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Dated

[REDACTED]

THE SESAR DEPLOYMENT ALLIANCE CONSORTIUM

and

[MANUFACTURER]

MEMORANDUM OF UNDERSTANDING

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The parties to this memorandum of understanding (**MoU**) are:

(1) The SESAR Deployment Alliance consortium, acting as SESAR Deployment Manager, hereinafter referred to as **SDM**, located at 100 Avenue de Cortenbergh, 1000 Brussels, Belgium, represented by the consortium's Managing Director, Mr. Massimo Garbini

and

(2) **[NAME OF MANUFACTURER]**, located at **[ADDRESS]**, represented by **[CAPACITY AND NAME OF COMPANY REPRESENTATIVE]**, hereinafter referred to as **Manufacturer**

Hereinafter collectively or individually referred to as **Parties** or **Party**.

WHEREAS

In 2004 the European Union (**EU**) adopted the first Single European Sky (**SES**) legislative package meant to reform the architecture of European air traffic management (**ATM**) in order to meet future capacity and safety needs at a European level. Updated in 2009, at present the SES regulatory framework has the following four pillars: regulating performance; a single safety framework; new technologies (the technological pillar); and managing capacity on the ground.

The Single European Sky ATM Research and Development (**SESAR**) project represents the technological pillar of the SES. It aims to provide the European Union (**EU**) by 2030 with a high performing ATM infrastructure that will enable the safe and environmentally friendly operation and development of air transport. While designing the SESAR project, the EU has been aware of the operational and technical continuity of the European airspace, which also concerns countries which are outside the European Economic Area (**EEA**), in particular those countries which are already part of the SES.

The SESAR project is composed of three phases: the definition phase to define the content of the next generation of ATM systems; the development phase to develop and validate the new generation of technological systems, components and operational procedures; and the deployment phase that consists in the industrialisation and implementation of the new ATM system.

The ATM Master Plan, produced during the definition phase of SESAR is the agreed roadmap to bring ATM research and development to the deployment phase. The ATM Master Plan outlines the essential operational changes that are required to help achieve the SES performance objectives. It is a key tool for SESAR deployment. The ATM Master Plan will consist of several common projects (**Common Projects**). The European Commission established the first such project by Regulation (EU) No 716/2014 on the establishment of the **Pilot Common Project** supporting the implementation of the ATM Master Plan.

Regulation (EU) No 409/2013 on the definition of Common Projects, the establishment of governance and the identification of incentives supporting the implementation of the European ATM Master Plan (**Regulation (EU) No 409/2013**)¹ set out the governance of the SESAR deployment phase (**SESAR Deployment governance**). The purpose of SESAR Deployment governance has been to ensure that Common Projects are implemented and monitored in a timely, coordinated and synchronised manner, making optimal use of the instruments and bodies identified in the SES regulatory framework. SESAR Deployment governance is composed of three levels: policy level; management level; and implementation level.

The SESAR Deployment Alliance consortium was selected by the European Commission to act as the SESAR Deployment Manager (**SDM**) following the call for Proposals MOVE/E2-2014-717/SESAR FPA and based on the SESAR Deployment Framework Partnership Agreement (**SESAR Deployment FPA**) which was concluded between the European Commission and the consortium members. The SDM does not have legal personality but in the future the SESAR Deployment Alliance consortium may decide to set up a legal entity to act as the SDM.

The SDM is responsible for the management level of SESAR Deployment governance and associated tasks in accordance with Article 9(2) of Regulation (EU) No 409/2013. Primarily, the SDM is responsible for developing, proposing, maintaining and implementing the deployment programme, which will adequately reflect Common Projects adopted by the European Commission pursuant to the ATM Master Plan. According to Article 11(1) of Regulation (EU) No 409/2013 the deployment programme shall provide a comprehensive and structured work plan of all activities necessary to implement technologies, procedures and best practices required to implement Common Projects. It shall organise these activities in implementation projects identifying the associated risks and mitigation actions, the geographical scope, the timeframe and the operational stakeholders responsible for carrying out the implementation projects (**Implementation Projects**). The deployment programme which reflects the Pilot Common Project shall be hereafter referred to as the **Deployment Programme**.

Under Article 9(2) of Regulation (EU) No 409/2013 the SDM is also responsible, inter alia, for (i) associating the operational stakeholders that are required to implement Common Projects; (ii) establishing mechanisms and decision-making processes that ensure efficient synchronisation and overall coordination of the Implementation Projects and the related investment in line with the deployment programme; (iii) ensuring effective management of risks and conflict of interest; and (iv) advising the European Commission on issues related to the implementation of Common Projects and to the setting up new Common Projects.

¹ Wherever this MoU (including its annexes and potential further amendments) makes reference to Regulation (EU) No 409/2013, the Parties mean the version of Regulation (EU) No 409/2013 published in the Official Journal of the EU L123/1 of 4 May 2013. If future amendments to Regulation (EU) No 409/2013 materially amend the roles of the Parties, the Parties shall amend this MoU accordingly.

To fulfil its mission the SDM relies on the cooperation of a broad range of entities and undertakings in the public and private sectors.

In particular, according to recital 15 of Regulation (EU) No 409/2013, the manufacturing industry should play an advisory role in SESAR deployment to ensure consistency with industrialisation and timely availability of equipment. More specifically, pursuant to Article 9(10) of Regulation (EU) No 409/2013, at the management level of SESAR Deployment governance, the SDM shall seek assistance from the manufacturing industry, through cooperative arrangements, which shall be communicated to the European Commission, to receive, inter alia, information on the industrialisation of products. Further, pursuant to Article 10(3) of Regulation (EU) No 409/2013, the information provided by the manufacturing industry on the maturity of the industrialisation processes shall be taken into account in the preparation of proposals for Implementation Projects, in particular on the impact of the Implementation Projects on legacy ATM systems, technical feasibility, cost estimates and roadmaps for technical solutions.

The Parties are mutually interested in the success of the SESAR project.

The Parties wish to record the basis on which they will collaborate with each other in the context of the SESAR deployment described above. This MoU sets out: (i) the key objectives of the Parties' collaboration; (ii) the principles of collaboration; (iii) the scope of cooperation; and (iv) the management structures the Parties will put in place.

The Parties have agreed as follows:

Article 1 - OBJECTIVES FOR THE MoU

- 1.1 The purpose of this MoU is to set out the basis for efficient cooperation between the Parties, as required by Article 9(10) of Regulation (EU) No 409/2013 in order to assist the SDM to fulfil its role under Article 9(2) of Regulation (EU) No 409/2013.
- 1.2 This MoU outlines the terms and conditions under which the Parties agree to cooperate with each other.

Article 2 – PRINCIPLES OF COOPERATION

The Parties agree to adopt the following principles which will govern their cooperation (**Principles**):

- (a) Cooperate. Establish and adhere to the management structure set out in this MoU to ensure that activities are delivered and actions taken pursuant to Article 3 of this MoU (Scope of the MoU);

- (b) Be open. Communicate openly about major concerns, or issues relating to the performance of the MoU using the communication channel defined in Article 4 of the MoU;
- (c) Develop and seek to achieve full potential. Within the scope of the MoU as defined in Article 3 below and taking into account the limitation of information exchange and confidentiality pursuant to Article 6 below, share information and materials to support the SDM in maximizing its role and contribution to the SESAR deployment, eliminate duplication of effort, mitigate risk and enhance efficiency;
- (d) Comply with legal requirements and best practice. Comply with applicable laws and standards including data protection legislation and competition law, prevent and avoid conflict of interests;
- (e) Act in a timely manner. Recognise the time-critical nature of SESAR deployment and respond accordingly to requests for support;
- (f) Flexibility. The Parties acknowledge that the scope of their cooperation should remain flexible in order to include potential future specific demands from the European Commission on the basis of Regulation 409/4013,
- (g) Act in good faith to support achievement of the objectives and scope of this MoU and compliance with these Principles; and
- (h) No consideration. The Parties shall not be entitled to receive any consideration pursuant to this MoU.

Article 3 – SCOPE OF THE COOPERATION

3.1 For the purpose of this cooperation the Parties agree to exchange with one another the information necessary for the timely implementation of the Pilot Common Project and for the preparation of new Common Projects, in particular as follows:

- (a) The SDM agrees to communicate to the Manufacturer the priorities defined in the Deployment Programme.
- (b) The Manufacturer agrees to inform the SDM about the readiness of technologies and components relevant for the Pilot Common Project on a timely basis.
- (c) The Manufacturer agrees to assist the SDM in connection with industrialisation of products relevant for the Deployment Programme. The assistance received shall be specific in order to assist the SDM to ensure consistency with industrialisation and timely availability of equipment and procedures pursuant to the Deployment Programme.

- (d) The Manufacturer agrees to assist the SDM by providing information necessary to update and improve the Deployment Programme over time.
- (e) The Manufacturer agrees to provide the SDM with information to enable the SDM to assess the risk of non-timely deployment.
- (f) In connection with new Common Projects to be prepared by the European Commission, the SDM may involve the Manufacturer so that the SDM can obtain information necessary to assist the European Commission with such preparation.

Article 4 – FOCAL POINTS

4.1 Each Party will nominate a person to act as a responsible for transmitting and receiving the information under Article 3 above (Scope of Cooperation). While the internal team of experts necessary for reaching the scope of cooperation may be larger, for each Party only one person will act as the focal point so as to collate centrally the relevant information and ensure efficient communication with the other Party.

4.2 The Parties hereby designate the following persons as the initial focal points:

- (a) For the SDM

[NAME]

[POSITION IN SDM]

[CONTACT DETAILS – ADDRESS, PHONE NO, EMAIL]

- (b) For the Manufacturer

[NAME]

[POSITION IN THE Manufacturer]

[CONTACT DETAILS – ADDRESS, PHONE NO, EMAIL]

4.3 Either of the Parties can change its nominated focal point by notifying in writing the focal point of the other Party of the change prior to such change becoming effective. Equally, if a focal point is temporarily unavailable, it shall notify the focal point of the other Party the name and contact details of its temporary replacement. Such notification shall be provided by email.

Article 5 - FINANCIAL

5.1 Each Party shall bear the costs of the activities it performs pursuant to this MoU.

- 5.2 Nothing in this MoU shall be construed as entitling the Manufacturer to receive any consideration for fulfilling the scope of cooperation as described by Article 3 or otherwise and/or creating any right and/or expectation of the Manufacturer for any type of action/and or outcome in connection with the Deployment Programme (including updates and/or potential improvements), future Common Projects, and/or Implementation Projects.

Article 6 - LIMITATION OF INFORMATION EXCHANGE AND CONFIDENTIALITY

- 6.1 If any Party or any of its personnel or advisors (together the **Recipient**) acquires any information relating to another Party (**Discloser**) in the course of its activities under this MoU, the Recipient shall, and shall procure that its personnel and advisors shall:
- (a) keep such information strictly confidential and use it only for purposes required under this MoU; and
 - (b) safeguard, treat as confidential and not use for any other purposes of its own business any information, document or material which it acquires in connection with this MoU and which relates to the business of the other Party.
- 6.2 The obligations of confidentiality in this Article 6 do not extend to a Recipient or any of its personnel or advisors in respect of any matter which that Recipient can show:
- (a) is in, or has become part of, the public domain other than as a result of a breach of the obligations of confidentiality under this MoU;
 - (b) was in its written records prior to the date of this MoU and not subject to any obligation of confidentiality;
 - (c) was independently disclosed to it by a third party entitled to disclose it;
 - (d) is required to be disclosed under any applicable law or by any stock exchange or any governmental, judicial or other competent authority; or
 - (e) where prior written consent was obtained by the Recipient from the Discloser.
- 6.3 The Manufacturer hereby acknowledges and agrees that the SDM will use the information provided by the Manufacturer in order to fulfil its role pursuant to Regulation (EU) 409/2013, as reflected in Article 3 above (Scope of Cooperation). Such use may include, without limitation, sharing of information received with the European Commission, using the information received for future updates and improvements of the Deployment Programme, using of the information

received in order to support with the preparation of the proposals for Implementation Projects; or disclosing such information to any public authority or court if required by legal provisions.

- 6.4 The Manufacturer hereby acknowledges and agrees that the European Commission may use information provided by the Manufacturer to the SDM in accordance with Regulation (EU) No 409/2013, in particular in the preparation of new Common Projects and/or the evaluation of the maturity of the Implementation Projects subject to proposals for grants, without this implying any entitlement whatsoever of the Manufacturer in connection with such implementation projects and/or any development and/or any stage of such Implementation Projects.
- 6.5 The SDM shall not disclose information received from the Manufacturer to any other manufacturer.

Article 7 - INTELLECTUAL PROPERTY RIGHTS

- 7.1 A Party receiving a document or other information containing or describing intellectual property from the other Party under this MoU: (i) shall not acquire any proprietary rights in the intellectual property by reason of its receipt from the other Party and (ii) shall not use, change or disclose the intellectual property to a third party unless it is already in the public domain before the disclosure or unless the use and/or disclosure are allowed pursuant to Article 6(3) and 6(4) above, which shall also apply to the disclosure, use and change of other Party's intellectual property.
- 7.2 Except otherwise agreed in writing by the Parties, nothing in this MoU will be construed as granting or implying any rights to, or interest in, patents, patent rights, inventions, copyrights, trade secrets, trademarks and other proprietary rights of the SDM, the Manufacturer or their contractors or subcontractors or third parties.
- 7.3 If the Manufacturer provides the SDM with any information containing Manufacturer's intellectual property rights which were registered, or applied for registration (such as patents), or inventions (whether or not patentable), or secret and substantial know-how, the Manufacturer (i) shall notify SDM thereof in writing enabling SDM to use the information received in full respect of the Manufacturer's intellectual property rights, and (ii) shall thereby also inform whether such information containing Manufacturer's intellectual property rights require special protection (e.g., where an invention may not be disclosed without losing its novelty status).
- 7.4 The Manufacturer hereby acknowledges that SESAR is a registered trade mark of the European Union. Nothing in this MoU shall be interpreted as entitling the Manufacturer to use the SESAR trademark, including any logo comprising the word 'SESAR'.

