

# Service agreement

## [Type of services]

Company InnoEnergy GmbH · Registered Office Albert-Nestler-Strasse 21 · 76131 Karlsruhe · Germany

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InnoEnergy is supported by the EIT,  
a body of the European Union

**This service agreement (“Agreement”) is made between:**

1. InnoEnergy GmbH, a German limited liability company (*Gesellschaft mit beschränkter Haftung*) having its registered place of business at Albert-Nestler-Strasse 21, 76131 Karlsruhe, Germany (“we” or “us”);

and

2. [Full name service provider], a [legal form] under [country] law, having its registered place of business at [address, zipcode, country], [VAT number service provider] (“you”);

**WHY DO WE ENTER INTO THIS AGREEMENT WITH YOU?**

- A. Our funds come, amongst others, from the European Institute of Innovation & Technology (“EIT”), which is a body of the European Union (“EU”). With these funds we promote innovation, entrepreneurship and education in the field of sustainable energy.
- B. As we use public money, we need to comply with certain (additional) obligations towards the EIT and other EU bodies. We also have to impose some of these obligations on external parties, such as you. These (additional) obligations are included in this agreement;
- C. As we use public money, we launched a tender procedure to select an external party to provide us with certain services (as specified in Article 2.1). You participated and made us an offer, on the basis of which we selected you to provide the Services; and
- D. This Agreement describes the terms and conditions that apply when you provide the Services.

**WHAT HAVE WE AGREED?**

**Article 1 - Structure of the Agreement**

- 1.1. This Agreement contains a basic set of rules that applies to each separate order for Services that we may place with you during the term of this Agreement by issuing an order form in the form as attached hereto as Annex 1 (hereinafter “**Order Form**”).
- 1.2. We have the right to place as many orders for Services with you as we deem fit. We are under no obligation to place a minimum amount of orders for Services with you. We can also ask third parties to provide services similar to the Services (as specified in Article 2.1) to us.
- 1.3. This Agreement consists of the body and all Order Forms issued by us that have not expired.
- 1.4. Each Order Form contains specific terms and conditions that apply solely to the specific order. These specific terms and conditions apply to such specific order in addition to the general terms set out in this Agreement. In case of discrepancy between the terms set out in the Order Form and the terms set out in the body of this Agreement, the terms set out in the Order Form shall prevail.

**Article 2 - Performance of the Services, subcontracting**

2.1. We may place orders with you by issuing Order Forms for the provision of the services specified below (hereinafter “**Services**”). If we have issued an Order Form, you must perform the Services and provide the deliverables within the time schedule specified in such Order Form.

Services	Deliverables
[description of each service to be provided by the service provider]	[description of each deliverable connected to the service ]

- 2.2. You must perform the Services by exercising due skill, speed and care, at a level generally required of well reputed service providers that perform the same or similar services.
- 2.3. You are free to organize how you provide the Services as long as the Services meet the requirements set in this Agreement and the relevant Order Form.
- 2.4. You must use personnel who possess the qualifications and experience necessary for the proper performance of the Services. If you mentioned specific personnel in your offer, we assume the Services are performed by such personnel. Should you want to involve other personnel, you must ask us whether we agree on that first.
- 2.5. You must report to us how you progress in the performance of the Services if we ask you to do so. We may ask you to report in a specific format.
- 2.6. We can accept or reject the Services that you provide to us. If we do not reject Services within 14 days after delivery, you may assume we accepted them.
  - If we reject (part of) a Service because it does not meet what we agreed and it is possible for you to re-perform the rejected (part of the) Service properly, you must do so promptly and without additional costs for us.
  - If we reject (part of) a Service and it is not possible for you to re-perform properly, that (part of a) Service is rescinded. We then also will not pay you for that (part of a) Service.
- 2.7. If you want to subcontract (part of) the Services to another party, you will have to ask us first. If we agree to such subcontracting, you must ensure that your subcontractor is bound by similar obligations towards you as you are towards us under this Agreement and the relevant Order Form. You remain fully responsible to us for the subcontracted part of the Services. We shall not have a direct contractual relationship with the subcontractor.

