

# Service agreement

# **Enquiry management and conversion services for educational programmes.**



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EIT InnoEnergy is the trading brand of KIC InnoEnergy SE

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

1. KIC InnoEnergy SE, a European public limited liability company (*Societas Europaea*) having its registered place of business at Kennispoort, 6<sup>th</sup> floor, John F. Kennedylaan 2, (5612 AB) Eindhoven, the Netherlands (“**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. *Our* contractual obligations with the EIT relating to said public money are on the verge of changing due to the upcoming implementation of the Horizon Europe framework. These changes are expected to become effective over the course of 2021 and 2022 and may require amendment of this Agreement. We have added a clause to this Agreement, allowing *us* to terminate this Agreement should *you* be unwilling or unable to accept such changes.
- C. As we use public money, we launched a tender procedure to select an external party to provide us with certain services. These services (“**Services**”) are specified in Article 1.1. 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 - Performance of the Services, subcontracting**

- 1.1. You must perform the Services and provide the deliverables that are specified below. You must do so within the time schedule specified below.

Services	Deliverables	Deadline
[description of each service to be provided by the service provider]	[description of each deliverable connected to the service]	[deadline for each Service and/or deliverable]

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- 1.2. 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.
- 1.3. You are free to organize how you provide the Services as long as the Services meet the requirements set in this Agreement.
- 1.4. 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.
- 1.5. 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.
- 1.6. 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.
- 1.7. 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. 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 2 - Compensation, invoices and payment

- 2.1. We pay the fees specified below as compensation for the Services.

Fees
[fees]

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

- 2.2. We only pay these fees if 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;
  - 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.
- 2.3. We pay invoices that meet the above criteria within 30 days following receipt.
- 2.4. 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.
- 2.5. We also may set-off amounts that we owe you under this Agreement with amounts that you owe us under this Agreement or another agreement we have with you.

### Article 3 - Taxes

- 3.1. The fees mentioned in Article 2.1 are exclusive of value added tax (VAT) or similar taxes.
- 3.2. You perform the Services as an independent contractor. This Agreement does not create a partnership, joint venture or employment relationship between you and us.
- 3.3. 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 4 - Intellectual property

- 4.1. 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.
- 4.2. We become the owner of any newly created IP in the deliverables (as mentioned in Article 1.1).
- 4.3. We remain the owner of any item we, or someone else on our behalf, provided you with.
- 4.4. 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.

- 4.5. 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.
- 4.6. 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.
- 4.7. 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 4.6.

#### Article 5 - Confidentiality

- 5.1. 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.
- 5.2. 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.
- 5.3. The obligation as mentioned in Article 5.2 does not apply to information which is or becomes public knowledge without a violation of confidentiality obligations.
- 5.4. 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).
- 5.5. 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 6 - Personal data

- 6.1. 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.
- 6.2. 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.
- 6.3. If we incur costs (including reasonable attorney’s fees) and/or suffer damages as a result of a breach of this Article 6 by you, you must fully compensate such costs and/or damages to us.

## Article 7 - Liability

- 7.1. 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.
- 7.2. Your liability under or in connection with this Agreement is capped at the insured amounts mentioned in Article 7.1.
- 7.3. 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.
- 7.4. The limitations of liability mentioned in Articles 7.2 and 7.3 above do not apply:
- in case of gross negligence or willful misconduct; and/or
  - for liability arising out of Articles 3.3, 4.6, 5.5 and/or 6.3 above.

## Article 8 - Termination

- 8.1. This Agreement becomes effective on 01 January 2022. This Agreement ends automatically on the date the last Service has been delivered, accepted and paid.
- 8.2. This Agreement cannot be terminated early by you or by us, save for the specific termination events specified in Article 8.3 and/or Article 8.4.

- 8.3. We may fully or partially terminate this Agreement with immediate effect by giving you notice at any time, if:
- a. you breach an obligation under this Agreement and, if the breach is capable of remedy, you fail to remedy the breach within 14 days after we ask you to do so;
  - b. you breach an obligation under this Agreement which is incapable of remedy;
  - c. you do not provide us with adequate assurance that you can fulfill your obligations under this Agreement in a timely fashion after we ask you to do so; or
  - d. the European Programme(s) in connection with which we entered into this Agreement with you are terminated.
  - e. you do not agree to - or are unable to comply with - changes to this Agreement required by us with a view to the implementation of the Horizon Europe Programme, corresponding arrangements we make with the EIT, or arrangements we make with other EU bodies in this respect.
  - f. any change, event, circumstance, condition or effect occurs which KIC InnoEnergy SE in its sole discretion believes or is reasonably likely to materially adversely impact either (i) the industries or fields in which KIC SE operates or (ii) either Party's possibilities to perform its material obligations under this Agreement, or otherwise materially impedes or delays such performance.
  - g. the exit of the United Kingdom from the European Union complicates either Party complying with the terms or conditions of this Agreement, or would lead to a material increase of the costs of either Party doing so (which, for example, could be the case if costs incurred by KIC InnoEnergy SE for UK service providers are no longer found eligible by the EIT).
- 8.4. You may fully or partially terminate this Agreement with immediate effect by giving us notice at any time, if:
- a. we breach an obligation under this Agreement, 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 Agreement which is incapable of remedy; or
  - c. we do not provide you with adequate assurance that we can fulfill our obligations under this Agreement in a timely fashion after you ask us to do so.
- 8.5. Following a termination all rights and obligations intended to survive the termination (such as Articles 4 up to and including 10) will survive the termination.

#### **Article 9 - Safeguarding of EU's financial interest and conflict of interest**

- 9.1. 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 5.2 of this Agreement does not apply in such a situation.
- 9.2. 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 10 - Various

- 10.1. Notices in relation to this Agreement must be given in writing.
- 10.2. 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.
- 10.3. If the Services cannot be performed, or potentially cannot be performed, because of reasons beyond our reasonable control (such as the effects of the COVID-19 pandemic), we will do our utmost to notify you as soon as possible, at least 30 days in advance. Following notification, the performance of the Services is suspended for as long as the force majeure continues. We shall use our best endeavors to find a suitable new date for the performance of the Services. We may determine in our sole discretion, acting reasonably, to terminate this Agreement instead.
- 10.4. This Agreement covers our full contractual relationship with you for the Services. Oral agreements or additional general terms and conditions do not apply.
- 10.5. You may not transfer or pledge (part of) this Agreement without our prior written consent. We shall not withhold such consent unreasonably.
- 10.6. 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.
- 10.7. Dutch law applies to this Agreement. Conflicts relating to this Agreement will be decided upon in the first instance by the competent court in Amsterdam, the Netherlands.
- 10.8. The United Nations Convention on the International Sale of Goods does not apply.

Signed in two copies by:

\_\_\_\_\_  
KIC InnoEnergy SE

By: Diego Pavia

Function: CEO

On:

Place:

\_\_\_\_\_  
[full legal name service provider]

By: [name representative]

Function: [position representative]

On:

Place: