Director of the SESAR Deployment Manager of any conflict of interest which exists or could arise during the performance of the SESAR Deployment Manager under this Agreement and/or the SESAR Deployment FPA.

The Parties shall use their best efforts to ensure that their personnel are not placed in a situation which could give risk to a conflict of interest.

The Parties declare that they have not made and shall not make any offer of any type whatsoever from which an advantage can be derived under this Agreement.

The Parties declare that they have not granted and shall not grant, have not sought and shall not seek, have not attempted and shall not attempt to obtain, have not accepted and shall not accept, any advantage financial or in-kind, to or from the SESAR Deployment Manager whatsoever, constituting an illegal practice or involving corruption, either directly or indirectly as an incentive or reward relating to the performance of this Agreement.

## **5. Liability**

- a. Each Implementing Partner shall compensate the Coordinating Partners acting as SESAR Deployment Manager for any damage cost, losses, demands and expenses (including all reasonable legal expenses) which the Coordinating Partners acting as SESAR Deployment Manager suffers or incurs as a consequence of or during the implementation of an Action, because an Action was not implemented or implemented poorly, partially or late or a breach by the Implementing Partner of this Agreement, the SESAR Deployment FPA or the SGA.
- b. Where the SESAR Deployment Manager – i.e. the Coordinating Partners acting collectively either in the form of a Consortium or, as the case may be, in the form of a legal entity - incurs any damage which cannot be attributed by the SESAR Deployment Manager to any identified Implementing Partner in accordance with Article 5(a) above, then such damage cost, losses, demands and expenses (including all reasonable legal expenses) shall be met by, and shared (pro rata in accordance

with the funding received by each Implementing Partner for the applicable SGA) amongst the Implementing Partners carrying out the work under the specific SGA that gave rise to the cost, loss, liability or damage.

- c. No Party shall be liable to the other for any indirect or consequential loss or similar damages including, but not limited to, any loss of profit, loss of revenue or loss of contracts, howsoever arising for any breach by it of any provision of this Agreement to the fullest extent that such liability may be excluded under the law of Belgium.
- d. As Action Coordinator in the SGAs for the Implementation Projects, the SESAR Deployment Manager is only responsible for delivering the FPA Coordination Work-package.

## **6. Intellectual Property Rights**

- a. Each Implementing Partner hereby warrants to the SESAR Deployment Manager that the Implementing Partner has the necessary ownership or permission to provide all documentation, reports, analysis and information provided to the SESAR Deployment Manager in accordance with this Agreement, the SESAR Deployment FPA or the SGA.
- b. The Implementing Partners shall indemnify and keep indemnified the SESAR Deployment Manager on a continuing basis from and against any costs, claim, damages, losses, demands and expenses (including all legal expenses) arising from a breach of the warranty provided to the SESAR Deployment Manager in Section C paragraph 6(a) above.

## **7. Intellectual Property**

- a. Background Rights

Each Party will establish a list specifying all rights of ownership and use of the industrial and intellectual property rights, including rights of third parties, existing prior to the conclusion of this Agreement and will disclose it to the Commission at the latest before the commencement of implementation.

Each Party shall ensure that it or its Affiliated Entities have all the rights to use any pre-existing industrial and intellectual property rights during the term of this Agreement.

- b. Foreground Rights

The Parties note that according to the SESAR Deployment FPA, ownership of the results of an action, including industrial and intellectual property rights, and of the

reports and other documents relating to it, shall be vested in the Parties and that the Commission shall be granted the right to use the results of an action for the purposes mentioned in Article II.8.3 of the SESAR Deployment FPA.

## **8. Confidentiality and Data Protection**

- a. If any Party or any of its personnel or advisor (together the “Recipient”) acquires any information relating to another Party (the “Discloser”) in the course of its activities under this Agreement, the Recipient shall, and shall procure that its personnel shall:
  - i. keep such information strictly confidential and use it only for the purposes of the Recipient’s rights and obligations under, and only to the extent necessary to exercise the Recipient’s rights and/or to perform or enforce the Recipient’s obligations under, the SESAR Deployment FPA or this Agreement; and
  - ii. safeguard, treat as confidential and not use for the purposes of its own business any information, document or material which it acquires in connection with this Agreement or the SESAR Deployment FPA and which relates to the business of any of the other Parties.
- b. Where disclosure is made by any Recipient or by any of its personnel to any of its other personnel or Affiliates, the Recipient shall ensure that such disclosure is made subject to obligations equivalent to those set out in this Agreement and each Recipient shall use all reasonable endeavours to procure that each of its personnel complies with all those obligations. Each Recipient shall be responsible to each Discloser in respect of the disclosure or use of any of the Discloser’s confidential information by a person to whom disclosure is made.
- c. The obligations of confidentiality in this Section C paragraph 8 do not extend to a Recipient or any of its personnel in respect of any matter which that Recipient can show:
  - i. is in, or has become part of, the public domain other than as a result of a breach of the obligations of confidentiality under this Agreement;
  - ii. was in its written records prior to the date of this Agreement and not subject to any obligations as to confidentiality;
  - iii. was independently disclosed to it by a third party entitled to disclose it; or
  - iv. is required to be disclosed under any applicable law or by any stock exchange or any governmental, judicial or other competent authority or

- v. where prior written consent was obtained by the Recipient from the Discloser. The obligations of confidentiality in this Section C paragraph 8 shall survive for a period of ten years following the termination of the SESAR Deployment FPA.

