MASTER SERVICES AGREEMENT FOR THE PROVISION OF VI-SEEM SERVICES

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INTRODUCTION

Services covered in this agreement are offered by their respective owners (service owners) under the federated model of the VI-SEEM project and are regulated by the signed MoU between resource providers and services providers within the VI-SEEM. VI-SEEM brings together the regional e-Infrastructures developed in the last decade, to build capacity and better utilize synergies, for an improved service provision within a unified Virtual Research Environment (VRE) for the inter-disciplinary scientific user communities in the combined Southeast Europe (SEE) and Eastern Mediterranean (EM) regions (SEEM). The overall objective is to provide user-friendly integrated e-Infrastructure platform for regional cross-border Scientific Communities in Climatology, Life Sciences, Digital Cultural Heritage, and Cross-disciplinary scientific fields for the SEEM region; by linking compute, data, and visualization resources, as well as services, models, software and tools. The present document is a proposed agreement template under which VI-SEEM participant(s) could provide services, if they are allowed, to non-academic users such as large enterprises, SMEs, private research institutions, etc.

This Agreement is made and entered into as of the [date] day of [month] 201… (**Effective Date**) by and between:

A. **[VI-SEEM Participant]**, a company organized and existing under the laws of [country], having its registered offices at [full address], duly represented by [name], [title], (hereinafter referred to as "**Provider**") and

B. **[Company Name]**, a company organized and existing under the laws of [country], having its registered offices at [full address], duly represented by [name], [title], (hereinafter referred to as the "**Customer**")

when appropriate hereinafter referred individually to as "Party" or collectively as "Parties"

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

This Master Services Agreement, which consists of the General Terms and Conditions and any other Annexes attached hereto (collectively, the "**Agreement**") sets out the entire understanding between the Parties concerning the services provided to the Customer as the latter have been developed in the context of VI-SEEM project and listed in the VI-SEEM service catalogue attached in Annex 1 hereof, which are agreed and set out in the relevant Purchase Order as described herein.

The Purchase Order, which after it is signed by both Parties, will form an integral part of the Agreement, will consist specific terms and conditions about the Service such as, but not limited to, the Service Description, the Service Term and the Service Charges. The Purchase Order shall expressly refer to this Agreement, shall be incorporated herein and shall be subject to the terms and conditions hereof.

DEFINITIONS AND INTERPRETATION

"**Customer Serviced Software**" means software installed on a Device and managed by Customer;

"**Effective Date**" means the date on which the Parties have executed this Agreement. If the Parties have executed this Agreement on different dates, the later date will be deemed the Effective Date hereof;

"**Incident**" means an unplanned interruption to a Service or deterioration in the normal quality of a Service;

"**Incident Management**" means the Incident Management Service provided by the Provider to investigate an Incident;

"**Initial Term**" means the period of time up to the end of the term agreed on the relevant Purchase Order commencing from the date on which the Service will be Ready For Service (RFS date);

"**Purchase Order**" means the order form, which upon signature by both Parties constitutes an integral part of the Agreement and sets forth additional Service conditions and details such as, without limitation of the below listed, charges, special provisioning terms and Service specifications;

"**Ready For Service Date (RFS date)**" means the date on which the Provider confirms that the Service is fully operational and ready for billing. The Provider informs the Customer in writing about that date and if the Customer does not have any objection within 3 (three) calendar days after receiving the Provider's notice, then the Service will be considered ready for use and the "Ready For Service Date" will be the date notified by the Provider in writing. In case the Customer provides any objection within the three (3) calendar days regarding the specified RFS date, he will have to provide a detailed technical report to the Provider for further consideration and action until the RFS date is mutually accepted.

