

External services contract between EURESCOM and <ENTITY NAME>

In the frame of the ESA 5G METEORS 5G satellite makerspace activity

THIS CONTRACT is made between:

- (1) **EURESCOM** - European Institute for Research and Strategic Studies in Telecommunications GmbH whose legal address is Wieblinger Weg 19/4, 69123 Heidelberg, Germany (hereinafter called "**EURESCOM**")

And

- (2) **<ENTITY NAME and ADDRESS>** (hereinafter called "**IMPLEMENTER**")

who shall be the "parties" to this Contract:

WHEREAS **EURESCOM** is executing the **ESA 5G METEORS** 5G satellite makerspace activity, and

WHEREAS **IMPLEMENTER** is a provider of external research services as described in **Appendix 1** to this contract, including work schedule and deadlines.

EURESCOM and **IMPLEMENTER** now agree the following **Contract** for performance and delivery of research services for the purpose of the **ESA 5G METEORS** activity.

The Contract:

1. Definitions

In this Contract and unless the context requires otherwise, the following words and phrases shall have the meanings detailed below:

"**Contract**" shall mean this Contract, together with its annexes and any modifications agreed in writing by the parties.

"**IPR**" shall mean any intellectual property right (including know-how) in any form, e.g. invention, copyright (including software), patent of any description, trade mark, trade dress, domain name, registered design right, design right and any registered protection for any of the foregoing including any application for such protection.

"**Foreground**" shall mean IPR generated pursuant to the performance of the Work and includes the Results of the Work.

"**Background**" IPR shall mean that which is not Foreground.

"**Statement of Work**" is the description of the work as presented in Appendix 1 to this contract.

"**Work**" shall mean any work carried out or to be carried out under this Contract as specified in the "Statement of Work" in Appendix 1 and any modifications to that agreed between EURESCOM and IMPLEMENTER in writing.

"**Services**" shall mean the items or services specified as such in the Scope of Work.

"**Results of the Work**" shall mean any direct results of performing the Work, and includes all Services.

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2.0 Effectiveness of this Contract

The start date of this Contract shall be <TO BE COMPLETED>, and shall be made effective by signature by both parties.

3.0 Terms and Conditions

There are no other terms and conditions than the terms and conditions expressed explicitly in this contract.

4.0 Performance

4.1 IMPLEMENTER shall perform the work and provide the external services under this Contract as stipulated in Appendix 1.

4.2 IMPLEMENTER shall endeavour to ensure that the work is performed to the highest professional standards and shall be responsible for the quality and timeliness of its services under this Contract.

4.3 IMPLEMENTER will perform its services according to the following performance standards:

- (i) IMPLEMENTER must be available during normal working hours to discuss the work in progress and respond to technical and/or administrative requests;
- (ii) The Personnel offered for the performance of the work must be in line with Appendix 1 to this contract and have the necessary competence to perform the work and provide the services.

EURESCOM shall be entitled to request a change of personnel in case the Personnel offered is provably unable to perform the services as agreed under this agreement.

5.0 Payment

The cost of the external services received by EURESCOM in the scope of this contract from IMPLEMENTER are fixed as follows:

<NNN> euroes

<Nthousand> euroes

Payments for services delivered by IMPLEMENTER will be done in stages by EURESCOM according to the agreed timeline and milestones as described in **Appendix 2**. Payments will be subject to the approval of the work and services of IMPLEMENTER at each milestone and the correct delivery of the associated documentation and invoices.

6.0 Acceptance of Services

6.1 IMPLEMENTER shall supply the work and services as defined in Appendix 1 to this contract to achieve the specific Results of the Work defined therein.

6.2 After reception of part or all of the Results of the Work, EURESCOM may object to any work or service that does not comply with the standards required by this contract. In such a case, IMPLEMENTER shall re-work the part of the Results of the Work in question to reach a satisfactory standard.

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Failure to supply any task, work or service to a satisfactory standard by the due date as set out in the Statement of Work (Appendix 1), plus any allowed time for re-working, shall oblige EURESCOM to deem IMPLEMENTER to be in default for that task, work or service and to withhold the corresponding payment and/or claim back the respective part of the advance payment.

In the case where IMPLEMENTER has been deemed to be in default for any specific task, work or service, IMPLEMENTER undertakes to return any payment or prepayment received for that task, work a , or service within 30 days.

7.0 Intellectual Property Rights

IMPLEMENTER warrants full compliance with all IPR provisions under the **Statement of Work (Appendix 1)**.

7.1 Third Party Intellectual Property Rights

IMPLEMENTER shall take all reasonable precautions to avoid the inclusion of third party IPR in the Results of the Work, and to avoid making the use of the Foreground subject to third party IPR, and to avoid giving advice the following of which would result in the infringement of third party IPR.

IMPLEMENTER warrants that the supply and use of their Personnel and Services in accordance with this Contract does not and will not infringe any IPR belonging to EURESCOM or any third party.

Notwithstanding the above, IMPLEMENTER shall indemnify EURESCOM from and against all claims, proceedings, damages, costs and expenses arising from infringement or alleged infringement of any patent rights and other Intellectual Property Rights of third parties with respect to the Work under this **Contract**.

7.2 Ownership of Intellectual Property Rights

IMPLEMENTER shall own all Intellectual Property Rights and have the right to apply for, and to own, any registered Intellectual Property Rights arising from Work performed under this Contract. He shall as soon as possible report to EURESCOM, and through EURESCOM to the European Space Agency any results arising from such a Work which may in his opinion be protected as registered Intellectual Property Rights and state whether he intends to apply for such protection. At IMPLEMENTER's specific request in order to allow for filing of patent applications the Agency shall not disclose any relevant information and results for a period of twelve (12) months from the date it was reported to the Agency.

The IMPLEMENTER shall subsequently inform the Agency (through EURESCOM) of any application to register such results arising from Work performed under this Contract and within two (2) months of the date of filing, provide the Agency with all details on that application. Unless agreed otherwise with the IMPLEMENTER, the Agency shall not disclose such information until publication of the registration application.

8.0 Confidentiality

IMPLEMENTER shall apply confidentiality rules compatible with the Confidentiality clauses in the **ESA 5G METEORS 5G satellite makerspace activity** Contract (as

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shown in **Appendix 3** to this contract) and ensure all his involved personnel are compliant.

9.0 Liabilities

- 9.1 IMPLEMENTER shall use all reasonable endeavours to ensure the accuracy of any information it supplies under this Contract and shall be responsible for any direct loss or damage arising out of any inaccuracies or omissions which are the result of its gross negligence or wilful intent.
- 9.2 IMPLEMENTER shall promptly notify EURESCOM of any claim arising relevant to 9.1. If any claim relevant to 9.1 is made against EURESCOM arising from IMPLEMENTER work, IMPLEMENTER will indemnify and keep indemnified EURESCOM against any and all loss and damages arising from such claim.
- 9.3 IMPLEMENTER shall promptly notify EURESCOM of any claim arising from their performance of the work and delivery of services where a third party alleges harm has been caused by the actions of IMPLEMENTER in performing this contract. If any such claim is made against EURESCOM arising from IMPLEMENTER work, IMPLEMENTER will indemnify and keep indemnified EURESCOM against any and all loss and damages arising from such claim.
- 9.4 IMPLEMENTER's overall liability under this contract is limited to the value of this contract, except for damages caused by wilful intent, and regarding claims, proceedings, damages, costs and expenses arising from infringement or alleged infringement of any patent rights and other Intellectual Property Rights of third parties with respect to the Work under this Contract.
- 9.5 Upon request, IMPLEMENTER shall inform EURESCOM on the essential terms and conditions of its employer's liability insurance.
- 9.6 Should in the execution of the Statement of Work a need arise to deliver information or services that originates from IMPLEMENTER that are subject to export control laws and regulations, IMPLEMENTER shall notify EURESCOM to secure that such information is only passed on to ESA in accordance with the provisions of such export control laws and regulations.

10 Term and Termination

- 10.1 This Contract starts on <day month year> and it shall terminate on <day month year> as foreseen by the Statement of Work.
- 10.2 If either party breaches any conditions of this Contract and fails to remedy such breach within thirty days after receipt of a written notice from the other party, the party giving notice may, at its option and in addition to any other remedies which it may have, terminate this Contract by sending notice of termination in writing to the other party and such termination shall be effective as the date of the receipt of such notice, and any benefits of the Contract in respect of the other party shall cease.
- 10.3 Notwithstanding termination or cessation of this Contract, clauses 7, 8 and 9 shall remain in force.

11.0 Force Majeure

If any party is rendered unable by circumstances of Force Majeure to fulfil any of its obligations under this Contract, such party, by giving notice and reasonably full particulars to the other party promptly after the occurrence of such Force Majeure,

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shall be excused from the performance of such obligations during the continuance of such inability so caused, so far as and to the extent that the obligations are affected by such Force Majeure, that such party shall be relieved of the liability for failure to fulfil the same during such period provided that the cause of such inability shall be remedied so far as is possible with reasonable despatch. For the purpose of this Contract, the term "Force Majeure" means an occurrence beyond the control of the party affected and which, by acting in a reasonable and prudent manner, said party is unable to prevent such as acts of God, state of war, riot, epidemics, atmospheric disturbance, lightning, storm, hurricane, earthquake, landslide, strikes and lock-outs.

12.0 Amendments, Variation

Amendments or variations of this Contract, its **Appendices**, or any of the rights or obligations of EURESCOM or IMPLEMENTER herein shall only be effective when expressed in writing and signed by both parties.

13.0 Waiver

No delay, neglect or forbearance in enforcing against any term or condition of this Contract shall be deemed to be a waiver or in any way prejudice any rights under this Contract unless in writing and signed by the parties.

14.0 Enforceability

The invalidity or unenforceability for any reason of any provision of this Contract shall not prejudice the validity or enforceability of the remainder. The parties shall seek to agree an amendment of this Contract such that the amended contract has as near as possible the same effect as intended in the original Contract.

15.0 Notice

Any notice to be given under this Contract shall be in writing or sent by fax or forwarded by letter post to the addressee at its business address as last notified in writing to the other party.

16.0 Relationship of the Parties

Nothing in this Contract shall be construed as establishing or implying any partnership or joint venture between the parties hereto and nothing in this Contract shall be deemed to constitute either of the parties hereto as the agent of the other or authorise either party:

- (i) to incur any expense on behalf of the other party,
- (ii) to enter into any engagement or make any representation or warranty on behalf of the other party,
- (iii) to pledge the credit of or otherwise bind or oblige the other party, or
- (iv) to commit the other party in any way whatsoever without in each case obtaining the prior written consent of the party concerned.

The sole exception to this section is where such an action is foreseen and the conditions allowing it are described in the scope of the work (Annex A).

17.0 Assignment

This Contract shall not be assigned or transferred by either party except with the written consent of the other party.

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18.0 Applicable Law

This Contract shall be governed by and construed in all respects by the laws of Germany. The Court of jurisdiction is Mannheim, Germany.

19.0 Dispute Resolution

19.1 EURESCOM and IMPLEMENTER will attempt to settle any claim or controversy arising out of it through consultation and negotiation in good faith and a spirit of mutual cooperation.

19.2 All disputes arising out of or in connection with this Contract, including any question regarding its existence, validity or termination, shall, unless amicably settled between the parties, be finally settled by arbitration according to the ICC (International Chamber of Commerce) Rules of Arbitration ("RULES"). The seat of arbitration shall be the ICC International Court of Arbitration in Frankfurt am Main, Germany. The procedural law of this place shall apply where the RULES are silent. The arbitration proceedings shall be conducted in English.

20.0 Headings

The headings used for the terms and conditions in this Contract are for reference purposes only and shall not affect the construction of the Contract.

EURESCOM and IMPLEMENTER now agree the above **Contract** for the performance and delivery of research services by **IMPLEMENTER** as described in the Statement of Work, Appendix 1 to this contract.

Signed for and on behalf of
EURESCOM

Signed for and on behalf of
IMPLEMENTER

.....
David Kennedy
Director

.....
<NAME>
<TITLE>

Date.....

Date.....

Appendices to this Contract:

Appendix 1: Statement of Work

Appendix 2: Milestone payment plan to IMPLEMENTER

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Appendix 3: ESA Confidentiality requirements.

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Annex 1 Personal Data Processing

This Personal Data Processing Annex (here in and afterwards called “PDPA” or the “PDP Annex”) governs the processing of Personal Data exchanged by the Parties in the frame of this CONTRACT and, as such, it forms an integral part of this CONTRACT. In case of conflict between the terms and conditions of this CONTRACT and the terms and conditions of this Annex, the terms and conditions of this Annex shall prevail.

1. Definitions

For the purpose of this Annex, the Parties agree to the following specific definitions in line with the PDP Annex to the ESA CONTRACT as well as the ones set forth in the ESA Personal Data Protection Framework defined in (8) below:

- (1) **“Agreed Purpose”** (of Processing) means:
 - (i) the performance of the CONTRACT, including implementation, management and monitoring of the work;
 - (ii) management of the relationship of the Parties in relation to the ESA CONTRACT, notably also for administrative, financial, audit or for communication purposes by ESA.
- (2) **“Agreed Retention Period”** (of Personal Data) means the duration necessary to fulfill the Agreed Purpose of Processing, but in any case no longer than 5 (five) years from the close-out of the ESA CONTRACT and this CONTRACT.
- (3) **“Agreed Territory”** (of Processing) means the following territories:
 - (i) ESA Member States, as they are listed on the following website http://www.esa.int/About_Us/Welcome_to_ESA/New_Member_States; and
 - (ii) European Union;
 - (iii) countries recognized by the European Commission as ensuring an Adequate Level of Protection of Personal Data under the European Union’s legal framework.
- (4) **“IMPLEMENTER”** means the natural or legal person who has entered into this CONTRACT with EURESCOM and which with regards to Personal Data, acts either as a Data Controller or as a Data Processor.
- (5) **“IMPLEMENTER Personnel”** means IMPLEMENTER’s personnel.
- (6) **“Contractor Personal Data”** means the Personal Data referred to in Section 3.3 herein.
- (7) **“Controller”** or **“Data Controller”** means any natural or legal person who makes the decision, alone or conjointly, to Process Personal Data, or commissions others to Process Personal Data on its behalf. The quality of Data Controller belongs to Party itself as an entity, not to the Party’s personnel who is materially involved in the related activities.
- (8) **“Data Privacy Regulations”** means collectively:

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- (i) ESA PDP Framework, i.e. the Personal Data Protection Framework of ESA available on the ESA website at the URL http://www.esa.int/About_Us/Law_at_ESA/Highlights_of_ESA_rules_and_regulations
 - (ii) the Personal Data protection laws and regulations applicable to the Agreed Territory of Processing to the extent that these laws and regulations provide an Adequate Level of Protection under the ESA PDP Framework.
- (9) **“Data Protection Incident”** means intentional or unintentional activity which violates the provisions set forth in the Data Privacy Regulations.
- (10) **“Data Subject”** means an individual who is the subject of Personal Data.
- (11) **“Disclosure (or “transfer”) of Personal Data” (or “Disclose”)** means any movement of Personal Data, including by copy, by moving Personal Data through a network or from one (1) medium to another (e.g. from a computer hard disk to a server), and/or by rendering remotely accessible Personal Data.
- (12) **“ESA”** or the **“Agency”** means the European Space Agency, including any of its establishments, centres, sites, and any other Agency’s facilities, being identified as Party to the ESA CONTRACT.
- (13) **“ESA Personal Data”** means the Personal Data referred to in Section 3.2 herein.
- (14) **“ESA Personnel”** means ESA employees and as well seconded agents, consultants, experts or employees of Third Parties, as long as these individuals act under an engagement of confidentiality and for which the need to know has been authorised by ESA.
- (15) **“EURESCOM Personnel”** means EURESCOM employees, experts or employees of Third Parties, as long as these individuals act under an engagement of confidentiality and for which the need to know has been authorized by EURESCOM.
- (16) **“Personal Data”** means any information concerning an identified or identifiable Data Subject, provided that this information can be related to the said Data Subject without unreasonable efforts.
- (17) **“Data Processor” (or “Processor”)** means any natural or legal person which Processes Personal Data upon decision of the Data Controller for a specific purpose. The quality of Data Processor belongs to Party itself as an entity, not to the Party’s personnel who is materially involved in the related activities.
- (18) **“Processing” (or “Process”)** means any operation or set of operations performed in particular by electronic means, on Personal Data, such as collection, recording, organisation, storage, retrieval, use, Disclosure, transfer, deletion. It also includes sub-Processing, whenever it is authorized by the Data Controller under Contract.

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2. Roles of the Parties

In the performance of this CONTRACT:

- (i) each Party will act as Data Processor of Personal Data submitted to it by the other Party;
- (ii) each Party will act as Data Controller of the Personal Data it submits to the other Party; and
- (iii) when acting as Data Processor, each Party shall process such data solely for the Agreed Purpose.

3. Personal Data exchanged by the Parties

- 3.1 Each Party shall communicate to the other Party only those Personal Data that is strictly necessary for the Agreed Purpose.
- 3.2 As Data Controller, EURESCOM will communicate to IMPLEMENTER only the Personal Data concerning EURESCOM representatives/contact persons including name, work address, email and telephone numbers.
- 3.3 As Data Controller, Contractor will communicate to EURESCOM only:
 - (i) Personal Data concerning Contractor's representatives/contact persons including name, work address, email and telephone numbers;
 - (ii) Personal Data concerning Contractor's key personnel, including title, name, work address, email, telephone numbers, education, professional experience, description of the persons job and responsibilities and the precise assignment of the person to the activity under this CONTRACT.

4. Data Controller's obligations

- 4.1 The Data Controller is responsible for the collection and update of the Personal Data, for the lawfulness and the quality of the Personal Data and of the means by which they were collected. Should the legal basis for the collection of the Personal Data cease to exist, the Data Controller will inform the Data Processor without undue delay.
- 4.2 The Data Controller will handle and answer any Third Party(ies) request regarding the Personal Data communicated by the Data Controller, subject to prompt and written notification thereof by the Data Processor.
- 4.3 The Data Controller undertakes to enforce the relevant provisions of the Data Privacy Regulation with respect to audits and to data breaches, involving the Personal Data processed under the CONTRACT as per Section 12 below.
- 4.4 The Data Controller shall ensure, in its area of responsibility, that the level of protection resulting from the Data Privacy Regulations is met.

5. Data Processor's obligations

- 5.1 The Data Processor shall process the Personal Data:

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- (i) in compliance with this PDP Annex and, generally, applying the level of protection resulting from the Data Privacy Regulations then in force;
- (ii) solely for the Agreed Purpose of Processing;
- (iii) solely in the Agreed Territory;
- (iv) without exceeding the Agreed Retention period;
- (v) in such a way as to minimise, by means of suitable preventive security measures, the risk of accidental or unlawful destruction, loss, alteration, unauthorised disclosure or access, or Processing operations that are either unlawful or inconsistent with the Agreed Purpose.

5.2 The Data Processor shall promptly investigate any reasonable suspicion of Personal Data Breach and act in accordance with Section 12 below.

5.3 The Data Processor shall cooperate with the Data Controller to enable the latter to guarantee to every Data Subject or his/her delegates the possibility to exercise the rights granted to him/her by the Data Privacy Regulations. The Data Processor acknowledges that Data Subject rights shall be exercised only through the Data Controller. Therefore, the Data Processor undertakes to immediately notify the Data Controller of any request that Data Subjects, address directly to the Data Processor, and will not respond to any such request or take any other related action, until authorised by the Data Controller.

5.4 The Data Processor shall immediately inform the Data Controller if, in its opinion, an instruction from the Data Controller infringes any provision on the Processing of Personal Data under the present Agreement.

6. Deletion of Personal Data

Following expiration of the Agreed Retention Period, all Personal Data must be effectively destroyed/deleted, unless required otherwise by the Data Privacy Regulations in the frame of audits, inspections, incidents.

7. Confidentiality

The Parties shall ensure the confidentiality of the Personal Data processed in particular by:

- (i) ensuring that the Personnel, recipients of the personal data of each Party:
 - are properly authorised on a need-to-know basis;
 - have committed themselves to confidentiality or are under a statutory obligation of confidentiality;
 - have received the appropriate personal data protection training.
- (ii) take into consideration, in terms of IT tools, product, applications, the principles of personal data protection by design and by default.

8. Security

The Parties shall adopt appropriate technical and organisational security measures, giving due regard to the risks inherent in the processing and to the nature, scope, context and purpose of the processing, in order to ensure the following as appropriate:

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- the on-going confidentiality, integrity, availability and resilience of processing systems and services;
- measures to protect Personal Data from accidental or unlawful destruction, loss, modification, unauthorised disclosure or access to personal data transmitted, stored or otherwise Processed.

9. Data Protection Officer

As far as required by the Data Privacy Regulation, the Parties shall appoint a Data Protection Officer and communicate the contact details to the other Party.

10. Transfer

Transfer of Personal Data outside the Agreed Territory requires prior written approval of the Data Controller.

11. Sub-contracting and contracting external services

- 11.1 In line with the PDPA of ESA EURESCOM is authorised to disclose the Personal Data received by the Agency for the Agreed Purpose and within the scope of the Contract to IMPLEMENTERS providing external services. Such external service providers are considered as sub-Processors. All the obligations of the Contractor in its role as Data Processor are passed on to the sub-Processors by flowing down these provisions in the respective contracts. The Processing of the Personal Data by the sub-Processors is only allowed for the Agreed Purpose and provided that the Personal Data are not transferred outside the Agreed Territory. Disclosure of the Agency's Personal Data to other sub-Processors requires prior approval of the Agency.
- 11.2 The Agency may engage sub-Processors to support its internal operations that process Personal Data. It is the responsibility of the Agency to ensure that such sub-Processors assume obligations consistent with the Data Privacy Regulations in order to guarantee an adequate level of protection of Personal Data.

12. Personal Data Breaches – Incident Management

In case of any actual or suspected Personal Data Protection Incident falling in the Data Processor's area of responsibility, the Data Processor shall promptly:

- (i) report to Data Controller about it within 48 hours;
- (ii) investigate and inform, in writing, the Data Controller of all stages of Data Processor's investigation as well as on the results thereof:
 - a) if such Incident actually occurred and about the date of occurrence;
 - b) on the causes and the nature of the Incident;
 - c) on the Personal Data which were affected by the Incident;
 - d) on other consequences of the Incident;
 - e) on the measures taken to mitigate the Incident;
 - f) the actions taken to prevent similar Incidents from occurring in the future.
- (iii) coordinate with the Data Controller in any aspect related to complaints (if any) lodged by the affected Data Subject to the Data Processor, in particular

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provide the Data Controller with reasonable assistance and accurate information about the Incident, in particular (but not only) in case a complaint is, or likely to be, lodged by a Data Subject in relation to the breach;

- (iv) to put in place controls and audits.

13. Law and dispute resolution

The Parties agree that:

- (i) notwithstanding any other provisions on the governing law set forth elsewhere in the CONTRACT, the provisions of the Data Privacy Regulations, as defined herein, will apply and prevail, in case of conflict;
- (ii) notwithstanding any other dispute resolution provisions set forth elsewhere in the Contract:
 - a) any Personal Data-related Incidents or disputes shall be submitted to the independent Data Protection Supervisory Authority established by ESA Council Resolution; and
 - b) the Rules of Procedure for the Data Protection Supervisory Authority, as set forth ESA PDP Framework, shall apply.

14. Duration

This PDP Annex enters into force simultaneously with the CONTRACT. Its terms and conditions will survive the expiration or termination of PDP Annex for as long as the Personal Data are protected by the Data Privacy Regulations.