## **9. Compliance**

### **a. Anti-corruption and Competition law**

Each Party shall in relation to the SESAR Deployment FPA and this Agreement at all times

- i. comply with all applicable laws and regulations relevant to the performance of its obligations under this Agreement and to which such Party is subject;
  - ii. To the extent possible, perform its tasks under this Agreement in such a manner and at such times so that no act, neglect, omission or default of the Party shall cause the other Parties to be in breach of the provisions mentioned in a) above; and
  - iii. not and has not, nor has any of its affiliates, employees or agents paid or received, nor undertaken to pay or receive any bribe, pay-off, kick-back, or unlawful commission, and has not and shall not in any manner or other way paid any sum in any currency or jurisdiction or given or offered to give any improper payments or inducements to any person to procure any agreement, permit or approval to which any governmental authority is expressed to be a party or which it has issued.
- b. All Parties shall abide by all applicable rules under the SESAR Deployment FPA, the SGA and INEA Rules.

## **10. No Partnership**

This Agreement is not intended to create nor shall it be construed as creating a corporation, partnership (whether general or limited), association or any other form of legal entity or company with or without legal personality or continuing relationship or commitment between the Parties.

## **11. Assignment**

Neither Party may assign or otherwise transfer any of its rights, its obligations, or delegate any of its duties under this Agreement, neither in whole nor in part, to a third party without the prior written consent of the other Parties.

As an exception to Article 11, two or more Parties being members of the same grouping of operational stakeholders may be succeeded by a newly created legal entity in which those Parties, and their Affiliates as applicable, together hold the entire issued share capital, which will replace their membership of this Agreement. In such case, the newly created entity shall be assigned the rights and obligations under this Agreement of the Parties forming such legal entity. Any such succession to this Agreement may only occur where the respective Parties may be succeeded by the newly created legal entity as partners to the SESAR Deployment FPA.

The involved Parties shall duly notify such decision to the Supervisory Board according to the internal procedure agreed by the Supervisory Board of the SESAR Deployment Manager

## **12. Announcement and Circulars**

Any disclosure of general information concerning this Agreement is subject to prior written consent of the Parties which shall not unreasonably be withheld.

## **13. Severability**

In the event of individual terms of this Agreement being or becoming invalid or unenforceable either in part or in full, this has no effect on the validity of the remaining terms of this Agreement. This also applies to any omissions or gaps the Agreement may have. The Parties undertake to agree to replace the missing, invalid or unenforceable term with a valid term that complies as far as possible with the economic purpose pursued by this Agreement.

## **14. Survival**

The provisions of this Agreement that may reasonably be interpreted or construed as surviving the expiration or termination of this Agreement, including, without limitation, Section B paragraphs 7 and 9 and Section C and Section C paragraph 5, 6, 8, 10, 13, 14, 16, 17 and 18 shall survive for a period of ten years following the expiration or termination of the SESAR Deployment FPA.

## **15. Written form**

Amendments and supplements to this Agreement have to be in writing. This shall also apply to an amendment, supplement or waiver of the aforementioned written form. Any reference to "writing" or "written" requires a personally signed document. A copy as a fax or an electronically transmitted copy (e.g. pdf) shall be sufficient evidence of the personally signed document.

## **16. Notices**

The Parties will communicate with each other in relation to this Agreement, the SESAR Deployment FPA or an SGA or to their implementation in accordance with Article II.2.1 of the SESAR Deployment FPA.

Where reference is made in this Agreement to the SESAR Deployment Manager, notices have to be provided by the Parties to the Managing Director.

## **17. Dispute Resolution and choice of law**

This Agreement and any legal matters that may arise out of or in connection with this Agreement shall be governed by, interpreted and construed exclusively in accordance with the laws of Belgium excluding Belgian law's conflict of law rules and excluding the United Nations Convention on Contracts for the International Sales of Goods of April 11, 1980 (CISG).

Any and all disputes, controversies or claims arising out of or in connection with this Agreement or any agreements entered into or documents executed pursuant to this Agreement, including any questions regarding their existence, validity, termination or breach (a "Dispute") shall be resolved in accordance with this Article. In the event of a Dispute, the Parties shall first seek in good faith to resolve the Dispute through negotiation. If the Dispute is not resolved within thirty (30) days of the Dispute arising, the Dispute shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by 3 (three) arbitrators appointed in accordance with the said Rules. The seat of arbitration and the venue of hearings shall be in Brussels, Belgium. The language to be used in the arbitral proceedings shall be English.