"**Resource provider**" means an organization providing physical or logical resources (networking, computing, storage, cloud or other resources) to support the services;

"**Service**" means a way to provide *value* to a *user / customer* through bringing about results that they want to achieve as described in the Purchase Order hereof;

"**Service Charges**" means the charges, fees, costs and expenses payable under this Agreement for the provison of the Service;

"**Service Level Agreement (SLA)**" means the document attached to this Agreement specifying the Service levels applicable to that Service;

"**Service Level Targets**" means specific quantitative objectives within the Service Level Agreement;

"**Service Provider**" means an organization or *federation* or part of an organization or *federation* that manages and delivers a *service* or services to *customers*;

"**Service Term**" means the period for which a Purchase Order shall be effective including the initial term and any service renewal;

"**Third Party Software**" means Licensed Software that is sourced from a third party provider and is required in order to use the Services;

"**Virtual Machine**" means a licensed software implementation of a physical server or machine;

"**VI-SEEM Helpdesk**" means the incident management center of the VI-SEEM participant that is the Provider of the Service;

"**VI-SEEM Serviced Software**" means software installed on a Device and managed in part or in full by VI-SEEM**;**

"**Working Day**" means X.00 am to Y.00 pm (defined by Service Owner) on any day from Monday to Friday (inclusive) which is not statutory or national holiday in the location of service provisioning.

REQUEST FOR A SERVICE

1. To request a Service, the Customer must complete an order form which shall include the name of the Customer, of the name of the Service or of the bundle, the applicable Charges and the Initial Term.

2. An order form shall only become a Purchase Order binding on both Parties and subject to the terms and conditions set out in this Agreement on signature by the Provider and the Customer. However, the Provider reserves the right to amend details for a Service in a Purchase Order, including its expected delivery date, if:

   a. the cost of any third party services required for a Service change from those used in the initial calculations of the Charges in a Purchase Order; and/or,

   b. a Service is supplied subject to survey and such survey reveals information that was unknown to the Provider at the time of quoting and which could affect the availability, performance, delivery timeframes and/or Charges offered.

3. If the Provider amends the details of a Service on a Purchase Order as above, it will notify the Customer and provide him with a new order form for the affected Service only. Customer shall have five (5) Working Days to accept the changes or to cancel the affected Service. If the Customer does not accept the revised order form within five (5) Working Days of notification, the Provider reserves the right to cancel the affected Service in the Purchase Order without any Liability to the Customer

by notice in writing to the Customer. If there are any other Services on the Purchase Order, these shall remain unaffected.

TERM, SUSPENSION AND TERMINATION

1. This Agreement shall become effective on the date it is duly signed by both Parties and shall continue in effect for …. Year(s) (Initial Term). This Agreement will continue in effect until terminated by either Party at the expiration or after the end of the Initial Term upon at least three (3) months prior written notice to the other Party (unless terminated earlier in accordance with the terms of this Agreement).

2. Each Purchase Order shall be effective for the Initial Term specified in it. Following the end of the Initial Term of the Purchase Order, the Purchase Order shall continue in effect under the same conditions until terminated by either Party with a thirty (30) day prior written notice to the other Party. If the Service Term of any Purchase Order extends beyond the term of this Agreement, the Parties agree that

    a. the provision of the Service under such Purchase Order shall continue until the end of the Service Term and

    b. the terms and conditions of this Agreement shall continue to be binding on the Parties regarding the said Service.

3. Either Party may terminate this Agreement or one or more Purchase Orders, in the event of a material default by the other Party provided that:

    a. The other Party ceases to trade (either in whole, or as to any part involved in the performance of this Agreement), or becomes insolvent, has a receiver, administrative receiver, administrator or manager appointed of the whole or any part of its assets or business, makes any composition or arrangement with its creditors, takes or suffers any similar action in consequence of debt, is unable to pay its debts when due, or any order or resolution is made for its dissolution or liquidation (other than for the purpose of solvent amalgamation or reconstruction) under the laws applicable to that Party; or

    b. The other Party commits a material breach of this Agreement which is not capable of remedy and, if capable of remedy, the breach is not remedied within thirty (30) days following a written notice by the non-breaching Party to the other Party.

4. The Provider may suspend all or any Service under any Purchase Order(s) and/or this Agreement with immediate effect by written notice to the Customer with no Liability or penalty where the Customer:

a. provides materially incorrect, false, illegible or incomplete information to the Provider and Customer failed to remedy within five (5) Working Days from receipt of written notice by the Provider;

b. is likely to defraud the Provider, interfere with the Provider's services or create harm to the Provider infrastructure or any third party's property and/or services;

c. fails to make any payment due under any Purchase Order in accordance with the terms and conditions set out in this Agreement;

d. is in breach of the terms of any license for Licensed Software; or

e. is using or allowing (or in the reasonable opinion of the Provider is likely to be using or allowing) any of the Services to be used for fraud, misconduct or any other illegal purpose.