Article 8 – CONFLICT OF INTERESTS

- 8.1 The Parties shall and shall procure that their employees, officers, directors and agents shall, take all necessary measures to prevent any situation where the impartial and objective implementation of this MoU and/or the impartial fulfilment of the SDM role pursuant to Regulation (EU) No 409/2013 may be compromised for reasons involving economic interest, political or national affinity, family or emotional ties or any other shared interest (**Conflict of Interest**).
- 8.2 The Manufacturer hereby acknowledges that, pursuant to the SESAR Deployment FPA, the SDM has to notify to the European Commission without delay any situation constituting or likely to lead to a Conflict of Interest during this MoU.
- 8.3 The Parties shall immediately take all the necessary steps to rectify a Conflict of Interest and hereby agree to allow the European Commission to verify that the measures taken are appropriate and to accept additional measures potentially required by the European Commission.

Article 9 COMPLIANCE WITH ANTI-CORRUPTION AND COMPETITION LAW

- 9.1 In relation to this MoU each Party shall at all times ensure that it has not, nor has any of its affiliates, employees or agents paid or received, nor undertaken to pay or receive any bribe, pay-off, kick-back, or unlawful commission, and has not and shall not in any manner or other way paid any sum in any currency or jurisdiction or given or offered to give any improper payments or inducements to any person to procure any agreement, permit or approval to which any governmental authority is expressed to be a party or which it has issued.
- 9.2 In relation to this MoU the Party shall at all times ensure that they comply with competition rules, and, in particular, that their cooperation pursuant to this MoU shall not have as object or effect the prevention, restriction or distortion of competition within the internal market within the meaning of Article 101 of the Treaty for the Functioning of the EU (TFEU).

Article 10 - LIABILITY

- 10.1 The Parties agree that, with respect to the activities undertaken pursuant to this MoU, one Party shall not make any claim against the other Party with respect to injury or death of its employees or contractors or any person acting on its behalf, or with respect to damage of any kind to or loss of its own or contractors' property whether such injury, death, loss or damage arises through negligence or otherwise, except in the case of gross negligence or wilful misconduct.

- 10.2 Nothing in or relating to this MoU can be construed as establishing a joint liability, joint venture, exclusive arrangement, or other similar relationship between the Parties.

Article 11 – SETTLEMENT OF DISPUTES

- 11.1 The Parties shall endeavour to settle their disputes amicably.
- 11.2 All disputes arising out of or in connection with this MoU, which cannot be solved amicably, shall be finally resolved under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules. The place of arbitration shall be Brussels if not otherwise agreed by the conflicting Parties. The award of the arbitration will be final and binding upon the Parties.

Article 12 – TERM AND TERMINATION

- 12.1 This MoU, including any annexes and amendments thereof, shall commence on the date first abovementioned.
- 12.2 This MoU shall terminate on the date of termination of the SESAR Deployment FPA, which will terminate on 31 December 2020, unless the SESAR Deployment FPA is terminated earlier or the duration of the SESAR Deployment FPA is extended.
- 12.3 In the event the coordinating partners composing the SESAR Deployment Alliance consortium decide to set up a legal entity (irrespective of its not-for-profit or for profit character, form and/or jurisdiction) to act as the SDM, the Parties hereby agree that the SDM will be entitled to assign to such legal entity, within six (6) months following the creation date of the legal entity, this MoU and all rights and obligations thereto related, in the manner such that the legal entity will replace in all respects the SESAR Deployment Alliance consortium in acting as the SDM pursuant to this MoU and its members shall cease to have any potential liability in respect of this MoU as from the assignment date. In order to be valid and effective, such assignment must be notified to the Manufacturer by way of a registered letter sent by the legal entity within six (6) months following its creation. No other formality or requirement (such as a further consent of the Manufacturer or a new agreement) will apply for the assignment to be valid and effective.

Article 13 NOTIFICATIONS

- 13.1 Notifications pursuant to this MoU shall be made by registered letter to the following addresses:
- 13.2 For the SDM
- 100 Avenue de Cortenbergh, 1000 Brussels, Belgium
- To the attention of: Head of Stakeholder Relations

13.3 For the Manufacturer

[ADDRESS]

[TO THE ATTENTION OF]

13.4 For the purpose of this Article, notifications exclude the regular exchanges of information pursuant to Article 3 above (Scope of the Cooperation), which will be communicated according to Article 4 above (Focal Points).

Article 14 – MISCELLANEOUS

14.1 This MoU, including the annexes thereof, may only be amended by written agreement of both Parties duly represented.

14.2 This MoU, and any non-contractual obligation arising in connection with it, shall be governed by and construed in accordance with Belgian law.

This MoU has been executed in three (3) original copies of which each Party has received one copy and one copy will be sent to the European Commission

SDM

Manufacturer