

Terms and Conditions for the use of Fraunhofer FOKUS' FUSECO testbed infrastructure

0. Fraunhofer-Gesellschaft zur Förderung der angewandten Forschung e. V., Hansastrasse 27c, 80686 Munich, Germany, is willing to provide access to its FUSECO testbed infrastructure consisting of hard- and software components (hereinafter: Testbed) developed by its Fraunhofer Institute for Open Communication Systems FOKUS, Kaiserin-Augusta-Allee 31, 10589 Berlin (hereinafter: Fraunhofer FOKUS) to interested third parties provided such third parties have agreed to the terms and conditions below.

By accessing the Testbed via the internet platform provided by Fraunhofer FOKUS each party (hereinafter: Participant) declares legally its acceptance of the terms and conditions of this license agreement.

Participant declares its consent that Fraunhofer FOKUS is entitled to file Participant's personal data provided under these terms and conditions. Fraunhofer FOKUS shall be entitled to use such data only for the administration of Participant's use of the Testbed.

Fraunhofer FOKUS reserves all rights not expressly granted to Participant under this license agreement.

1. Short description of the Testbed

The Testbed is multi-technology environment (Cloud computing, Mobile Broadband, Machine-to-Machine/Sensor, Software defined Networking, Network Function Virtualization) and consists of the following major components:

- Virtual Machines running on OpenStack
- WiFi APs
- LTE Femto Cells
- 3G Femto Cells
- 2G Femto Cells
- Radio Signal Attenuation System
- Radio Signal Shield Box
- OpenIMS Core
- OpenIMS Clients Linux
- OpenIMS Clients Android
- OpenEPC as a Service
- OpenEPC Clients Linux
- OpenEPC Clients Android
- Monitoring Systems
- OpenMTC - OneM2M, ETSI M2M Platform
- Zigbee-, Bluetooth-based, Temperature, Humidity, Energy, Light, eHealth Sensors
- Arduino Boards
- OpenSDNCore - SDN and NFV Platform

- OpenFlow Switches
- Testbed Federation and Control Platform

2. Scope

2.1 Fraunhofer FOKUS grants a non-exclusive, non-sublicensable, non-transferable right to Participant to use the Testbed. Participant's right of use is restricted to its own evaluation and testing purposes only. Any use for other purposes such as – but not limited to – commercial purposes or 'as a Service' is excluded. Any violation of this restrictions of use shall be subject to claims of compensation and to refrain from continuing such use.

2.2 Fraunhofer FOKUS is under no obligation to develop the Testbed and/or to release any update or upgrade with regard to the latter's hard- and software components.

2.3 Participant shall use best efforts to secure by technical and legal means that its allow to the Testbed shall not be used by any other party.

Participant shall not decompile, reverse engineer, disassemble, translate, integrate, adapt, create derivative works or updates of, or attempt to derive the source code of the Testbed software, or any part thereof.

2.4 Participant shall not copy or modify the Testbed software or parts thereof.

2.5 Fraunhofer FOKUS reserves the right to modify these terms and conditions and will announce such modifications on its website (<http://www.fuseco-playground.org>). Participant shall be obliged to check the website on regular intervals as Fraunhofer FOKUS is under no obligation to inform Participant of such modifications individually.

2.6 Participant is aware of and acknowledges that the Testbed contains third party components subject to additional terms and conditions, e. g. open source software. Participant commits itself to comply with such terms and conditions applying to such third party components.

2.7 Nothing in this license agreement is intended to restrict any third party rights. Participant shall ensure that third party rights shall not be affected or infringed by its use of the Testbed.

2.8 This license agreement does not generate any obligation for Fraunhofer FOKUS to create or maintain services that run outside of the Testbed.

2.9 In case Participant is interested in a commercial use of the Testbed or a use that is otherwise not covered by this license agreement, Participant may contact the point of contact indicated in Section 9 in order to obtain information regarding possible terms and conditions of an additional agreement covering such additional use of the Testbed.

2.10 Participant shall not be entitled to enter into agreements on behalf of or with

effect to Fraunhofer FOKUS or to create other obligations for Fraunhofer FOKUS.

3. Technical Requirements

The actual software and hardware requirements for using the Testbed depends on the specific usage scenario and test purpose. The use of the Testbed is at Participant's sole risk and responsibility. Participant acknowledges that Fraunhofer FOKUS is unable to ensure that the Testbed is or will remain available uninterrupted. Fraunhofer FOKUS shall not be liable if Participant installs or runs software on the Testbed which does not run properly.

4. Participant's responsibility

Participant shall be responsible and liable for any and all activities under its account.

Participant commits itself that it shall:

- (i) comply with any instructions relating to the use of the Testbed;
- (ii) not use the Testbed in a manner which (or is likely to) adversely affect the provision of the Testbed or which may perturb, interfere, distort or damage the Testbed;
- (iii) not use the Testbed to use, distribute, receive, store or communicate any material which is illegal, unlawful, offensive, abusive, indecent, defamatory, obscene or menacing, a nuisance or a hoax or any other type of material likely to cause offence;
- (iv) not use the Testbed to send or transmit anything, content or material which consists of or contains virus software;
- (v) not use the Testbed in a manner which may damage Fraunhofer FOKUS' reputation;
- (vi) not use the Testbed in any manner which violates copyright, trademark, confidentiality, privacy, or which infringes the intellectual or industrial property rights of Fraunhofer or any third party;
- (vii) not provide any content into the Testbed which breaches or could breach the law, public order, public morality or any third party rights;
- (viii) not remove, change or obscure any copyright notice displayed on the Testbed and its components;
- (viii) not copy, use, reverse engineer, amend, disassemble, disintegrate, decompile, or otherwise attempt to reconstruct, identify, discover or derive the source code, underlying ideas, underlying user interface techniques or algorithms or disclose any of the foregoing, or in any other way interfere with any software (or parts thereof) provided as part of the Testbed.

5. Participant's obligations regarding data backup in case of possible software conflicts

Participant shall use reasonable efforts to check if there might be conflicts with its

software intended to be tested and run within the Testbed before the installation of such use. Participant shall make backup copies of all of its software and data before the first installation within the Testbed and shall repeat such backup procedures in regular intervals in order to exclude/reduce the possibility of data losses resulting from software malfunction.

6. Warranty

6.1 Fraunhofer FOKUS will regularly check the Testbed with a virus scanner, however Fraunhofer FOKUS does not take any liability that the Testbed shall be virus-free at any and all times as there will be several Participants using the Testbed. Fraunhofer FOKUS shall use reasonable efforts within its actual and legal possibilities that the Testbed provides the essential functionalities as described in the Testbed description, however always provided that the Testbed has not been modified, has not been used with incompatible software and provided that no other reasons within Participants' sphere of influence affect the executability of the Testbed.

Participant is obliged to report any defects discovered in the Testbed without delay by e-mail or letter to the contact address provided under Section 9. Fraunhofer FOKUS shall be entitled to use such feedback unrestricted in time, content and place for optimization and development of the Testbed.

6.2 Fraunhofer FOKUS shall take no warranty obligation whatsoever with respect to the Testbed, and any other claims, losses, liabilities, damages, costs and expenses attributable to any failure to conform to any warranty.

6.3 Fraunhofer FOKUS' warranty is excluded in the case that faults or defects are caused by unauthorized modification of the Testbed, by inappropriate or culpable handling, by combination with inappropriate hard- or software, or by use of inappropriate software, regardless if caused by the Participant or any third party.

6.5 Warranty claims – if any - shall expire after a statutory period of limitation amounting to 12 months.

7. Liability

7.1 Fraunhofer FOKUS' liability in the case of violation of obligations and tort shall be limited to wilful intent. Only in cases of personal damages or violation of essential contractual obligations (cardinal obligations) Fraunhofer FOKUS shall also be liable for damages resulting from negligence. In any case, Fraunhofer FOKUS' liability shall be limited to the foreseeable, contractually typical damages.

7.2 Participant acknowledges to be solely responsible to safeguard its access information provided by Fraunhofer FOKUS to access the Testbed. Participant shall take sole liability in case of loss of or damage to such access information and for any and all damages resulting from – temporary or permanent - inaccessibility and

loss of data and software uses within the Testbed by the Participant.

7.3 Fraunhofer FOKUS takes no responsibility or liability for any damage caused due to a breach of Participant's obligations according to Section 2 of this license agreement. This exclusion of liability explicitly extends to damages arising to Participant from the inaccessibility of Participant's data and software. Participant is aware that in case of modifications or manipulations of the Testbed, Fraunhofer FOKUS reserves the right to exclude the Participant from any further use of the Testbed without prior announcement.

8. Export Law Control

Participant represents and warrants that Participant is neither located in nor citizen of a country that is subject to a U.S. or German Government embargo, or that has been designated by the U.S. or German Government as a "terrorist supporting" country; and that Participant is not listed on any U.S. or German Government list of prohibited or restricted parties. Participant shall indemnify Fraunhofer FOKUS from any third party claim resulting from a breach of these obligations.

9. Contact Information

In case of questions, complaints or claims with respect to the Testbed the Participant may contact:

Name: Thomas Günther
Address: Kaiserin Augustaallee 31, 10589 Berlin
Telephone: +49 – 3034637157
E-Mail: fusecopg@fokus.fraunhofer.de

10. Consent to Use of Data

Participant agrees that Fraunhofer FOKUS may collect and use technical data and information, including but not limited to technical information about Participant's use of the Testbed that is gathered periodically to facilitate the provision of Testbed development and other services related to the Testbed. Fraunhofer FOKUS may use this information - provided it has been anonymized so that the information shall in no case be attributable to Participant - to improve the Testbed.

11. Termination

Participant's authorized use of the Testbed is effective until terminated by a party with written notice (email sufficient). Additionally, Participant may terminate its use and this agreement by deleting its account. Participant's right to use the Testbed shall terminate automatically and without notice from the Fraunhofer FOKUS if Participant fails to comply with any of its obligations under this license agreement.

The right of each party to terminate this agreement for good cause remains unaffected.

Upon termination of its Testbed use allowance, Participant shall cease all use of the Testbed.

12. Applicable law

This agreement is governed by the laws of the Federal Republic of Germany excluding its conflicts of law rules. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is expressly excluded.

13. Miscellaneous

13.1 If any of the provisions of this agreement should be or become invalid, the validity of the remaining provisions shall not be affected. Invalid provisions shall be replaced by valid provisions formulated in such a way that the intended purpose will largely be achieved.

13.2 No Party may transfer or assign its rights and obligations deriving from this license agreement.

13.3 Fraunhofer FOKUS is entitled to change these terms and conditions, in which case it will inform Participant of the modifications as described in Section 2.5 which will be considered mutually binding unless Participant contradicts within 4 weeks after its first possibility of becoming aware of them.