

## Contract between EURESCOM and <PARTNER>

### For financial support to third parties under Article 15 of Grant Agreement number 732497 — 5GINFIRE

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THIS CONTRACT is made between:

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

And

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

who shall be the "parties" to this Contract:

WHEREAS **EURESCOM** is the coordinator of project "Evolving FIRE into a 5G-Oriented Experimental Playground for Vertical Industries", that receives European Union funding under Horizon 2020 Grant Agreement number 732497 – 5FINFIRE, and

WHEREAS 5GINFIRE has reserved funds to provide financial support to third parties under Article 15 of Grant Agreement<sup>1</sup> number 732497 — 5GINFIRE through an open call process, and

WHEREAS **EURESCOM** is the one of 10 beneficiaries in Grant Agreement number 732497 – 5FINFIRE authorized to contract the third parties who are successful in the 5GINFIRE open call process, and

WHEREAS **PARTNER** is a third party receiving financial support for research services critical to the success of the delivery of research work under the aforementioned Grant Agreement; and the work of this project must be performed within the timeframe and deadlines of the 5GINFIRE's 1<sup>st</sup> Open Call ,

**EURESCOM** and **PARTNER** now agree the following **Contract** for performance and delivery of research services by **PARTNER** as part of the aforementioned **Grant Agreement**.

#### The Contract:

##### 1. Definitions

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

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

"**Grant Agreement**" means Horizon 2020 Grant Agreement 732497 for project 5GINFIRE as awarded to Eurescom and 9 additional beneficiaries,

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<sup>1</sup> Article 15 of Grant Agreement number 732497 — 5GINFIRE is equal to the Article 15 of the Model Grant Agreement. The MGA is available at [http://ec.europa.eu/research/participants/data/ref/h2020/mga/gga/h2020-mga-gga-multi\\_en.pdf](http://ec.europa.eu/research/participants/data/ref/h2020/mga/gga/h2020-mga-gga-multi_en.pdf)

## Contract between EURESCOM and <PARTNER>

### For financial support to third parties under Article 15 of Grant Agreement number 732497 — 5GINFIRE

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

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

“**Background**” IPR shall mean that which is not Foreground.

“**Description of Work**” is the description of the tasks as presented in Annex 1 to this **Contract**.

“**Work**” shall mean any work carried out or to be carried out under this Contract as specified in the “Description of Work” in Annex 1 to this **Contract**, and any modifications to that agreed between EURESCOM and the PARTNER.

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

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

#### 2.0 Effectiveness of this Contract

The start date of this Contract shall be 1 May 2018, and shall be made effective by signature by both parties.

#### 3.0 Terms and Conditions

In addition to the terms and conditions of this contract, the terms and conditions of the Horizon 2020 Grant Agreement number 732497 – 5FINFIRE under which the work is performed also apply, however only correspondingly for the legal relationship between EURESCOM and the PARTNER.

In particular the PARTNER agrees that the following articles of the Grant Agreement are explicitly part of this **Contract** ensuring that the European Commission (EC) the European Court of Auditors (ECA) and the European Anti-Fraud Office (OLAF) can exercise their rights under Articles 22 and 23 of the Model Grant Agreement towards **PARTNER**. Furthermore the obligations of the **PARTNER** include the obligations under articles 35, 36, 38, and 46. The referenced articles cover:

- Article 22 – Checks, reviews, audits and investigations — Extension of findings
  - Checks, reviews and audits by the EC
  - Investigations by the European Anti-Fraud Office (OLAF)
  - Checks and audits by the European Court of Auditors (ECA)
  - Checks, reviews, audits and investigations for international organisations
  - Consequences of findings in checks, reviews, audits and investigations — Extension of findings
  - Consequences of non-compliance
- Article 23 – Evaluation of the impact of the action
  - Right to evaluate the impact of the action
  - Consequences of non-compliance

## Contract between EURESCOM and <PARTNER>

### For financial support to third parties under Article 15 of Grant Agreement number 732497 — 5GINFIRE

- Article 35 – Conflict of interest
  - • Obligation to avoid a conflict of interests
  - • Consequences of non-compliance
  
- Article 36 – Confidentiality
  - • General obligation to maintain confidentiality
  - • Consequences of non-compliance
  
- Article 38 – Promoting the action – Visibility of EU funding
  - • Communication activities by beneficiaries
  - • Communication activities by the EC
  - • Consequences of non-compliance
  
- Article 46 – Liability for damages
  - • Liability of the EC
  - • Liability of the beneficiaries

#### **4.0 Performance**

- 4.1 PARTNER shall perform its work under this Contract in accordance with the requirements of the Statement of Work.
- 4.2 PARTNER shall endeavour to ensure that all Work is performed to the highest professional standards and shall be responsible for the quality and timeliness of its services under this Contract.
- 4.3 PARTNER will perform its services according to the following performance standards:
- (i) PARTNER must be available during normal working hours to discuss the work in progress and respond to technical and/or administrative requests
  - (ii) The Personnel offered for the performance of the work must have the necessary competence to perform the work and must be announced in advance to EURESCOM.

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

#### **5.0 Consideration and Payment**

The sum due in consideration of performance, and the payment terms, shall be as specified by the payment plan in Annex 2 to this CONTRACT.

Notwithstanding the commitments in the payment plan, Payments for services delivered by PARTNER will only be done by EURESCOM subsequent to receiving the corresponding funding from the European Commission.

As with all H2020 projects, the final 15% payment will only be paid after the completion and approval of all Work of the Project by the European Commission.

## Contract between EURESCOM and <PARTNER>

### For financial support to third parties under Article 15 of Grant Agreement number 732497 — 5GINFIRE

PARTNER shall strictly abide by all H2020 provisions concerning reporting, cost calculations and invoicing, and adhere to all instructions contained in H2020 Annotated Model Grant Agreement<sup>2</sup> when completing its invoices.

#### 6.0 Acceptance of Services

- 6.1 PARTNER shall supply the work and services as defined in the Statement of Work.
- 6.2 After reception of part or all of these Services, EURECOM may object to any work or service that does not comply with the standards implied in the Statement of Work. If the objected Service does not comply with these standards, PARTNER shall re-work the Service to reach the agreed standards.

**Failure to supply the work or service to a satisfactory standard by the final date for that task as set out in the Statement of Work shall oblige EURESCOM to withhold corresponding payment and/or claim back the respective part of the advance payment.**

In the case where part or all of the work or service has not been supplied to the standard required by the **CONTRACT** and an opportunity to rework it has not been successful, PARTNER undertakes to return any payment or prepayment received for this work or service within 30 days.

#### 7.0 Intellectual Property Rights

PARTNER warrants full compliance with all IPR provisions under the H2020 Model Grant Agreement.

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

PARTNER warrants that the supply and use of their Personnel and Services in accordance with this Contract does not and will not infringe any IPR belonging to EURESCOM, any of the 5GINFIRE beneficiaries or any third party.

As H2020 Model Grant Agreement shall apply, Intellectual Property Rights to the Results of the Work generated by the PARTNER shall be owned by the PARTNER as specified in article 26 of H2020 Model Grant Agreement.

#### 8.0 Confidentiality

PARTNER shall fully comply with the Confidentiality clauses in the H2020 Model Grant Agreement and ensure all his personnel are compliant.

#### 9.0 Liabilities

- 9.1 PARTNER shall use all reasonable endeavours to ensure the accuracy of any information it supplies under this Contract and shall be responsible for any direct loss or damage arising out of any inaccuracies or omissions which are the result of its gross negligence or wilful intent.

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<sup>2</sup> [http://ec.europa.eu/research/participants/data/ref/h2020/grants\\_manual/amga/h2020-amga\\_en.pdf](http://ec.europa.eu/research/participants/data/ref/h2020/grants_manual/amga/h2020-amga_en.pdf)

## **Contract between EURESCOM and <PARTNER>**

### **For financial support to third parties under Article 15 of Grant Agreement number 732497 — 5GINFIRE**

- 9.2 PARTNER shall promptly notify EURESCOM of any claim arising relevant to 9.1. If any claim relevant to 9.1 is made against EURESCOM arising from PARTNER work, PARTNER will indemnify and keep indemnified EURESCOM against any and all loss and damages arising from such claim.
- 9.3 PARTNER shall promptly notify EURESCOM of any claim arising from their performance of the work where a third party alleges harm has been caused by the actions of PARTNER in performing this contract. If any such claim is made against EURESCOM arising from PARTNER work, PARTNER will indemnify and keep indemnified EURESCOM against any and all loss and damages arising from such claim.
- 9.4 PARTNER's overall liability under this contract is limited to the value of PARTNER's share of this contract, except for damages caused by wilful intent.
- 9.5 Upon request, PARTNER shall inform EURESCOM on the essential terms and conditions of its employer's liability insurance.
- 9.6 Should in the execution of the CONTRACT a need arise to provide the European Commission or the 5GINFIRE beneficiaries with information which is subject to export control laws and regulations that originates from PARTNER, PARTNER shall notify EURESCOM to secure that such information is only provided in accordance with the provisions of such export control laws and regulations.

#### **10 Term and Termination**

- 10.1 This Contract starts on 1 December or November 2018 and it shall terminate no later than the 30 April or 31 May 2019 in line with the plan foreseen in Annex 1. In the case Grant Agreement 732497 for project 5GINFIRE is terminated earlier than planned, this Contract will also be terminated and work items and payments will be finalised in line with the European Commission decision to terminate the Grant Agreement 732497 for project 5GINFIRE.
- 10.2 If either party breaches any conditions of this Contract and fails to remedy such breach within thirty days after receipt of a written notice from the other party, the party giving notice may, at its option and in addition to any other remedies which it may have, terminate this Contract by sending notice of termination in writing to the other party and such termination shall be effective as the date of the receipt of such notice, and any benefits of the Contract in respect of the other party shall cease.
- 10.3 Notwithstanding termination or cessation of this Contract, clauses 7, 8 and 9 shall remain in force.

#### **11.0 Force Majeure**

If any party is rendered unable by circumstances of Force Majeure to fulfil any of its obligations under this Contract, such party, by giving notice and reasonably full particulars to the other party promptly after the occurrence of such Force Majeure, shall be excused from the performance of such obligations during the continuance of such inability so caused, so far as and to the extent that the obligations are affected by such Force Majeure, that such party shall be relieved of the liability for failure to fulfil the same during such period provided that the cause of such inability shall be remedied so far as is possible with reasonable despatch. For the purpose of this Contract, the term "Force Majeure" means an occurrence beyond the control of the

## Contract between EURESCOM and <PARTNER>

### For financial support to third parties under Article 15 of Grant Agreement number 732497 — 5GINFIRE

party affected and which, by acting in a reasonable and prudent manner, said party is unable to prevent such as acts of God, state of war, riot, epidemics, atmospheric disturbance, lightning, storm, hurricane, earthquake, landslide, strikes and lock-outs.

#### 12.0 Amendments, Variation

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

#### 13.0 Waiver

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

#### 14.0 Enforceability

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

#### 15.0 Notice

Any notice to be given under this Contract may be first sent as a PDF file attached to an eMail and must be acknowledged by the receiving party on receipt. If not acknowledged by eMail, then it shall be sent by fax or forwarded by letter post to the addressee at its business address as last notified in writing to the other party.

#### 16.0 Relationship of the Parties

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

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

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

#### 17.0 Assignment

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

**Contract between EURESCOM and <PARTNER>**

**For financial support to third parties under Article 15 of Grant Agreement number 732497 — 5GINFIRE**

**18.0 Applicable Law**

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

**19.0 Dispute Resolution**

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

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

**20.0 Headings**

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

**EURESCOM** and **PARTNER** now agree the above **Contract** for the performance and delivery of research services by **PARTNER** under the aforementioned Grant Agreement 732497 for project 5GINFIRE

Signed for and on behalf of  
EURESCOM

Signed for and on behalf of  
PARTNER

.....  
David Kennedy  
Director

.....  
<NAME>  
<TITLE>

Date.....

Date.....

**Contract between EURESCOM and <PARTNER>**

**For financial support to third parties under Article 15 of Grant Agreement  
number 732497 — 5GINFIRE**

ANNEXES:

**Annex 1 to this Contract: The agreed Description of Work (DoW)**

The DoW is based on the Partners' proposal including any adjustments agreed in the contracting phase e.g. timing of deliverables.

**Annex 2 to this Contract: Payment plan and working practices for the above DoW**

The payment plan will cover any advance payments(s), interim payments based on achievements, the final payment and any other financial conditions. This annex also presents the standard 5GINFIRE project requirements for contributions to management, reporting, attending meetings and providing deliverables

Annexes to this Contract not attached hereto, but available to both parties.