**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

relating to the research project under the HORIZON EUROPE Framework Programme for Research and Innovation (2020-2027), 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“ starting on October 1st, 2022 and ending September 30th, 2025 (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 following parties participate in the Project:
	+ Interuniversitair Micro-Electronica Centrum vzw, established Kapeldreef 75, 3001 Leuven, Belgium (Coordinator or IMEC)
	+ ERICSSON GMBH (EDD), established in PRINZENALLEE 21, DUSSELDORF 40549, Germany,
	+ DEUTSCHE TELEKOM AG (DT), established in FRIEDRICH-EBERTALLEE 140, BONN 53113, Germany,
	+ Affiliated Entities of Deutsche Telekom AG:
		- T-Systems International GmbH (T-System), with its registered office situated at Hahnstrasse 43d, 60528 Frankfurt am Main, Germany
		- Deutsche Telekom Security GmbH (Deutsche Telekom Security), with its registered office sitauted at Bonner Talweg 100, 53113 Bonn, 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), with registered office situated at 111 Überlandstrasse, 600 Dübendorf, Switzerland
	+ UNIVERSITY OF SURREY (SURREY), established by Royal Charter 1966, whose administrative offices are Guildford, Surrey GU2 7XH
	+ AWTG LIMITED (AWTG), with its registered office situated at 8 Canham Mews, Canham Road, W3 7SR London, United Kingdom

hereinafter referred to as the “SPIRIT Partner” and at least 2, more or all as the “SPIRIT Partners”;

* 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 ultimate goal of SPIRIT is to provide an open and flexible environment for both the SPIRIT Parties and the Open Call application/service providers to develop and test a wide variety of collaborative telepresence applications between remote sites over the public Internet. The following two types of existing capabilities (minimum TRL 4) will be leveraged:

• The **application platforms** for supporting a wide variety of telepresence applications: the two complementary application platforms will be provided from EDD and Fraunhofer, respectively.

• The **network infrastructures** for supporting the delivery of telepresence content across remote sites: the two network infrastructures will be provided from DT and 5G Innovation Centre (5GIC) hosted at SURREY.

* WHEREAS the Platform consists of individual testbeds and tools put at the disposal by different resource providers subject to terms and conditions to be agreed upon between the selected third parties under the Open Calls and the resource providers providing the individual testbeds and tools;
* WHERAS within SPIRIT, Open Calls to attract third party players to develop and test their individual applications in such an environment in order to maximize the framework’s supporting capability for a wide range of telepresence applications will be organized;
* WHEREAS financial support to third parties will be provided for Experiment(s) (as defined below) carried out by third party players selected through the Open Call mechanism organized under SPIRIT;
* WHEREAS this Agreement will regulate the general terms and conditions including financial support to third parties (FSTP) provided to the Experimenter for the Experiment which is approved for such funding under the Open call mechanism organized under SPIRIT, but expressly excluding the terms and conditions of access and use regarding the Platform (which is to be arranged between the Experimenter and the resource providers providing the individual testbeds and tools of the Platform;

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, for testing new ideas and technologies in the area of telepresence and immersive technologies by accessing and using the individual testbeds and tools of the Platform provided by the resource providers. Details of the Experiment can be found in the Proposal submitted by the Experimenter and approved under the Open Call mechanism organized under SPIRIT.
	2. “Experiment Results” means any tangible and intangible outputs of the Experiments that are generated by the Experimenter under the Experiment, such as data, know-how or information, whatever its form or nature, whether or not it can be protected, as well as any rights attached to it, including Intellectual Property Rights.
	3. “Intellectual Property Rights” or “IPRs” means patents, patent applications and other statutory rights in inventions; copyrights (including without limitation copyrights in Software); registered design rights, applications for registered design rights, unregistered design rights and other statutory rights in designs; and other similar or equivalent forms of statutory protection, wherever in the world arising or available.
	4. “Maximum Budget” means the maximum amount of funding to be made available by the Coordinator to the Experimenter by way of financial support to third parties as further detailed in Appendix 1 hereto.
	5. “Platform” means the SPIRIT individual testbed and tools put at the disposal and use of the Experimenter. 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**

Subject to the terms and conditions set forth in the Agreement, .the Coordinator shall give the Financial Support to third parties (FSTP) for the Experiment to the Experimenter in accordance with the conditions detailed in this Agreement.

The terms and conditions regarding the access and the use of the Platform (the “Platform Access and Use Agreement”) by the Experimenter is not subject of this Agreement and is the responsibility of the SPIRIT Party(ies) putting the Platform at the disposal of the Experimenter as detailed in the Proposal. It is expressly agreed that the Coordinator is not responsible and cannot be held liable for the execution of the Platform Access and Use Agreement between the Experimenter and the SPIRIT Party(ies) putting the Platform at the disposal of the Experimenter. A copy of the executed Platform Access and Use Agreement will be provided by the Experimenter to the Coordinator.

The Experimenter undertakes to perform the Experiment in accordance with the terms and conditions of the Proposal and the Platform Access and Use Agreement (as defined hereunder) and to provide all information and documents needed by the Coordinator regarding the FSTP (as required by the Coordinator to be able to obtain the funding from the the European Health and Digital Executive Agency (HADEA) (‘EU executive agency’ or ‘granting authority’)).

**Article 3 – Financial Support to third parties**

3.1. For the performance of the Experiment in accordance with the terms and conditions of the agreement to be executed by and between the Experimenter and the SPIRIT Party(ies) putting the Platform at the disposal of the Experimenter, the Coordinator agrees to provide within the Maximum Budget FSTP to the Experimenter. Details can be found in Appendix 1.

3.2. Invoicing of the FSTP 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, execution of Platform Access and Use Agreement (a copy of which is provided by the Experimenter to the Coordinator, acceptance by the SPIRIT Parties 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 12 (conflict of interest), 13 (confidentiality and security), 14 (ethics), 17.2 (visibility), 18 (specific rules for carrying out action), 19 (information) and 20 (record-keeping). The Experimenter further agrees that the bodies mentioned in Article 25 (e.g. granting authority, OLAF, Court of Auditors (ECA), etc) can exercise their rights towards the Experimenter. The excerpt of the Grant Agreement is attached hereto in Appendix 2.

**Article 4 – Reporting - Publications**

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 SPIRIT Parties.

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.

**Article 5 – Liability**

5.1. As the subject of this Agreement is strictly limited to the provision of FSTP to the Experimenter and all related terms and conditions as detailed in the Agreement, the Coordinator nor the SPIRIT Parties can be held liable for any damage caused to the Experimenter or to third parties because of the implementation of the Experiment by the Experimenter, including gross negligence. The Coordinator cannot be held liable for any damage caused by the Experimenter as a consequence of the implementation of the Experiment.

5.2. To the extent authorized under mandatory law, in no event shall the Coordinator 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 Agreement, however caused, whether for breach of warranty, contract, tort or negligence, strict liability or otherwise, shall not exceed the Maximum Grant.

5.3. 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 or fraud by the Coordinator.

5.4. The Experimenter must compensate the Coordinator for any damage it sustains as a result of the implementation of the Experiment or because the Experiment was not implemented in full compliance with the Agreement. This liability of the Experimenter does not extend to indirect or consequential losses or similar damage (such as loss of profit, loss of revenue or loss of contracts), provided such damage was not caused by wilful act or gross negligence or its exclusion or limitation is not allowed by mandatory law.

**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.

This Agreement automatically terminates if and when the Platform Access and Use Agreement is terminated. The SPIRIT Party(is) involved shall immediately inform the Coordinator hereof.

If the Experimenter does not fulfil its obligations under this Agreement and this default is not remedied within fifteen (15) calendar days as from issuance of notice of default, the Coordinator may terminate this Agreement with immediate effect.

In case of termination of this Agreement, the Experimenter will provide the reports needed by the Coordinator for the FSTP. The Coordinator will calculate the amount of FSTP on the basis of the report submitted and taking into account the costs incurred for the activities implemented before the end of the Experiment. If the Coordinator does not receive such report within the deadline, only costs which are included in an approved report from the Experimenter will be taken into account.

**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 may not assign any of their claims for payment against the Coordinator to any third party, except if expressly approved in writing by the Coordinator on the basis of a reasoned, written request by the Experimenter. If the Coordinator has not accepted the assignment or if the terms of it are not observed, the assignment will have no effect on it.

In no circumstances will an assignment release the Experimenter from its obligations towards the Coordinator.

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,

Name:

Title:

Date:

Appendix 1:

Experiment – financial information

Duration of the Experiment:

 Start date: [XX/XX/XXXX] provided that the Platform Access and Use Agreement is executed.

 End date: [XX/XX/XXXX]

Maximum Budget: [XXX]

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

Appendix 2 – Excerpt of the Grant Agreement

Grant Agreement excluding the data sheet, Annex 1, Annex 2 and Annex 2a will be added.

Beneficiary (ies) must be read as Experimenter

granting authority must be read (as the case may be) as Coordinator or SPIRIT Parties.