**Agreement for the Use of the SPIRIT Platform for Experimentation**

This Agreement for the Use of the SPIRIT Platform for Experimentation (hereinafter referred to as the “Agreement”) is executed by and between:

1. Experimenter:

[FULL NAME + LEGAL FORM], with its registered office situated at [ADDRESS] and hereby duly represented by [NAME+TITLE]

1. Coordinator:

**Interuniversitair Micro-Electronica Centrum vzw (IMEC)**, a non-profit organisation duly organized under the laws of Belgium, Register of Legal Entities Leuven VAT BE 0425.260.668, with its registered office situated at Kapeldreef 75, 3001 Leuven, Belgium and hereby duly represented by Luc Van den hove, President and CEO

relating to the research project under the Horizon 2020 – the Framework Programme for Research and Innovation (2014-2020), Call: HORIZON-CL4-2021-HUMAN-01, Topic: HORIZON-CL4-2021-HUMAN-01-25 for the implementation of the project entitled “Scalable Platform for Innovations on Real-time Immersive Telepresence SPIRIT“ (hereinafter referred to as “SPIRIT” or “the Project)

Hereinafter individually referred to as the “Party” and jointly as the “Parties”

* WHEREAS as from October 1st, 2022, the Coordinator participates in the Project together with:
	+ ERICSSON GMBH (EDD), established in PRINZENALLEE 21, DUSSELDORF 40549, Germany,
	+ DEUTSCHE TELEKOM AG (DT), established in FRIEDRICH-EBERTALLEE 140, BONN 53113, Germany,
	+ FRAUNHOFER GESELLSCHAFT ZUR FORDERUNG DER ANGEWANDTEN FORSCHUNG EV (Fraunhofer), established in HANSASTRASSE 27C, MUNCHEN 80686, Germany,
	+ UNIVERSITAET KLAGENFURT (UNI-KLU), established in UNIVERSITAETSSTRASSE 65-67, KLAGENFURT 9020, Austria,
	+ DIGITAL FOR PLANET-D4P, established in
	+ UNIVERSITY OF SURREY, established in
	+ AWTG LIMITED, established in

hereinafter collectively referred to as the “SPIRIT Partners” or “Beneficiaries”;

* (only in case the proposal is made by a consortium) WHEREAS as from …………………., the Experimenter participates in the Experiment together with:
	+ ……………., established in ………………,
	+ ……………., established in ………………,
	+ ……………., established in ………………,
	+ ……………., established in ………………,

hereinafter collectively referred to as the “Experimenters”;

* WHEREAS the SPIRIT Partners have amongst themselves entered into a written agreement detailing their respective rights and obligations under the Project;
* WHEREAS the purpose of SPIRIT is the adoption of the SPIRIT Platform (hereinafter referred to as the “Platform”) , being developed as a distributed, interconnected testbed infrastructure, enabling large-scale testing of heterogeneous telepresence applications in real-world Internet environments, to test a variety of additional use cases covering heterogeneous vertical sectors through third party participation;
* WHEREAS the Platform consists of individual testbeds and tools put at the disposal by different resource providers;
* WHEREAS the Experimenter through the execution of the submitted proposal (hereinafter referred to as the “Proposal”) under an open call (in accordance with the rules detailed in the open call documents) has applied to use the Platform to be provided by the SPIRIT Partner(s) identified in the Proposal;
* WHEREAS on the basis hereof the Experimenter will be entitled to use the Platform subject to the terms and conditions described hereunder;

NOW, THEREFORE, the Parties agree as follows:

**Article 1 - Definitions**

When used herein, unless the context requires otherwise, the following words and expressions shall have the meaning as stated hereunder:

* 1. “Experiment(s)” means the experimentation activity(ies) undertaken by the Experimenter, alone or (if applicable) with the patron, for testing new ideas and technologies in the area of computer networking. Details of the Experiment can be found in the Proposal submitted by the Experimenter.
	2. “Experiment Results” means any tangible and intangible outputs of the Experiments that are generated by or on behalf of the Experimenter (e.g. involvement of patron) as well as any rights attached to them.
	3. “Maximum Budget” means the maximum amount of funding to be made available by the Coordinator to the Experimenter by way of financial support as further detailed in Appendix 1 hereto.
	4. “Platform” means the SPIRIT Platform resources and tools. The Platform has been constructed for experiment-driven research activities, where experiment-driven research is defined as any activity that furthers the Experimenters’ knowledge and/or understanding of concepts, tools, algorithms, protocols, provided that this activity is legal. Specific Platform components are made available to the Experimenter for the performance of Experiment(s) in accordance with the terms and conditions of the Agreement.

**Article 2 – Scope of the Agreement - Responsibilities**

2.1. Subject to the terms and conditions set forth in the Agreement, the Experimenter is hereby granted the non-exclusive, non-sub licensable, non-transferable right to use the Platform for the performance of Experiments. Any other use of the Platform by the Experimenter than the use expressly described in the Experiments is not permitted.

2.2. Responsibilities of the Experimenter

2.2.1. The Experimenter shall perform its tasks in accordance with the conditions of the Agreement and the Proposal towards the implementation of the Experiment to the best of its ability and in accordance with any guidelines issued by the Coordinator.

2.2.2. The Experimenter shall not, directly or indirectly:

- rent, lease, transfer or sub-license the Platform, nor permit any third party to do so;

- use the Platform to host commercial activities or in a way that limits the rights of others to use the Platform;

- remove, alter, cover or obscure any copyright notices or other proprietary rights notices placed or embedded on or in Platform;

- reverse engineer, decompile, disassemble, re-engineer, translate, integrate, adapt, create derivate works or updates of the Platform or any part thereof nor permit, allow, or assist any third party to do so.

2.2.3. The Experimenter acknowledges and agrees that besides the terms and conditions detailed in the Agreement, specific regulations of the party providing specific components within the Platform may apply. In case the party providing and maintaining such specific components requires specific or extra terms and conditions to be agreed upon, the Experimenter will be required to agree and sign this separate document as well. This document will form an annex to the Agreement. It is the Experimenter’s responsibility to remain aware of all applicable regulations and of any changes made to them.

If there is evidence that the actions of the Experimenter are adversely impacting the quality offered by the Platform, the Coordinator is empowered to take reasonable measures to terminate or reprioritize usage in order to protect the overall operation of the Platform.

2.2.4. Should the Experimenter’s usage imply giving access to the Platform to third parties, the Experimenter understands it will need to gather explicit consent from the Coordinator and agrees to enforce any restrictions imposed by the Coordinator and accepts to fulfill its legal obligations as a service provider regarding data protection and retention laws.

2.2.5. The Experimenter is responsible and liable for any and all actions performed by using the Platform. The Experimenter undertake that it shall:

- comply with all instructions and regulations relating to the use of the Platform;

- not use the Platform in a manner which is or is likely to adversely affect the Platform or which may disturb the working of, interfere or damage the Platform or any other system. In case of misuse, the Experimenter is responsible for restoring all damages to the Platform and is responsible for any loss and damages incurred;

- not interfere with others’ work or attempt to invade their privacy;

- not use the Platform in a manner that may damage the SPIRIT Partner’(s) t’s good name and reputation or may infringe the intellectual or industrial property rights of a Party or any other third party. Copyright, other intellectual property right and data protection legislation must be observed by the Experimenter.

2.2.6. The Experimenter shall, in a timely manner, provide all information reasonably required by the Coordinator such as but not limited to the information required for the Coordinator to comply with its obligations under the Agreement, the Grant Agreement with the European Commission and the Consortium Agreement.

2.2.7. The Experimenter shall ensure that neither the Experimenter nor anyone of its behalf or with its consent causes any damage to the Platform.

2.2.8. The use of the Platform is at Experimenter’s own risk and responsibility. The Coordinator does not assume any liability in regards to interruption, corruption, loss or disclosure of services, processes and data hosted on the Platform. The Experimenter acknowledges and agrees that the uninterrupted availability and use of the Platform cannot be ensured (“reasonable efforts”).

The Experimenter shall take appropriate measures to protect its credentials and prevent their use by third parties. The information the Experimenter provides when requesting an account should be correct. The Experimenter is responsible for all and any loss or damages incurred by the Coordinator, the Provider and/or the Beneficiaries as a result of any unauthorized transfer by them of their password.

2.3. The Platform will be put at the disposal of the Experimenter free of charge for the Experiments detailed in the Proposal and on a reasonable effort basis.

2.4. The Coordinator shall give the Financial Support for the Experiment in accordance with the conditions detailed in article 3 of the Agreement.

**Article 3 – Financial support**

3.1. For the performance of the Experiment in accordance with the terms and conditions of the Agreement, the Coordinator agrees to provide within the Maximum Budget financial support to the Experimenter. Details can be found in Appendix 1.

3.2. Invoicing of the financial support will effectuated by the Coordinator for the Experimenter as detailed in the Open Call document. Payment is subject to receipt of the funding from the European Commission, acceptance by the Beneficiaries of the reports and the attendance of the meetings as detailed in the Open Call documents.

3.3. The Experimenter hereby agrees to be bound by the obligations as set forth in the articles 22, 23, 35, 36, 38 and 46 of the Grant Agreement. These articles can be found http://ec.europa.eu/research/participants/data/ref/h2020/grants\_manual/amga/h2020-amga\_en.pdf

**Article 4 – Intellectual property – Consent to use data**

The Results achieved by the Experimenter using the Platform will be owned by the Experimenter.

The Experimenter will deliver a final report describing the Results of the Experiment and the experience gained in using the Platform. This final report can be made public to the European Commission and all Beneficiaries including their Affiliated Entities.

Publications and demonstrations made based on the Results of the Experiment should clearly mention the usage of the Platform and the provider and refer to the Project even if the publication or demonstration takes place after the end of the Experiment.

The Experimenter agrees the Coordinator and the other relevant SPIRIT Partner(s) may monitor the Platform and traffic for vulnerabilities and conformance to authorized use and may collect and use data and information, including but not limited to the information about Experimenter’s use of the Platform. This information, provided it is anonymized, can be used by to improve the Platform.

**Article 5 - Liability – Warranty**

5.1. The Experimenter shall fully and exclusively bear the risks in connection with the Experiment, including without limitation to any risk arising from the use of the Platform. The Experimenter shall hold harmless and indemnify the Coordinator and/or the SPIRIT Partners harmless against all losses, repayments, liabilities, claims or damages which the SPIRIT Partners and/or the Coordinator as a result thereof would incur or suffer or have to pay to the European Commission or any third parties. In addition, should the European Commission have a right of recovery against the Coordinator or any other Beneficiary regarding any or all of the Financial Support granted under the Agreement, the Experimenter shall repay the sums in question in the terms and on the dates stipulated by the Coordinator.

5.2. No warranty whatsoever is given with respect to the Platform, support and all information provided hereunder including, but not limited to, any express or implied warranty for use, availability, reliability, quality, fitness for a particular purpose or non-infringement of third party intellectual property rights. They are provided “AS IS”.

5.3. To the extent authorized under mandatory law, in no event shall the Coordinator or any of the other Beneficiaries be liable to the Experimenter or any person or entity connection with any of them for costs of procurement of substitute goods, property damage, personal injury, profit loss, business interruption, or for any other special, indirect, consequential or incidental damages, however caused, whether for breach of warranty, contract, tort or negligence, strict liability or otherwise.

 The Coordinator’s liability in aggregate, arising out of or in connection with the Experiment and/or the Agreement, however caused, whether for breach of warranty, contract, tort or negligence, strict liability or otherwise, shall not exceed the Maximum Grant.

5.4. The Coordinator is not liable for any failure due to the direct or indirect use, loss of use, or delay in delivery of the Platform or the services provided herein, unless the Experimenter can show willful misconduct, fraud or deceit by the Coordinator.

**Article 6 – Term and termination of the Agreement**

The Agreement enters into force on the date detailed in Appendix 1 for the period provided in Appendix 1, unless sooner terminated in accordance with article 6. The Experimenter acknowledges and agrees that its authorized use of the Platform is only effective during the term of the Agreement.

The Experimenter’s right to use the Platform and the Agreement are automatically and without notice from the Coordinator terminated if the Experimenter fails to comply with any of the obligations detailed in the Agreement.

Upon termination of the Agreement, the Experimenter shall immediately discontinue all use of the Platform.

**Article 7 - Applicable law**

The Agreement is governed by the laws of Belgium without reference to its conflict of law principles. Any dispute arising out of the Agreement shall be settled by the competent courts located in Brussels (Belgium).

**Article 8 - Miscellaneous**

8.1. The Experimenter represent and warrant that the Platform shall not be evaluated or employed for the purpose of use in the design, development, production, stockpiling or use of weapons of mass destruction, such as nuclear, chemical or biological weapons or in any manner for a military end use or with a military end-user. The Experimenter shall comply with applicable laws and regulations controlling the export of technical data, computer software and all other export controlled commodities and ensures that it will not include the participation of persons on any restricted party listing in accordance with applicable national and international regulations. The Experimenter agree to indemnify, defend and hold harmless the Coordinator and the other SPIRIT Partners from any and all claims, damages and other liabilities resulting from the Experimenter’s violation of any applicable export regulations.

8.2. The Parties may sign and deliver this Agreement by electronic transmission. Each Party agrees that the delivery of this Agreement by electronic transmission shall have the same force and effect as delivery of original signatures and that each Party may use such electronic or facsimile signatures as evidence of the execution and delivery of this Agreement by the Parties to the same extent that an original signature could be used.

AS WITNESS, the Parties have caused the Agreement to be duly signed by the undersigned authorised representatives in separate signature pages.

For Experimenter,

Name:

Title:

Date:

For IMEC,

Luc Van den hove

President & CEO

Date:

Appendix 1:

Experiment – financial information

Duration of the Experiment:

 Start date: xxx

 End date: xxx

Budget Experimenter: xxx k€

Budget Patron: xxx k€

Payment conditions (subject to payment conditions detailed in article 3.3): (timing of the payment, unless this is included in the open call document)