## **18. SESAR Deployment FPA to prevail**

Each Party undertakes to the other Parties that, in the event of any conflict between the provisions of the SESAR Deployment FPA and this Agreement, then, as between the Parties, the provisions of the SESAR Deployment FPA shall prevail.

**SIGNED FOR AND ON BEHALF OF  
NATS:**

  
\_\_\_\_\_

LONDON, 5/6/15  
\_\_\_\_\_

Place and Date

**SIGNED FOR AND ON BEHALF OF  
DFS:**

Langen, 21.05.2015  
Place and Date

Robert Schickling  
Managing Director Operations

R. Schickling

Langen, 21.05.2015  
Place and Date

Ralf Bertsch :v  
Director Planning and Innovation

R. Bertsch

[Handwritten signature]



**SIGNED FOR AND ON BEHALF OF  
DSNA:**

**Maurice GEORGES**  
Directeur des services de la Navigation aérienne



Place and Date Paris, 22 MAI 2015

**SIGNED FOR AND ON BEHALF OF  
AUSTRO CONTROL:**

*Sommerbauer*

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Place and Date

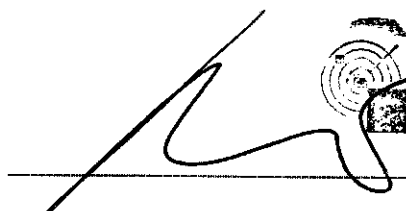

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*Francis Kelly*

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Place and Date

**SIGNED FOR AND ON BEHALF OF  
CROATIA CONTROL:**

  
  
HRVATSKA KONTROLA  
ZRAČNE PLOVIDBE d.o.o.  
VI EPIKA GOBILA • 1  
14000 Zagreb

ZAGREB ; 29.05.2015.

Place and Date

*Dragan Bilac'*  
*Director General*

**SIGNED FOR AND ON BEHALF OF  
IAA:**



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Dublin 12.07.2015

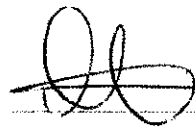
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Place and Date

Director

High Auction Authority

**SIGNED FOR AND ON BEHALF OF  
LFV:**

  
Niclas Gustavsson

3/7 - 2015 NACKKÖPING  
Place and Date

**SIGNED FOR AND ON BEHALF OF  
NAVIAR:**

*M. Damberg*

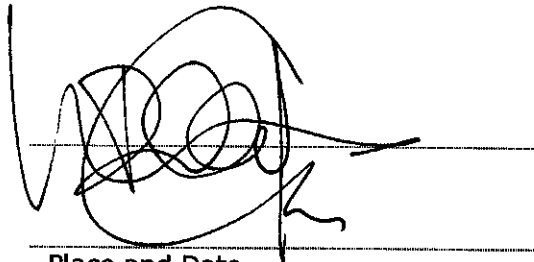
MORTEN DAMBERG / CEO

Place and Date

*Kartrup 27/5 2015*

**SIGNED FOR AND ON BEHALF OF  
ENAIRES:**

*Ignacio González Sánchez  
Director of Air Navigation*



Place and Date

*Madrid June 30th*

**SIGNED FOR AND ON BEHALF OF  
ENAV:**

*Massimo Selli*  
\_\_\_\_\_  
Rome, 25/05/2015  
Place and Date



**SIGNED FOR AND ON BEHALF OF  
PANSA:**

Acting President  
of Polish Air Navigation Services Agency

*Magdalena Jaworska*

*WARSAW 29.05.2015*

Place and Date

**SIGNED FOR AND ON BEHALF OF  
LUFTHANSA:**



Kay Kratky  
Member of Lufthansa German  
Airlines Board  
Chief Operating Officer

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Place and Date



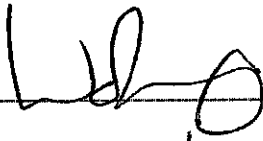
Werner Knorr  
Senior Vice President  
Operations Frankfurt

FRA 24.06.15

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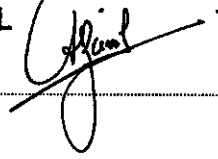
Place and Date

**SIGNED FOR AND ON BEHALF OF  
EASYJET:**

  
\_\_\_\_\_  
10/06/2015  
\_\_\_\_\_  
Place and Date

**SIGNED FOR AND ON BEHALF OF  
AIR FRANCE:**

Alain BASSIL



Roissy, 23<sup>rd</sup> JUNE 2015

Place and Date

**SIGNED FOR AND ON BEHALF OF  
BRITISH AIRWAYS:**

*John Ophel*

18/6/15 London.

Place and Date

**SIGNED FOR AND ON BEHALF OF  
SDAG:**

LUC LAVERNE  
MANAGING DIRECTOR

Russell 22<sup>nd</sup> May 2015  
Place and Date

A large, stylized handwritten signature in black ink, consisting of a long horizontal stroke with a loop at the end and a vertical stroke intersecting it.