Any exercise of such right of suspension shall not prejudice the Provider's right to payment hereunder.

5. The Provider may terminate all or any Service under any Purchase Order(s) and/or this Agreement and/or any other agreement between the Customer and the Provider with immediate effect by written notice to the Customer with no Liability or penalty where the Provider has exercised its right under the above paragraph and the Customer has not remedied the underlying cause of suspension within 10 Working Days of the date of the notice of suspension.

6. Termination or expiry of a Purchase Order and/or this Agreement for any reason is without prejudice to any rights or remedies available to, or any obligations or Liabilities accrued to the Parties as at the date of termination or expiry.

7. Upon expiry or termination of the Agreement all amounts due to the Provider up till the termination date shall become immediately due and payable to the Provider.

8. Should this Agreement be terminated in whole or in part

a. by the Customer for reason not due to the Provider, or

b. by the Provider for reason due to Customer, the Customer shall either, reimburse the Provider for any third party cancellation/termination charges associated with the Service/s terminated or shall pay the total of the remaining Charges till the end of the Initial Term or the relevant Renewal Term.

CHARGES AND TERMS OF PAYMENT

1. Unless stated otherwise in the Purchase Order:

a. The Provider will invoice the non-recurring charges, if any, when the Purchase Order comes into force;

b. The Provider will invoice the recurring Charges from the Ready For Service Date and monthly in advance thereafter;

c. The Provider will invoice any other Charges not covered by (a) and (b) above as and when incurred; and

d. The Customer shall pay all Charges, within thirty (30) days from the invoice issuance date.

2. All invoices will be raised in Euros and the amounts shall be paid in Euros unless otherwise specified in the Purchase Order. Currency exchange costs, bank charges, withholding tax or any deductions shall be excluded from the invoiced amount. Should the applicable law require for any deduction or withholding tax, the Customer shall pay the invoiced amount in full plus the related extra amount that the Provider would receive if no deduction or withholding tax had been required. For all payments effected from one Party to another, all intermediary bank charges shall be borne by the paying Party.

3. All amounts due that are not paid when due, including any amount disputed by Customer which is subsequently determined to be due to the Provider shall accrue extended payment interest computed at a rate 0.5% above EURIBOR per month. This interest shall accrue from the date following the day on which payment is due to and including the day the Customer receives payment.

4. The Customer may dispute an invoice within thirty (30) days from the invoice date. If the Customer does not submit a documented claim for the disputed amount within such 30-day period, he shall be deemed to have accepted the amounts stated on the invoice. In case of disagreement on a portion of the invoice, the Customer may only withhold payment of the disputed portion. The Parties shall amicably attempt to resolve the dispute, but if the dispute cannot be resolved within thirty (30) days of the date of the invoice, either Party may institute legal proceedings. If the Customer does not submit a documented claim prior to the due date for payment of the invoice, the Customer waives all rights to dispute the invoice.

5. All charges under this Agreement are exclusive of Value Added Tax (VAT) or any other indirect or sales taxes that may be applicable. Should there be any VAT or other sales tax to be charged by the Provider, it will be added to the agreed charge and shall be paid in addition by the Customer.

6. If any withholding tax should apply to any payments under this Agreement, the Customer may withhold that amount required under the applicable legislation but must pay it in addition to the invoiced amount in accordance with par. 2 above and must notify the Provider accordingly prior to the payment. The Parties agree to cooperate and give all necessary support with regard to the formal procedures and applications necessary for receiving a whole or partial exemption from any withholding tax, if applicable.

SERVICE LEVELS AND SERVICE CREDITS

1. The Provider shall provide the Service in accordance with the SLA (Service Level Agreement) attached hereto. The Customer must provide the Provider with all reasonable details regarding the relevant Service Credits claim, if any, including but not limited to, detailed description of the incident, its duration and any attempts made by the Customer to resolve it. The Provider will use all information reasonably available to it to validate claims and make a good faith judgment on whether the Service Level Targets apply to the claim.

2. The Customer agrees that any compensation is defined under the SLA and the Provider shall have no further Liability to Customer for the failure to achieve the Service Level Targets.

3. Validated claims will be compensated, provided that the Customer has paid the Provider all due charges under the Agreement. Any credit balance will be carried forward to the next billing period.

4. Service Credits will not be payable by the Provider to the Customer where the failure to meet a Service Level Target is caused by any of the following:

    a. fault or negligence of the Customer, its employees, agents or contractors;

    b. DDoS attacks;

    c. Ongoing data restore from a backup;

    d. The Customer failing to comply with the terms of this Agreement;

    e. Any Event of Force Majeure described in the relevant Clause;

    f. Maintenance during any Planned Outage;

    g. A fault in, or any other problem associated with, equipment connected on the Customer's side;

    h. Any damage or disruption to connectivity services;

    i. Any malfunction of Customer serviced software including a failing shutdown or boot of Customer serviced software, or even DNS problems outside the direct control of the Provider;

CUSTOMER RESPONSIBILITIES

1. The Customer must assign to one or more of its qualified employees to be the technical representatives and support contact points of this Agreement with the Provider. This information may be updated online, by phone, or email and must be provided to the Provider for the follow up of the installation before the Ready for Service Date as well as during the Incident Management.

2. Should the Provider be subject to any liability under Article 14 of Directive 2000/31/EC, which refers to Electronic Commerce, or the respective applicable national legislation, the Provider shall not have any liability towards the Customer. [The Provider reserves the right to remove or disable access to the information immediately at any case where the Service consists storage information.]

3. Customer's software shall be installed at Customer's own risk. With regards to the Customer Serviced Software, the Customer is solely responsible for the following:

   a. performance;

   b. licensing;

   c. incidents or problems;

   d. interoperability with the Service;

The Customer shall indemnify the Provider against any claim, loss or damage incurred by the Provider resulting from Customer's unlicensed software or breach of the Customer Serviced Software licensing terms.

4. Customer agrees to:

   a. report any Service Incidents or problems to the VI-SEEM Helpdesk as soon as such problems arise;

   b. provide feedback on any maintenance approval requests given to the Customer by the Provider during the time such requests are worked out;

   c. be responsible for the installation of the Customer Serviced Software;

   d. act and provide all related information upon the Provider's reasonable request in order for the Service to be provided by the Provider;

INCIDENT MANAGEMENT

1. When there is an incident or request, the following information shall be provided by the Customer to the VI-SEEM Helpdesk:

   a. Organization name;

   b. incident description

Customer must report an incident and provide full details of the affected Service.

2. A ticket is raised by the VI-SEEM Helpdesk for all recorded incidents. The incident duration is calculated as the elapsed time between the incident's reporting time to the VI-SEEM Helpdesk and the time when the Service is restored by the Provider.

3. All tickets are prioritized by the Provider based on the incidents priority levels as categorized herebelow:

Incident priority	Response time
Less urgent	5 working days
Urgent	5 working days
Very urgent	1 working day
Top priority	1 working day

It is up to the Provider to lower the priority level if the Customer does not provide adequate resources or responses to the Provider in order to help the Incident Management team to resolve the incident. The Incidents relating to a security issue require post-restoration investigation and are considered to be out of scope for the Incident Management team.

4. During the incidents resolution, the Provider will work on the problem until it is successfully resolved as per the following Operation hours: every day from Monday to Friday and from 9:00 to 17:00 CET/CEST time, excluding public holidays at the same time in all organizations providing the service.

LIMITATIONS OF LIABILITY

1. Neither Party shall be liable for any indirect, incidental or consequential loss or damage, including loss of use or data or lost revenue or profits, even if they are aware of such possibility. Either Party's liability in contract, tort, or otherwise, including any liability for negligence howsoever arising out of or in connection with the performance of its obligation under this Agreement but excluding liability due to either Party's gross negligence or willful (malicious) misconduct, shall be limited to direct damages.

2. The Provider shall not be liable for any act or omission of any other entity (excluding any affiliate or subcontractor of the Provider) furnishing equipment or facilities to the Customer, nor shall the Provider be liable attributable synonym for any damages or losses due to Customer's fault or negligence, a Customer Entity or a Customer's customer in conjunction with the Services. The Provider's liability to the Customer for failure to provide the Service as agreed in the relevant Purchase Order shall be limited to the amount payable to the Customer in the way of performance credits as per the Service Level Agreement, if any.

3. The Customer shall indemnify, defend and hold harmless the Provider from and against any and all liabilities, costs, damages, and expenses (including reasonable legal expenses) resulting from actions of Customer and Customer Entities (including their employees, agents and independent contractors), including, but not limited to, breach of any provision of this Agreement, damages to the Services, or any unauthorized or illegal acts.

4. It is fully acknowledged by the Customer that there are no complete guarantees provided against data loss, data protection breach, direct or indirect loss of business for the Services rendered in the Data Center facilities of the Provider which operate in high-availability configuration and in parallel are designed to decrease the downtime and data loss.

5. Nothing in this Agreement shall exclude or limit either Party's Liability:

    a. for fraud or fraudulent misstatement;

    b. for death or personal injury;

    c. in relation to the intellectual property indemnity set out in the relevant Clause; or

    d. for any other Liability which cannot be excluded or limited by applicable law.

LICENSES

The Customer shall acquire all necessary licenses, approvals, permits and consents required by any applicable governmental or regulatory authority instrument or any other body requisite for the Customer to use the Services. The Customer shall use the Services in accordance with and subject to all provisions of applicable law and any competent authority.

INTELLECTUAL PROPERTY INDEMNITY

1. Each Party shall indemnify, defend and hold the other Party harmless against any claim, actions or proceedings brought against the one Party given that it is an actual or threatened infringement of any Intellectual Property Rights and a prompt written notice of such claim has been provided from the affected Party to the other consisting of the relevant information that is necessary to defend such claim.

2. Provider shall not have any liability whatsoever concerning any alleged infringement on the basis of the sale or use of any Service in conjunction with any other services that are not supplied by the Provider, unless otherwise agreed by the Provider.

3. Provider shall not have any liability whatsoever concerning any unauthorized modifications, changes or alterations performed by the Customer or its agents of the Services provided by the Provider, except for the ones carried out by the Provider.

4. If the use of a software developed and owned by the Provider in the form of an intellectual property is required by the Customer for using the Services, he may be provided it by the Provider with a non-exclusive and non-transferable license valid for the period during which the Service will be used. This

license shall be solely used by the Customer for its internal purposes and for the use of the specific Services. If this license is provided by a third party, it will be subject to the terms of the related software license. The Customer shall use all its reasonable endeavors to ensure that himself and any third party should not:

    a. obtain or claim any ownership of the Licensed Software as well as to its origin or any further improvement;

    b. reproduce the Licensed Software except if agreed in writing by the Provider and in accordance with the terms of the related software license;

    c. perform any disassembly or deconstruction of the license software except to the extent permitted by law;

    d. sell, lease, license or sublicense the Licensed Software;

    e. create or develop any imitation of the software or any other software on the basis of the Licensed Software; or

    f. take any action which is forbidden by the relevant software license.

DATA PROTECTION

1. Both Parties fully acknowledge their responsibilities arising under the applicable data protection legislation, and hereby undertake to be fully compliant with the obligations and duties under such legislation. Both Parties shall at all times ensure that the proper technical and administrative security measures are taken to prevent any unauthorized or unlawful processing which can result in accidental loss or damage of personal data.

2. Both Parties agree that with regards to the personal data provided by the one Party to the other for the needs of the present Agreement, each Party shall:

    a. only act upon the other Party's instructions how the personal data under this Agreement shall be processed as well as to make sure that the proper technical and administrative measures are taken against unauthorized or unlawful personal data processing and against accidental loss or damage of the personal data; and

    b. fully comply with any reasonable request made by the other Party in order to ensure full compliance with the aforementioned measures.

3. General Data Protection Regulation (GDPR) is the legal framework which sets the guidelines for the collection and processing of personal information and applies to "controllers" (they who determine the purposes and means of processing personal data) and "processors" (they who are responsible for processing personal data on behalf of a controller. A "controller" may be a natural or legal

person, public authority, agency or other body that, alone or jointly with others, determines the purposes and means of the processing of personal data, Art. 4 No. 7 GDPR. The "processor" is defined as a natural or legal person, public authority, agency or other body that processes personal data on behalf of the controller, Art. 4 No. 8 GDPR. Given above, the existence of the processor depends on a decision taken by the controller, who can either process data within its organization (e.g., through its own employees) or transfers the processing activities to an external organization, giving it the role of a "processor". The processing of personal data through the Cloud, have the companies determine the purposes and means of processing, but the Service Provider carries out all operations. Given that VI-SEEM services are Cloud Services in nature, the Customer acts as controller and the Provider as processor unless the Service provided renders the Customer able to process any personal data as long as the service is High Performance Computing or Virtual Machine or Storage.

WARRANTIES

1. The Provider warrants that it will perform the Service in all material respects as described in the Purchase Order in a professional manner in accordance with the Service specifications. If the Service provided is not performed as warranted, the Customer must promptly provide written notice to the Provider that describes the deficiency in the Service.

2. The Provider does not guarantee that
   a. the Service will be performed error-free or uninterrupted, or that all Services errors will be corrected,
   b. the Service will operate in combination with Customer's content or applications, or with any other hardware, software, systems, services or data not provided by the Provider, and
   c. the service will meet Customer requirements, specifications or expectations.

3. The Customer acknowledges that the Provider does not control the transfer of data over communications facilities, including the internet, and that the services may be subject to limitations, delays, and other problems inherent in the use of such communications facilities. The Provider is not responsible for any delays, delivery failures, or other damage resulting from such problems. The Provider is not responsible for any issues related to the performance, operation or security of the Services that arise from Customer's content, applications or third party content. The Provider does not make any representation or warranty regarding the reliability, accuracy, completeness, correctness, or usefulness of third party content or services, and disclaims all liabilities arising from or related to third party content or services.

FORCE MAJEURE

Both Parties shall not be deemed in default of any of its obligations under this Agreement if, and to the extent that, performance of such obligation is prevented or delayed by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that both Parties shall use reasonable efforts, which are consistent with accepted practices in the information and communications industry, to resume performance as soon as practicable under the circumstances, provided, however, that in no event shall such time extend for a period of more than one hundred and eighty (180) days.

ASSIGNMENT

Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the Parties hereto (whether by operation of law or otherwise) without the prior written consent of the other Party. Subject to the preceding sentence, this Agreement will be binding upon, inure to the benefit of and be enforceable by the Parties and their respective successors and assigns.

CONFIDENTIALITY

1. Each Party may receive from the other Party information that is proprietary to the disclosing Party, and is marked as confidential or a similar notice (if disclosed in writing or tangible form), identified as confidential (if disclosed verbally), or should reasonably be treated as confidential under the context in which disclosure was made (Confidential Information).

2. Confidential Information does not include information that the receiving Party can demonstrate:
   a. is or has become public knowledge through no fault of the receiving Party;
   b. is rightfully obtained by the receiving Party from a third Party without breach of any confidentiality obligation; or
   c. is independently developed by employees of the receiving Party without use of or reference to such information.

3. The receiving Party will:
   a. safeguard Confidential Information with the same degree of care as it exercises with its own confidential information, but no less than reasonable care;

b. not disclose any Confidential Information to third parties other than Agents who have a need to know and are bound by confidentiality agreement; and

c. will use the other Party's Confidential Information solely in the exercise of the rights and obligations under this Agreement and for no other purpose.

4. The receiving Party may disclose Confidential Information if required by a regulation, law or court order, but only to the extent required to comply with such regulation, law or order, and only after providing reasonable advance notice to the originally disclosing Party to allow such Party to contest such disclosure.

GOVERNING LAW AND JURISDICTION

1. This agreement is governed by the [country of Provider or other] Law. The Parties shall make every possible effort to amicably settle any dispute that arises from this agreement and relates to the execution or application or interpretation thereof as well as to its broader implications in general.

2. Should the Parties decide to institute legal proceedings, it is hereby agreed that the Courts of [city, country] are the only Courts having jurisdiction to hear the case.