### Article 3 - Compensation, invoices and payment

3.1. We pay the fees specified below as compensation for the Services.

Fees
[fees]

Company bank details (InnoEnergy should be informed when the bank details provided below have changed)
[bank details]

3.2. We only pay these fees if (i) an Order Form was issued for the relevant Services, and (ii) you provide us with an invoice that mentions at least the below:

- a. your name and address;
- b. your VAT identification number;
- c. our name and address;
- d. our VAT identification number;
- e. the invoice number and the Order Form number;
- f. the invoice date;
- g. the date on which the Services were provided;
- h. a brief description of the nature and type of Services supplied;
- i. the following data for every VAT tariff or exemption:
  - i. the price per piece or unit, including VAT;
  - ii. any reductions that are not included in the price;
  - iii. the VAT tariff that has been applied;
  - iv. the cost (the price excluding VAT);
  - v. in case of advance payment, the date of payment; and
  - vi. the amount of VAT.

3.3. We pay invoices that meet the above criteria within 30 days following receipt.

3.4. However, if you do not (properly) fulfil your obligations under the Agreement, we may suspend payment. If we do so, we will notify you thereof.

3.5. We also may set-off amounts that we owe you under this Agreement (including all Order Forms issued) with amounts that you owe us under this Agreement (including all Order Forms issued) or another agreement we have with you.

### Article 4 - Taxes

4.1. The fees mentioned in Article 3.1 are exclusive of value added tax (VAT) or similar taxes.

4.2. You perform the Services as an independent contractor. This Agreement does not create a partnership, joint venture or employment relationship between you and us.

4.3. You are responsible for your own taxes (income taxes, payroll taxes, social insurances, etc.). We are responsible for our own taxes. If we incur costs (tax claims, administrative fines,

including reasonable attorney's fees) and/or suffer damages in connection with taxes that are your responsibility, you must fully compensate such costs and/or damages to us. If you incur costs (tax claims, administrative fines, including reasonable attorney's fees) and/or suffer damages in connection with taxes that are our responsibility, we must fully compensate such costs and/or damages to you.

#### **Article 5 - Intellectual property**

- 5.1. For the purpose of this Agreement "**IP**" means patents, utility certificates, utility models, (industrial) design rights, copyrights, database rights, trademarks, trade names and trade secrets, including moral rights and any applications, renewals, extensions combinations, divisions, discontinuations or re-issues of the foregoing.
- 5.2. We become the owner of any newly created IP in the deliverables (as mentioned in Article 2.1).
- 5.3. We remain the owner of any item we, or someone else on our behalf, provided you with.
- 5.4. You remain the owner of any IP that you already owned or controlled before the start of the performance of the Services ("**Background IP**"). You grant us a non-exclusive, royalty-free and fully paid-up, worldwide, irrevocable and perpetual license under such Background IP, if and to the extent we need it for our free use (including the sale) of the deliverables under this Agreement, with the right to sublicense.
- 5.5. You may not make any public reference to us, whether in press releases, advertisements, or otherwise, without our prior written consent. The same applies for us.
- 5.6. If we incur costs (including reasonable attorney's fees) and/or suffer damages as a result of claims by third parties that the Services infringe their IP, you must fully compensate such costs and/or damages to us.
- 5.7. If our use of the Services is frustrated (for instance because they infringe the rights of a third party) you must either, at your own cost: (i) procure for us or our users the right to continue using the Services; or (ii) replace or modify the Services with functional, non-infringing equivalents. If you cannot ensure continuation of the Services through either of the above options within a reasonable time frame, we may terminate the Agreement. If we terminate, you must reimburse the price we paid for the relevant Services. Such reimbursement is in addition to your compensation obligation under Article 5.6.

#### **Article 6 - Confidentiality**

- 6.1. For the purpose of this Agreement "**Confidential Information**" means information, such as but not limited to commercial and/or technical information, which is disclosed to you by us or to us by you (either directly or indirectly) in connection with the performance of this Agreement, and which is marked as "confidential", "proprietary" or similar, or which can reasonably be deemed to be of a confidential or proprietary nature.
- 6.2. You and we may not:
  - (i) use the Confidential Information for other purposes than in connection with (your performance and our use) of the Services; and

- (ii) disclose the Confidential Information to any third party, except to employees, external advisers and subcontractors who (A) have a legitimate “need to know”, and (B) are under similar confidentiality obligations as apply under this Agreement.
- 6.3. The obligation as mentioned in Article 6.2 does not apply to information which is or becomes public knowledge without a violation of confidentiality obligations.
- 6.4. You must immediately return to us all property that we have made available to you if we ask you to do so. We will do the same with property that you have made available to us (except for the deliverables).
- 6.5. If we incur costs (including reasonable attorney’s fees) and/or suffer damages as a result of a violation of the confidentiality obligations by you, you must fully compensate such costs and/or damages to us. If you incur costs (including reasonable attorney’s fees) and/or suffer damages as a result of a violation of the confidentiality obligations by us, we must fully compensate such costs and/or damages to you.

#### **Article 7 - Personal data**

- 7.1. For the purpose of this Agreement:
- **“Personal Data”** means data which relate to a living individual who can be identified (a) from those data, or (b) from those data in connection with other information which is easily obtainable; and
  - **“Process”** or **“Processing”** means obtaining, recording or holding information or data or carrying out any operation or set of operations on the information or data, including:
    - (a) organization, adaptation or alteration of the information or data, (b) retrieval, consultation or use of the information or data, (c) disclosure of the information or data by transmission, dissemination or otherwise making available, or (d) alignment, combination, blocking, erasure or destruction of the information or data.
- 7.2. If you Process Personal Data in performing the Services, you must:
- a. comply with all applicable privacy and data protection laws;
  - b. Process the Personal Data only (i) for or on our behalf (ii) in accordance with our instructions and this Agreement (iii) as far as needed for the Services;
  - c. maintain the security, confidentiality, integrity and availability of the Personal Data;
  - d. implement and maintain appropriate technical, physical, organizational and administrative security measures to protect the Personal Data against loss and/or unauthorized access;
  - e. promptly inform us of any actual or suspected security incident involving such Personal Data; and
  - f. securely erase or destroy the Personal Data upon termination of the Agreement or at our request.
- 7.3. If we incur costs (including reasonable attorney’s fees) and/or suffer damages as a result of a breach of this Article 7 by you, you must fully compensate such costs and/or damages to us.

#### **Article 8 - Liability**

- 8.1. You must take out and maintain sufficient insurance to cover liability arising out of or in connection with this Agreement. Such insurance shall at least have the insured amounts as stated in your proposal. You must provide us with insurance certificates evidencing such coverage if we ask for it.
- 8.2. Your liability under or in connection with this Agreement is capped at the insured amounts mentioned in Article 8.1.
- 8.3. Our liability under or in connection with this Agreement is capped at the total amount due to you by us on completion of the Services, less the amount already paid to you.
- 8.4. The limitations of liability mentioned in Articles 8.2 and 8.3 above do not apply:
  - in case of gross negligence or willful misconduct; and/or
  - for liability arising out of Articles 4.3, 5.6, 6.5 and/or 7.3 above.

#### **Article 9 - Termination**

- 9.1. This Agreement becomes effective on [date] and ends on [please include date after which no orders can be placed] (“End Date”). All orders placed before the End Date that have not expired remain effective after the End Date.
- 9.2. Both you and we may terminate each Order Form in accordance with the termination provisions set out in such Order Form. If an Order Form is terminated, we are only required to pay for the Services provided under such Order Form until the moment of termination. If you already received payment for the Services not provided at the time of termination, you must refund the excess amount to us.
- 9.3. The termination of an Order Form has in itself no effect on the existence of the other running Order Forms and the body of this Agreement.
- 9.4. We may terminate this Agreement (including all running Order Forms) with immediate effect by giving you notice at any time before the End Date, if:
  - a. you act in a way that puts us in a situation in which we cannot reasonably be held to continue our relationship with you;
  - b. the European Programme(s) in connection with which we entered into this Agreement with you are terminated.
- 9.5. You may fully or partially terminate this Agreement (including all running Order Forms) with immediate effect by giving us notice at any time before the End Date, if we act in a way that puts you in a situation in which you cannot reasonably be held to continue your relationship with us.
- 9.6. Following a termination all rights and obligations intended to survive the termination (such as Articles 5 up to and including 11) will survive the termination.

