



**JOINT UNDERTAKING**

**SESAR 3 Joint Undertaking  
Membership Agreement**

*Ref. S3JU/LC/002-CTR*

This “Membership Agreement” or “**Agreement**” is **between** the following parties:

*The **SESAR 3 Joint Undertaking (“SESAR 3 JU”)***, a joint undertaking within the meaning of Article 187 of the Treaty on the Functioning of the European Union, established under COUNCIL REGULATION establishing the Joint Undertakings under Horizon Europe<sup>1</sup>,

Located at 100 Avenue de Cortenbergh, 1000 - Brussels, Belgium,

Represented for the purpose of signature of this Agreement by its Executive Director, Mr Andreas Boschen,

**on the one part,**

**and**

The **Members** of SESAR 3 JU, as identified in each individual adhesion form, annexed in Appendix A to the Agreement,

**on the other part,**

**SESAR 3 JU and the Members hereinafter referred to individually as a “Party” and collectively as the “Parties”.**

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<sup>1</sup> Council Regulation (EU)2021/2085 of 19 November 2021 establishing the Joint Undertakings under Horizon Europe and repealing Regulations (EC) No 219/2007, (EU) No 557/2014, (EU) No 558/2014, (EU) No 559/2014, (EU) No 560/2014, (EU) No 561/2014 and (EU) No 642/2014

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## RECITALS

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HAVING REGARD to Council Regulation (EU) 2021/2085 of 19 November 2021 (the “Single Basic Act” or the “SBA”) establishing the Joint Undertakings under Horizon Europe and repealing Regulations (EC) No 219/2007, (EU) No 557/2014, (EU) No 558/2014, (EU) No 559/2014, (EU) No 560/2014, (EU) No 561/2014 and (EU) No 642/2014 and in particular Recitals (30), Articles 5(2)(a), 17(2)(e), 27 and 28(2) thereof;

HAVING REGARD to Regulation (EU) 2021/695 of the European Parliament and of the Council of 28 April 2021 establishing Horizon Europe – the Framework Programme for Research and Innovation, laying down its rules for participation and dissemination, and repealing Regulations (EU) No 1290/2013 and (EU) No 1291/2013 (Text with EEA relevance);

HAVING REGARD to Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 and in particular Article 188;

HAVING REGARD to the Governing Board decision ref. GB(D)01-2021 adopting the Financial Rules of SESAR 3 JU including any future amendment;

HAVING REGARD to Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (Text with EEA relevance.)

WHEREAS, the founding members listed in Annex III to the Single Basic Act, notified their decision to accede to the Single European Sky ATM Research 3 Joint Undertaking by means of a letter of commitment as per Article 6(3) of the SBA;

WHEREAS the Parties express their commitment to achieving the European ATM Master Plan vision for a Digital European Sky as well as the following general objectives of the Single European Sky ATM Research (SESAR) 3 Joint Undertaking (hereinafter referred to as SESAR 3 JU):

- strengthen and integrate the Union’s research and innovation capacity in the ATM sector, making it more resilient and scalable to fluctuations in traffic while enabling the seamless operation of all aircraft;
- strengthen, through innovation, the competitiveness of manned and unmanned air transport in the Union, and ATM services’ markets to support economic growth in the Union; and
- develop and accelerate the market uptake of innovative solutions to establish the Single European Sky airspace as the most efficient and environmentally friendly sky to fly in the world;

WHEREAS, given the complexity of today’s Air Traffic Management system and the required technological development and investment for modernising it, neither the Union nor market participants can attain the objectives of the ATM Master Plan on their own;

WHEREAS this Agreement should provide a stable legal framework for the contribution and cooperation of the members to SESAR 3 JU, without prejudice to the applicable law to this Agreement;

WHEREAS the European Commission has entrusted SESAR 3 JU with the task of implementing the Union's financial contribution allocated to the Digital European Sky Programme under the Horizon Europe Programme;

WHEREAS according to Article 5(2)(a) of the SBA the joint undertaking shall provide financial support, mainly in the form of grants, to research and innovation indirect actions, selected following open, transparent and competitive calls, except in duly justified cases specified in the work programme in order to set additional conditions requiring the participation of members of the joint undertaking or their constituent or affiliated entities;

WHEREAS according to Article 28(2) of the SBA the members other than the Union shall agree on how to share their collective contribution among them in accordance with the applicable financial rules;

WHEREAS according to Article 157 of Single Basic Act the European Organisation for the Safety of Air Navigation (EUROCONTROL) role and contribution shall be set out in an administrative agreement between the two parties, the SESAR 3 JU and EUROCONTROL, which shall complement this Membership Agreement;

WHEREAS SESAR 3 JU Governing Board has adopted this Membership Agreement through its decision Ref. GB (D)10-2022 of 27 June 2022.

## SECTION A – PRELIMINARIES

### ARTICLE 1. DEFINITIONS AND INTERPRETATION

In this Agreement, the definitions set out in Appendix B (“Definitions”) shall apply.

In this Agreement, unless the context requires otherwise:

- the singular includes the plural and vice versa;
- any phrase introduced by the words "including", "includes", "in particular", "for example" or similar, shall be construed as illustrative and without limitation to the generality of the related general words.

The headings in this Agreement are for ease of reference only and shall not affect its interpretation.

References to Articles and Appendices are, unless otherwise provided, references to the Articles of and Appendices to this Agreement.

If there is any conflict between the Articles and any Appendices and/or any Annexes to the Appendices referred to in this Agreement, the conflict shall be resolved in accordance with the following order of precedence:

1. Articles of the SBA;
2. Articles of this Agreement;
3. Appendices to this Agreement;
4. Any other document referred to in this Agreement.

### ARTICLE 2. PURPOSE OF THIS AGREEMENT

This Agreement shall:

- (i) govern contributions of the Members to SESAR 3 JU,
- (ii) provide for the rights and obligations of the Parties to this Agreement.

## SECTION B – GENERAL OBLIGATIONS AND LIABILITY

### ARTICLE 3. GENERAL OBLIGATIONS

The Parties shall work and cooperate together to the best of their abilities with a view of implementing the Digital European Sky Programme in an efficient, open and timely manner and of attaining the objectives and the deliverables as envisaged by the European ATM Master Plan.

The Parties shall contribute to the SESAR 3 JU's agenda and priority setting through the adoption and possible amendment of the Strategic Research and Innovation Agenda, as well as the adoption of the Bi-Annual Work Programme.

For the purposes of paragraphs 1 and 2, the Parties shall act in good faith, in accordance with Good Industry Practice and in the best, overall interest of the European Union and of the Digital European Sky Programme.

The Parties shall make available contributions in accordance with SBA provisions and Article 8 below. The Parties commit to make these contributions available as long as they remain Members of SESAR 3 JU.

The Parties shall comply with all applicable laws and regulations, in particular the European Union competition and state aid laws.

The Members shall commit to comply with the legal framework and general principles applicable to the Actions funded with Horizon Europe funds they participate in as beneficiaries for a proper implementation of the objectives of SESAR 3 JU as set forth by the SBA and the Strategic Research and Innovation Agenda within the wider context of the Single European Sky policy.

The Members shall refrain from any activity that could undermine or could be detrimental to the Digital European Sky Programme. In particular, the Members shall take all necessary and appropriate measures to avoid acts or commitments which would lead to a breach of the provisions of the Single Basic Act and/or that are incompatible with obligations under this Agreement or under the Grant Agreements to which they are party.

Additional obligations of the Members to those set in the relevant Grant Agreements, related to the management and implementation of the intellectual property rights, are set out in the SESAR 3 JU Bi-Annual Work Programme.

### ARTICLE 4. COMMUNICATION

The Parties shall abide by the common partnership communication principles, set forth in Appendix D ("SESAR 3 Joint Undertaking Communications Charter for Members").

### ARTICLE 5. COMPLIANCE WITH COMPETITION LAW

To the extent allowed under the legal framework applicable to the Member, the Members acknowledge that antitrust law (including EU competition law) is applicable to their cooperation and undertakings in the course of the Digital European Sky Programme. In particular, the Members



understand that they shall not use the forum provided by SESAR 3 JU to coordinate commercial activities outside the scope of SESAR 3 JU.

The Members further acknowledge that in order to be able to achieve the objectives of SESAR 3 JU, they will have to share information in the framework of the latter's activities. When sharing such information in this context, the Members shall comply with any applicable antitrust law prohibiting the exchange of competitively sensitive information among competitors.

Appendix C attached hereto provides some recommended practices to avoid infringing applicable antitrust law.

## ARTICLE 6. LIABILITY

### 6.1 General principles

The relevant provisions of the Grant Agreement(s), the SBA and applicable EU law, supplemented when necessary by Belgian law, shall govern any liability arising from the participation to the Digital European Sky Programme.

### 6.2 Insurance

To the extent allowed under the legal framework applicable to the Member, each Member agrees to obtain and maintain appropriate professional insurance, to insure against any liability caused by that Member's participation to the Digital European Sky Programme.

### 6.3 Financial Liability

The financial liability of the Members is laid down by Article 41(1) of the SBA.

## SECTION C – ADHESION TO THE MEMBERSHIP AGREEMENT

### ARTICLE 7. ADHESION TO THE MEMBERSHIP AGREEMENT

Members shall be bound by this Agreement and shall contribute to the Digital European Sky Programme, according to the provisions set forth in the SBA and refined in this Agreement.

Every Member of SESAR 3 JU shall become a Party to this Agreement by signing an adhesion form, in order to be able to participate with its respective contribution to SESAR 3 JU.

Without prejudice to Article 13 below, following the adoption of the Membership Agreement by the Governing Board through decision ref. GB(D)10-2022, the SESAR 3 JU will send to the Members the pre-filled adhesion forms (using the template, provided in Appendix A).

The Member will be requested to sign the forms and return them to the SESAR 3 JU for the counter-signature of its Executive Director.

Any change to the membership composition decided by the Governing Board through an *ad hoc* decision shall be formalised by annexing the adhesion form of the new Member duly signed. Following the signature of the adhesion form, the entity concerned shall become Party of this Agreement.

## SECTION D – CONTRIBUTIONS

### ARTICLE 8. CONTRIBUTIONS TO SESAR 3 JU

#### 8.1 General principles

In accordance with Articles 11, 28 and 146(1) of the Single Basic Act, the contributions of the Members shall consist of:

- 1) financial contributions to the administrative costs;
- 2) in-kind contributions to operational activities (or “IKOP”);
- 3) in-kind contributions to additional activities (or “IKAA”).

The present Section shall be considered *inter alia* in compliance with and implementing Article 28(2) of the Single Basic Act, which establishes an obligation on the Members to agree on how to share their collective contribution in accordance with the applicable SESAR 3 JU financial rules.

#### 8.2 Financial contribution to the administrative costs

##### 8.2.1 Purpose

The Members other than the Union and EUROCONTROL shall provide financial contributions to SESAR 3 JU for the administrative costs on an annual basis.

The SESAR 3 JU – EUROCONTROL Agreement shall detail EUROCONTROL’s financial contributions to the SESAR 3 JU administrative costs. Therefore, Articles 8.2.2 and 8.2.3 below shall not apply to EUROCONTROL.

##### 8.2.2 Due financial contributions to administrative costs

- I. Members other than the Union and EUROCONTROL shall collectively contribute to the SESAR 3 JU administrative costs up to EUR 25 000 000 as detailed below. The maximum amount of annual contributions by the Members listed in the table may be adjusted based on the actual SESAR 3 JU administrative costs incurred.

- II. The table below reflects the initial estimation of the administrative costs of SESAR 3 JU in terms of total maximum yearly financial contribution of the Members other than the Union and EUROCONTROL with the assumption that SESAR 3 JU will not need any contribution to administrative costs before 01/07/2024:

Latest estimated date by which payment is due	Maximum amount in EUR to be shared among the Members other than the Union and EUROCONTROL
01/07/2024	3 571 428, 57
01/07/2025	3 571 428, 57
01/07/2026	3 571 428, 57
01/07/2027	3 571 428, 57
01/07/2028	3 571 428, 57
01/07/2029	3 571 428, 57
01/07/2030	3 571 428, 57

**Table 1. Summary of the collective obligation of financial contributions to SESAR 3 JU administrative costs by the Members other than Union and EUROCONTROL**

Before any award of grants, the repartition key of the due total maximum yearly financial contribution per Member other than the Union and EUROCONTROL shall be equal between the Members other than the Union and EUROCONTROL.

In order to identify the most accurate yearly allocation of the due total maximum financial contribution per Member other than the Union and EUROCONTROL, SESAR 3 JU will proceed with a yearly adjustment before proceeding with a final balance of all accounts at the time of winding-up of SESAR 3 JU.

The repartition key of the due total maximum yearly financial contribution per Member other than the Union and EUROCONTROL will depend on the actual grants awarded to these Members as a result of the calls for proposals launched by SESAR 3 JU.

- 1) *Yearly update of the repartition key of financial contributions to the administrative costs per Member based on estimated requested and final paid co-financing under awarded Grant Agreements.*

SESAR 3 JU will update the repartition key of the due financial contributions to the administrative costs for each Member on a yearly basis based on the following formula:

$\text{Updated yearly Financial Contribution per Member (M}_1\text{)} = \frac{\text{TCFA M}_1 \text{ * ATBS}}{\sum_N \text{CFA}}$
---

Where:

- TCFA  $M_1$  = Total co-financing amount of one Member which is calculated based on:

- The cumulative estimated amounts of co-financing under signed Grant Agreements by 31/12 of year n-1 awarded per Member as a result of the calls for proposals launched by SESAR 3 JU (such as for Industrial Research and Exploratory Research); and
- The correction resulting of the difference between the final co-financing amounts actually paid to the Member by 31/12 of year n-2 and the cumulative estimated amounts of co-financing identified in the above paragraph

-  $\sum N$  CFA = Total co-financing amount which is calculated based on:

- The cumulative estimated amounts of co-financing under signed Grant Agreements by 31/12 of year n-1 awarded to all Members:
  - other than the EU and EUROCONTROL,
  - who adhered to this Agreement by signing the adhesion form (Appendix A) and having a status of Member when the formula is to be applied, and
  - who were awarded Grant Agreement(s) as a result of the calls for proposals launched by SESAR 3 JU (such as for Industrial Research and Exploratory Research); and
- The correction resulting of the difference between the final co-financing amounts actually paid to all the Members other than the EU and EUROCONTROL by 31/12 of year n-2 and the cumulative estimated amounts of co-financing identified in the above paragraph

- ATBS = Amount of financial contribution to administrative costs in EUR to be shared among the Members other than the Union and EUROCONTROL for year n

In accordance with Article 8.3.2 below and for consistency purposes, SESAR 3 JU will use the value of grant amount registered in the Funding and Tender Opportunities Portal and eGrants tool to apply the above formula.

By 31 March each year at the latest, SESAR 3 JU Executive Director shall report to the Governing Board on the fair and proportionate repartition of each Private Member's Financial Contributions to SESAR 3 JU administrative costs with the co-financing amounts paid to and received by the Members over the Digital European Sky Programme duration. This report shall identify any potential deviation and propose possible corrective measures for adoption by Governing Board decision.

The voting rights will be updated in accordance with Governing Board decision ref. GB(D)09-2021 "*Establishment of voting rights to Governing Board members*" including any future amendment and Article 9 below.

2) *Final balance of all accounts at the time of winding-up of SESAR 3 JU*

At the time of its winding-up, the appointed liquidator of SESAR 3 JU shall distribute any surplus among SESAR 3 JU members in proportion to their financial contribution to the SESAR 3 JU in accordance with Article 45 (4) of the SBA.

- III. In case the SESAR 3 JU administrative expenditure significantly increases before 2024, this may result into the need to anticipate the requests for payments and re-balancing Members' financial contributions. Such changes shall be subject to a specific Governing Board decision.

### 8.2.3 Conditions for payment of the financial contributions to administrative costs

Without prejudice to Article 8.2.2, individual annual invoices to the Members other than the Union and EUROCONTROL will be calculated and based on the formula indicated in Article 8.2.2 (II)(1) above.

The first annual payment for financial contributions to administrative costs due by the Members other than the Union and EUROCONTROL will be calculated by SESAR 3 JU in 2024, based on the grants awarded in the first calls for proposals of SESAR 3 JU (such as Industrial Research and Exploratory Research).

## 8.3 In-kind contributions to operational activities (IKOP)

### 8.3.1 Purpose

The Members contribution to operational activities of SESAR 3 JU shall be in line with their investment in Industrial Research activities as foreseen in the Multi-Annual Work Programme and Bi-Annual Work Programme over the lifetime of SESAR 3 JU. Such contribution shall consist of the eligible costs incurred by them in implementing indirect actions, awarded to them by SESAR 3 JU under Horizon Europe Programme, less the contribution of SESAR 3 JU to those costs.

### 8.3.2 Evaluation and reporting of IKOP

IKOP of the Members shall be calculated and reported automatically through the Funding and Tender Opportunities Portal and eGrants tool. The value of the reported IKOP by each Member shall be audited in accordance with the mechanism applicable to the specific Grant Agreement.

## 8.4 In-kind contribution to additional activities (IKAA)

### 8.4.1 Purpose

The Members contribution to additional activities of SESAR 3 JU shall be in line with their overall investments in the implementation of the European ATM Master Plan not covered by IKOP. An activity may qualify as IKAA when it meets the following cumulative conditions:

- 1) it does not receive financial support from SESAR 3 JU, but contributes to its objectives and is directly linked to the uptake of results from projects under the Digital European Sky Programme or its preceding initiatives or that has a significant Union added value (i.e. is considered as "relevant" to the Digital European Sky Programme);
- 2) it is determined in accordance with the usual cost accounting practices of the Members, with the applicable accounting standards of the country where they are established, and with the applicable International Accounting Standards and International Financial Reporting Standards; and

- 3) it is included in the annual additional activities plan annexed to the main part of the SESAR 3 JU Bi-Annual Work Programme, upon review amongst Members at Programme Committee level.

#### 8.4.2 Possible types of IKAA

For the purpose of identifying and harmonising the contribution of the Members in terms of IKAA, Article 147 of the Single Basic Act includes the following types of activities:

- Type A: indirect costs not funded by the Union in relation to the implementation of the Digital European Sky Programme as a whole (Horizon Europe Exploratory Research and Industrial Research activities);
- Type B: investments in certification and standardisation activities in relation to the execution of the European ATM Master Plan;
- Type C: cost of communication and outreach activities related to SESAR Solutions not covered by the Union;
- Type D: cost related to coordination with ICAO and other international partners in relation to the execution of the European ATM Master Plan ;
- Type E: investments in deployment activities in relation to the execution of the European ATM Master Plan (such as but not limited to Digital Sky Demonstrators).

#### 8.4.3 Reporting

The Members shall report by 31 May each year at the latest to the Governing Board on the value of the IKAA, made in the previous financial year. For this purpose, the SESAR 3 JU Governing Board shall adopt and provide the Members with specific reporting guidelines and dedicated templates.

#### 8.4.4 Evaluation

The costs shall be certified by an independent audit body appointed by the Member concerned and shall not be audited by SESAR 3 JU or any Union body.

The valuation method may be verified by SESAR 3 JU should there be any uncertainty arising from the certification.

#### 8.5 SESAR 3 JU's VAT exemption

In accordance with Article 39 of the SBA which lays down the applicability of Protocol 7 on the privileges and immunities of the European Union, annexed to the TEU and the TFEU, and in particular Article 3 and 4 therein, in the light of the *ad hoc* agreement with the Belgian State, the SESAR 3 JU is VAT exempted.

In Belgium, use of this Agreement constitutes a request for VAT exemption No 450, Article 42, paragraph 3.3 of the VAT code (circular 2/1978), provided the invoice includes the statement: "*Exonération de la TVA, Article 42, paragraphe 3.3 du code de la TVA (circulaire 2/1978)*".

#### 8.6 SESAR 3 JU's bank account

For the purpose of this Agreement, the SESAR 3 JU's bank account is the following:

Bank: ING  
Address : Boulevard Baudouin 1<sup>er</sup>, 19  
Floor 3 -CDM  
City : 1348 Louvain-la-Neuve  
Country : BELGIQUE

IBAN : BE59 3751 1375 6326  
EC – SESAR JU RECEIPTS EUR  
BIC Code : BBRUBEBB

## SECTION E – VOTING RIGHTS - PARTICIPATION TO THE GOVERNING BOARD

### ARTICLE 9. VOTING RIGHTS

The number of votes of the Members shall be in proportion to their contribution to the budget of the SESAR 3 JU.

However, the Union and EUROCONTROL shall each have at least 25 % of the total number of votes and the representative of the civil users of airspace shall have at least 10 % of the total number of votes.

The Members other than the Union and EUROCONTROL shall initially have equal voting rights at the SESAR 3 JU Governing Board as per Governing Board decision Ref. GB(D)09-2021 “*Establishment of voting rights to Governing Board members*” including any future amendment.

As a result of the award of the first grants, resulting from the SESAR 3 JU calls for proposals, the number of votes of each Member shall be updated in proportion to their actual financial contribution to the budget of SESAR 3 JU. Such an update shall be done on a yearly basis and be subject to a specific Governing Board Decision.

The Governing Board shall decide on any redistribution of the voting rights due to the change of redistribution of financial contributions, itself due to the accession of (new) Associated Members or due to termination of membership.

### ARTICLE 10. PARTICIPATION TO THE GOVERNING BOARD

Every Member that is entitled to attend and vote at Governing Board meetings can vote either in person or by a proxy.

Considering the large number of SESAR 3 JU Members and in order to facilitate a smooth functioning of the SESAR 3 JU governance, Members may appoint another Member, a proxy, to attend a Governing Board meeting and vote on its behalf. The proxy shall possess the same rights as the Member. These rights include the right to attend, actively participate at the Governing Board meeting and vote at Governing Board meetings. Decisions made by the proxy are valid as if the vote is given by the Member who entrusted him/her, provided that the proxy form allows him/her to do so.

A statement, which shall outline at least the name of the member, the name of the proxy, the duration of the proxy and the manner in which the proxy should vote, shall be duly communicated in writing to the concerned Member and to the Secretary of the Governing Board.

## SECTION F –CONFIDENTIALITY AND DATA PROTECTION

### ARTICLE 11. CONFIDENTIALITY AND CONFLICT OF INTERESTS

Rules on Confidentiality and Conflict of Interests adopted with Governing Board decision ref. GB(D)03-2021 including any future amendment shall apply mutatis mutandis to the Parties.

For the purpose of the performance of the obligations arising from this Agreement, the scope of the above-mentioned GB decision ref. GB(D)03-2021 shall be extended in order to apply the rules thereof to any workforce of the Members (such as personnel, contractors, experts, external consultants), as well as to any persons representing or acting in whatever form on behalf of the Members.

#### ARTICLE 12. DATA PROTECTION

The Parties, in their role of controllers, must be accountable for the processing of personal data under this Agreement in compliance with the applicable European Union and national law on data protection (including authorisations, notification requirements, and adequacy and risk assessments).

The Parties may grant access to personal data of their personnel only when this is strictly necessary for implementing this Agreement and in accordance with the principles of purpose limitation, data minimisation and lawfulness of the processing.

When transmitting personal data of their personnel to be processed by SESAR 3 JU, the Members must ensure lawfulness of the processing and the transfer, including the compulsory collection and management of explicit consent from the relevant data subjects when legally required.



## SECTION G - ENTRY INTO FORCE, TERM AND TERMINATION

### ARTICLE 13. ENTRY INTO FORCE – TERM

This Agreement enters into force on 27<sup>th</sup> June 2022, the date of adoption by the SESAR 3 JU Governing Board through its decision ref. GB(D)10-2022. It takes effect for each individual Member upon this Member's signature of the adhesion form as per Appendix A of the Agreement and its counter-signature by the SESAR 3 JU Executive Director.

Without prejudice to Article 14 below, the duration of the Agreement shall correspond to the duration of SESAR 3 JU as per Article 3(1) of the SBA.

### ARTICLE 14. TERMINATION

Membership of the Member may be terminated under the conditions set forth in Article 8 of the Single Basic Act.

In view of Article 7 above, each Member shall be a Party to this Agreement. Therefore, the termination of the membership shall result in the automatic termination of this Agreement for the concerned Member, with the exception of Articles 6, 11, 12, 16 and 17 thereof, which shall continue to apply even after the termination.

The termination of the Agreement shall become effective and irrevocable on the same date as the one of the termination of the membership.

The Parties agree that this Agreement cannot be terminated unilaterally as long as the membership of the SESAR 3 JU Member/s concerned remains valid.

## SECTION H - MISCELLANEOUS AND GOVERNING LAW

### ARTICLE 15. LANGUAGE

The Parties acknowledge that this Agreement has been drafted in English, which shall be its official language.

Any translated versions of this Agreement shall be allowed for information purposes, if so required under any national laws of the Member. The English version shall however prevail in any case.

### ARTICLE 16. APPLICABLE LAW

This Agreement shall be governed by the applicable European Union law, supplemented, where necessary, by the law of Belgium.

For the European Organisation for the Safety of Air Navigation (EUROCONTROL), this Agreement is governed by the applicable EU law, supplemented if necessary by the law of Belgium, and, where appropriate, by the general principles governing the law of international organisations and the general rules of international law.

Any dispute between the Parties in relation to the interpretation, application or validity of this Agreement shall be settled as set forth in Article 17 below.

#### ARTICLE 17. SETTLEMENT OF DISPUTES

The Parties shall endeavour to settle amicably any dispute arising out of or relating to the interpretation or application of this Agreement.

If at any time questions, disputes or differences shall arise between the Parties in relation to or in connection with this Agreement, the Parties will use every endeavour to resolve it by a process of consultation, consensus and application of common sense.

The purpose of the consultation shall be to review and agree so far as is practicable the action taken to solve the arisen problem and the Parties shall negotiate with each other in good faith to that end. Each Party shall respond to a request for amicable settlement within seven (7) working days of such request.

The Period to reach an amicable settlement shall be sixty (60) working days from the date of the request.

If the dispute cannot be settled amicably, each Party may decide to submit for mediation (followed by an arbitration, should the mediation failed) or directly for arbitration in the following manner:

a) in case of mediation, the Parties shall jointly appoint a mediator acceptable by each of them, who will be responsible for facilitating the resolution of the dispute within two months from the referral of the dispute. The mediation proceedings must take place in Brussels and the language used in the mediation proceedings will be English.

b) in case of arbitration involving Members other than EUROCONTROL, all disputes arising out of or in connection with the present Agreement shall be finally settled under the rules of arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said rules. The arbitration proceedings must take place in Brussels and the language used in the arbitral proceedings will be English. The arbitral award will be binding on all parties and will not be subject to appeal.

c) in case of arbitration involving EUROCONTROL, the matter shall be referred to the Permanent Court of Arbitration Optional Rules for Arbitration Involving International Organisations and States in force at the Effective Date. The appointing authority will be the Secretary-General of the Permanent Court of Arbitration following a written request submitted by either party. The arbitration proceedings must take place in Brussels and the language used in the arbitral proceedings will be English. The arbitral award will be binding on all parties and will not be subject to appeal.

#### ARTICLE 18. ENTIRE AGREEMENT

This Agreement, together with the documents referred to in it and attached to it, constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes, cancels and nullifies any previous agreement between the Parties in relation to the Digital European Sky Programme.

#### ARTICLE 19. AMENDMENTS

Articles and the appendices of this Agreement may be modified in writing only. The signature process shall be formalised through the signature of an amendment form by the duly authorised representative(s) of each Party.

Amendments shall be adopted by the Governing Board Amendments shall enter into force and take effect either on the date indicated in the relevant Governing Board decision, if by such date all the Parties have signed the amendment form or on the date on which the last Party signs it.

#### ARTICLE 20.ASSIGNMENT

Members may not assign or transfer any of their rights or obligations under the present Agreement, in whole or in part, to any third party.

#### ARTICLE 21.NOTICES - CORRESPONDENCE

Formal notices and correspondence given under or in relation to this Agreement shall be in writing in paper or electronic format in the language of the Agreement, signed by or on behalf of the Party giving it and shall be served by delivering it personally "in hand", or by sending it by pre-paid post, recorded delivery or registered post, and/or by electronic means.

If a Party requests written confirmation of an e-mail within a reasonable time, the other party must provide an original signed paper version of the communication as soon as possible.

The Parties agree that any communication made by email has full legal effect, is admissible as evidence in judicial proceedings and in the procedures under Article 17 of this agreement.

Notices should be addressed to the attention of the authorised representative(s) of the relevant Party duly notified by the other Party.

Such notices or correspondence is deemed to have been effective when the receiving Party receives it, unless it is specifically agreed that the moment of the notification is the date when such a communication was sent.

An e-mail is deemed to have been received by the receiving Party on the day of dispatch of that e-mail. The sending party must be able to prove the date of dispatch. In the event that the sending party receives a non-delivery report, it must make every effort to ensure that the other party actually receives the communication by email or mail. In such a case, the sending party is not held in breach of its obligation to send such communication within a specified deadline.

Formal notifications by registered post with proof of delivery will be considered to have been received either on the delivery date registered by the postal service.

## APPENDICES

## Appendix A- Members' Adhesion Forms

### Template to be filled in and signed by each Founding member and Associate member of SESAR 3 JU

*All adhesion forms signed to be attached to the original version of the Membership Agreement*

[Legal name of the Member], [OPTION for EUROCONTROL: established by the EUROCONTROL International Convention relating to Co-operation for the Safety of Air Navigation as amended at Brussels in 1981] [OPTION for private entities: [type of legal entity, statutory registration number, VAT registration number], established in [legal address of the Member], represented for the purpose of signing this form by [name and surname of the legal representative dully authorized to sign this Agreement], [function of the legal representative],

hereby agrees by signing this form to adhere to the Membership Agreement Ref. S3JU/LC/002-CTR and to comply with its terms and conditions.

SIGNATURES:

**For [Name of the Member]:**

[Name of the Member's representative]

[Function]

Done in ....., on .....2022

**For the SESAR 3 JU:**

Andreas Boschen

Executive Director

Done in Brussels, on .....2022

Done in English in two originals.



## Appendix B - Definitions and Acronyms

Action or Indirect Action	Activities to which SESAR 3 JU provides financial support and which are undertaken by participants/ beneficiaries to Grant Agreements. This term is often also used as a synonym for "projects" under Digital European Sky Programme.
Additional activity	An activity, included in the annual additional activities plan annexed to the main part of the Bi-Annual Work Programme, that does not receive financial support from the SESAR 3 JU but contributes to its objectives and is directly linked to the uptake of results from projects under the SESAR 3 JU or its preceding initiatives or that has a significant Union added value.
Associated member	Any legal entity established in a Member State, a country associated to Horizon Europe, or an international organisation that accedes to the SESAR 3 JU by signing a letter of commitment in accordance with Article 6(3) and subject to an approval in accordance with Article 7.
Bi-Annual Work Programme	The SESAR 3 JU biannual work programme outlines the scope of the research and innovation (R&I) activities that will be performed in the period of reference (two years), implemented through open call(s) for proposals and call(s) for tenders. It also details the resources of the SESAR 3 JU for this period in the staff establishment plan and in the budget. This work programme constitutes the financing decision for year N and, upon confirmation by the budgetary authority, for year N+1.
Communications Coordination Group	The group through which the SESAR 3 JU, Member and project representatives coordinate communications activities of the partnership and programme.
Conflict of interest	A situation involving a financial actor or other person as referred to in Article 61 of Regulation (EU, Euratom) 2018/1046.
Constituent entities	The entities that constitute a private member of SESAR 3 JU where the private member is an association according to that member's statutes.
Digital European Sky	The vision of the European ATM Master Plan, seeking to transform Europe's aviation infrastructure enabling it to handle the future growth and diversity of air traffic safely and efficiently, while minimising environmental impact.
Digital European Sky Programme	Or, in accordance to the SBA, the Single European Sky ATM Research and Development project ("SESAR project") established by Council Regulation (EC) No 219/2007 aims to modernise ATM and to bundle technological and operational innovation in support of the Single European Sky. It aims to provide the technological solutions for a highly performing ATM by 2035 to enable an uncongested, even safer and more environmentally and climate friendly functioning of the air transport sector, in line with the European Green Deal and the European Climate Law.
European ATM Master Plan	Is the planning tool for ATM modernisation across Europe, connecting ATM research and innovation activities with deployment activities scenarios to achieve the Single European Sky performance objectives.
Financial Contributions to administrative costs	Contributions by the private members of SESAR 3 JU made up to EUR 25 000 000 for administrative costs, over the period set out in Article 3 of the SBA.
Founding member	Any legal entity established in a Member State, a country associated to Horizon Europe, or an international organisation that is identified as a member of the SESAR 3 JU in the Council Regulation (EU) 2021/2085 of 19 November 2021 or in one of its Annexes.
Funding and Tender Opportunities Portal	The Funding and Tenders Portal is the web platform set as single entry point (the Single Electronic Data Interchange Area) for applicants, contractors and experts in funding programmes and procurements managed by the European Commission.

Good Industry Practice	Standards, practices, methods and procedures conforming to the applicable law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances.
Grant Agreement	The grant contract concluded between SESAR 3 JU and the beneficiaries. It establishes the rights and obligations that govern the grant. It consists of a core text and annexes (for instance, fixing the project content and the project budget).
In-kind contributions to additional activities (IKAA)	Contributions by the private members, constituent entities or the affiliated entities of either, and by international organisations, consisting of the costs incurred by them in implementing additional activities less any contribution to those costs from the Union.
In-kind contributions to operational activities (IKOP)	Contributions by private members, constituent entities or the affiliated entities of either and by international organisations, consisting of the eligible costs incurred by them in implementing indirect actions less the contribution of SESAR 3 JU to those costs.
Member	A generic term used in this Agreement, referring to a Founding member or an Associated member of SESAR 3 JU.
Member other than the Union	Any Private member or international organisation that is a Founding or Associated member of SESAR 3 JU.
Multi-Annual Work Programme	The multiannual work programme that establishes the framework under which the operations of SESAR 3 JU will be defined, planned and executed from 2021 to 2031. It defines the overall life cycle of SESAR 3 JU's research and innovation (R & I) programme (Digital European Sky Programme), which seeks to deliver the technological solutions needed to achieve the modernisation and digitalisation of air traffic management (ATM) in Europe, in line with the European ATM Master Plan. It also defines the activities of SESAR 3 JU other than R & I, both operational and administrative.
Preceding initiative	Any partnership in one of the areas covered by SESAR 3 JU that received financial support from one of the previous Union framework programmes for research.
Private member	Any legal entity established under public or private law that is a member of SESAR 3 JU other than the Union or international organisations.
Programme Committee	Advisory body to the SESAR 3 JU Executive Director established by Executive Director decision ref. S3JU/ED/015
SESAR 3 JU – EUROCONTROL Agreement	The administrative agreement signed between SESAR 3 JU and EUROCONTROL, which describes EUROCONTROL's tasks, responsibilities and contribution to the activities of SESAR 3 JU as per Article 157 of the SBA.
Single Basic Act (SBA)	Regulation, establishing the SESAR 3 Joint Undertaking, i.e. Council Regulation (EU) 2021/2085 of 19 November 2021 establishing the Joint Undertakings under Horizon Europe and repealing Regulations (EC) No 219/2007, (EU) No 557/2014, (EU) No 558/2014, (EU) No 559/2014, (EU) No 560/2014, (EU) No 561/2014 and (EU) No 642/2014
Single European Sky	<a href="#">European Commission</a> initiative that seeks to reform the <a href="#">European air traffic management</a> system through a series of actions carried out in four different levels (institutional, operational, technological and control and supervision) with the aim of satisfying the needs of the European airspace in terms of capacity, safety, efficiency and environmental impact. Refer to the European Commission website: <a href="https://transport.ec.europa.eu/transport-modes/air/single-european-sky_en">https://transport.ec.europa.eu/transport-modes/air/single-european-sky_en</a>



Strategic Research and Innovation Agenda	The document, covering the duration of Horizon Europe, that identifies the key priorities and the essential technologies and innovations required to achieve the objectives of SESAR 3 JU.
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## Appendix C - Membership Code of Good Behaviour

When participating in common Actions, there is a risk that Members may exchange information or enter into agreements that infringe competition rules.

In accordance with Article 101 of the Treaty on the Functioning of the European Union, agreements, decisions or concerted practices between undertakings whose object or effect is to prevent, restrict or distort competition within the common market are prohibited.

In case of infringement, the European Commission or a national competition authority can order the companies concerned to end illegal agreements and can impose fines of up to 10% of the undertakings' turnover.

The Digital European Sky Programme requires close collaboration between organisations which are, for the most part, key players in the ATM sector and therefore usually in competition with one another.

This collaboration must not be misused, i.e. the Members shall not use SESAR 3 JU as a forum through which competitors exchange commercially sensitive information that is not directly related to the Digital European Sky Programme as such.

Therefore, the collaboration between Members should be closely linked, and strictly limited, to the objectives and needs of the Digital European Sky Programme.

### 1. General Principles

Competition with other market players must always be conducted in compliance with the applicable laws, and rules of ethics.

Information exchanged with competitors should not allow the identity of those tendering for business to be disclosed or have the effect of reducing competitors' uncertainties.

Exchanges of information between the Members should be strictly necessary and limited to the Digital European Sky Programme.

Ignorance of the unlawful nature of behaviour is not an admissible defence argument.

The Members shall immediately inform SESAR 3 JU management of any suspected contacts with a competitor, which could lead to an infringement of applicable legislation, in order to examine whether any subsequent action should be taken.

### 2. Programme Management Principles

Digital European Sky Programme shall be managed according to the following basic principles:

- Participation of all the Members to achieve the goals as described in the Digital European Sky Programme,
- Collaboration between the Members and SESAR 3 JU as well as synchronisation of Digital European Sky Programme activities, including regarding the management of outcomes of the Actions,
- Duty of care and duty to mitigate damages in Research and Innovation (R&I) activities,
- Transparency and communication of issues between Members,

- Progress and risk tracking at each level, in order to anticipate and prevent critical issues and disputes,
- Management and resolution of issues by the Members at their own level first, avoiding to the extent practicable recourse to SESAR 3 JU governance,
- Involvement of all the Members participating in an Action in the discussions held to find a remedy, and agreement of all of them on the remedy adopted,
- Proper and timely reporting of information to the upper level in accordance with the processes determined at each level of the Digital European Sky Programme structure,
- Seamless flow of relevant information between SESAR 3 Indirect Actions identified in SESAR 3 JUs Bi-Annual and Multi-Annual Work Programmes for the benefit of the SESAR Project,
- Proper and timely access to information, background and results of the Actions, in order to ensure adequate execution and maintenance of the European ATM Master Plan;
- Common approaches towards standardisation and deployment activities. This principle involves:
  - o the respect of SESAR 3 JU obligations in the area of standardisation laid down in the SBA (Art. 143 (b)(ii) and (c) of the SBA), and therefore
  - o the channelling of all necessary information in terms of background and results of the Actions through SESAR 3 JU allowing the performance of the relevant standardisation and/or further deployment activities.

### 3. Principles to be complied with when participating in meetings

In order to avoid infringing competition rules, it is strongly recommended to:

#### 3.1 Before the meetings

- Request a strictly defined agenda
- Verify its content: all the items of the agenda must be compatible with competition law
- Refuse to participate in discussions that do not appear to be legal
- Demand that the agenda be followed as defined

#### 3.2 During the meetings

##### 3.2.1 Behaviour

- Officially alert other Members if the internal processes are not being complied with
- Withdraw in the event that compliance is refused
- Leave the meeting if necessary and have it noted in the minutes

##### 3.2.2 Information exchanged

The information exchanged between Members should be strictly necessary and limited to the Digital European Sky Programme as defined below.

#### 3.3 After the meetings

- Rule out any discussions on items that were not placed on the agenda beforehand
- Demand copies of minutes and reports of meetings

- Inform SESAR 3 JU management of any suspected requests from competitors, which could lead to an infringement of applicable legislation.

#### 4. Non exhaustive list of prohibited practices

- Exchanges of information that allow the identity of those tendering for business to be disclosed or which are likely to reduce companies' competitive uncertainties with respect to:
  - o Prices, profit level
  - o Pricing policy, price levels, pricing methods, scheduled price increases or reductions
  - o Production, markets, technical development not linked to the Digital European Sky Programme, investments
- Sharing markets or sources of supply
- Disclosing company strategy to competitors
- Disclosing market strategy to competitors
- Concerted practices tending to limit other companies' access to the market
- Dissemination, under the pretence of management assistance, of indicative lists, reference prices
- Dissemination of cost valuation methods which are not linked to the Digital European Sky Programme
- Recommendations with respect to prices, price increases
- Exchanges of individualised information that enable competitors to anticipate and adapt to each other's market behaviour
- Limitations of output or sales.

As far as possible, the above principles should also be observed during the tele- and videoconferences as well as hybrid meetings.

## Appendix D - SESAR 3 Joint Undertaking Communications Charter for Members

Recognising the benefit of coordinated communications, SESAR 3 JU relies on its members' support to obtain a critical mass of brand recognition and awareness, and, with that, buy-in for the partnership and the Digital European Sky Programme from among its target stakeholders.

To that end, this Charter aims to maximise efforts among the SESAR 3 JU membership to promote SESAR 3 JU and its research and innovation programme. In joining SESAR 3 JU members hereby commit to support the SESAR 3 JU's communications objectives and outreach to targeted audiences, as outlined in the SESAR 3 JU communications strategy<sup>2</sup>.

With this charter, members commit to the following five principles:

1. Provide visibility to the SESAR 3 JU brand and regularly promote participation in the Digital European Sky programme by leveraging their own external corporate communications channels, for example:
  - including the SESAR 3 JU logo and details of their involvement in the programme in relevant communications channels;
  - acting as ambassadors on behalf of the SESAR 3 JU at events/fora or contributing to written/digital communications material.
2. Explore and exploit opportunities to support SESAR 3 JU's outreach efforts in countries and localities where they have a corporate presence, for example, hosting or supporting the organisation of SESAR 3 JU events.
3. Promote participation in the SESAR 3 JU across internal communications channels.
4. Nominate a representative with communications expertise to join and participate in the SESAR 3 JU Communications Coordination Group.
5. Assist the SESAR 3 JU in building a digital media library, contributing stock video footage and photo illustrations for use in SESAR 3 JU communications (respecting relevant copyright conditions).

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<sup>2</sup> Adopted by the SESAR 3 JU Governing Board under Decision ref. GB(D)04-2022 upon recommendation by the SESAR 3 JU Executive Director in accordance with Article 16(2)(r) of the Single Basic Act