#### **Article 10 - Safeguarding of EU’s financial interest and conflict of interest**

- 10.1. You understand and agree that we may provide the EIT, the European Court of Auditors, the European Anti-Fraud Office and/or other EU bodies with information regarding the Services (including this Agreement and tender materials) in order to meet our obligations towards

such bodies. We may do so during the term of this Agreement and 4 years thereafter. Article 6.2 of this Agreement does not apply in such a situation.

- 10.2. You must take all necessary measures to prevent a situation where the impartial or objective implementation of this Agreement is compromised for reasons involving economic interest, political or national affinity, family or emotional ties or any other conflicting interest. You must inform us immediately if there is a change in circumstances which leads or may lead to a conflict of interest.

### Article 11 - Various

- 11.1. Notices in relation to this Agreement must be given in writing.
- 11.2. If you cannot perform an obligation under this Agreement because of *force majeure* (meaning: reasons beyond your reasonable control), you must notify us. Following notification, only the performance of such obligation(s) is suspended during the force majeure. We may terminate this Agreement if the force majeure lasts more than 30 days. Shortage of personnel, shortage of production materials or shortage of resources, strikes, breach of contract by third parties contracted by you or force majeure events at third parties contracted by you, financial problems, and/or lack of the necessary licenses, permits or authorizations needed for the Services do not qualify as force majeure.
- 11.3. This Agreement covers our full contractual relationship with you for the Services. Oral agreements or additional general terms and conditions do not apply.
- 11.4. You may not transfer or pledge (part of) this Agreement without our prior written consent. We shall not withhold such consent unreasonably.
- 11.5. Neither the failure nor the delay to enforce a right under this Agreement shall constitute a waiver of such right or remedy or of any other available rights or remedies.
- 11.6. German law applies to this Agreement. Conflicts relating to this Agreement will be decided upon in the first instance by the competent court in Karlsruhe, Germany.
- 11.7. The United Nations Convention on the International Sale of Goods does not apply.

Signed in two copies by:

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**InnoEnergy GmbH**

By: Dr. Christian Müller

Function: CEO

On:

Place:

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**[full legal name service provider]**

By: [name representative]

Function: [position representative]

On:

Place:



ANNEX 1

ORDER FORM # [number]

We hereby ask you to provide the below Services pursuant to the terms and conditions set out in the service agreement between us and you dated [date] (hereinafter: “Agreement”).

Services	Deliverables	Deadline

The fees specified in Section 3.1. of the Agreement apply to the provision of the Services mentioned above.

This Order Form forms an integral part of the Agreement. The terms and conditions set out in the Agreement apply to this Order Form unless this Order Form specifically provides otherwise.

This Order Form becomes effective on the date it is issued by us. The Order Form automatically ends on the date the last Service specified in this Order Form has been delivered, accepted and paid (“End Date”).

We may fully or partially terminate this Order Form with immediate effect by giving you written notice at any time prior to the End Date if:

- a. you breach an obligation under this Order Form and, if the breach is capable of remedy, you fail to remedy the breach within 14 calendar days after we ask you to do so;
- b. you breach an obligation under this Order Form which is incapable of remedy;
- c. you do not provide us with adequate assurance that you can fulfill your obligations under this Order Form in a timely fashion after we ask you to do so;
- d. the European Programme(s) in connection with which we have entered into the Agreement are terminated.

You may fully or partially terminate this Order Form with immediate effect by giving us written notice at any time before the End Date if:

- a. we breach an obligation under this Order Form and, if the breach is capable of remedy, we fail to remedy the breach within 14 days after you ask us to do so;
- b. we breach an obligation under this Order Form which is incapable of remedy;
- c. we do not provide you with adequate assurance that we can fulfill our obligations under this Order Form in a timely fashion after you as us to do so.

Following a termination of this Order Form all rights and obligations that are intended to survive the termination will survive the termination.

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**InnoEnergy GmbH**

By:

Function:

On:

Place: