

Request for Proposals

EIT Health Germany GmbH – Graphic Design Support DACH-Region

Mannheim | 12 November 2020

EIT Health Germany GmbH | Sandhofer Str. 116 | 68305 Mannheim (Germany)



1. Overview of EIT Health

Established in 2015 as a ‘*Knowledge and Innovation Community*’ (KIC) of the European Institute of Innovation and Technology (EIT), EIT Health accelerates positive change in healthcare systems to sustainably impact healthcare in Europe.

At EIT Health:

We work across borders with approximately 150 EIT Health partner organizations, bringing together the brightest minds in healthcare to answer some of the biggest health challenges facing Europe.

We engage institutions, companies, cities and citizens from the word go, giving them the opportunity to become true agents of change.

EIT Health Germany is one of a total of six EIT Health Centers in Europe and is operated by the EIT Health Germany GmbH. It currently serves 35 leading companies and public health care institutions as well as renowned universities and research institutions across Germany, Austria and Switzerland in the spirit of the [EIT Health Mission](#) in a “public-private partnership”. Our aim is to jointly address the urgent health challenges of our time with our colleagues and partners across Europe with concrete measures and programmes in order to open up new resources for established and young companies and to realize their ideas in common products and services for the European market.

In order to support the vision of improving the lives of people in Europe through innovation, EIT Health Germany GmbH is looking to contract support to work closely with EIT Health Germany ‘s Communications Lead and team on a variety of tasks with the goal of creating and sustaining awareness and visibility for EIT Health in the DACH-region.

2. General objectives and scope of work

2.1. General objectives

EIT Health Germany GmbH is seeking to contract Graphic Design Support. The scope of the work includes, but is not limited to:

- Graphic Design of print and online brochures adhering to corporate branding guidelines and requirements of the individual team members
- Graphic Design of images, banners, logos, flyers and similar communication materials
- Provision of all developed materials in various formats (jpeg, png, pdf, tiff, etc.) and as open graphic files (indd, ps, etc.) depending on individual needs



2.2. Detailed scope of work

The support that is required and requested should cover the following areas and tasks:

EIT Health Germany Graphic Design Support

- Regular and add-hoc support to complement our communication materials for online and print channels by providing high-quality graphic design services as requested by the EIT Health Germany team, this may include but is not limited to the following:
 - Graphic Design and layout of our annual Highlight Report brochure providing drafts for review and final print-ready files as well as files suitable for online publication
 - Graphic Design support for our events and programmes by developing flyers, banners, imagery, brochures, and (if applicable) logos following corporate branding guidelines – files to be suitable to a variety of uses
- Provision of open and publish-ready files in various formats (jpeg, png, pdf, tiff, indd, ps, etc.) depending on individual needs
- Integration into EIT Health Germany's dynamic workflow between the core team and external support agencies (comms, press&media, graphic design)

2.3. Deliverables

Expected deliverables are listed below, and can also be approved jointly during the contract period:

EIT Health Germany Graphic Design Support (Q1 – Q4 2021)

- Graphic Design of Highlight report brochure (drafts & to print-ready files)
- Logos for new programmes, banners for events, lead-images for community talks and other social media content, as well as ad-hoc requests from the team as open and publish-ready files in various formats (jpeg, png, pdf, tiff, indd, ps, etc.) depending on individual needs (via monthly retainer)

2.4. Methodology and organization of work

The tenderer is requested to propose the best operational structure for the management in his/her proposal including the proposed expert(s), their background and experience:

- An overview of how your experience and qualifications meet the requirements detailed under points 2.2. and 2.3. above.
- At least one example of a similar project with the description of the approach and methodology used. (*"Similar project" means at the minimum a project in a European context (preferably an EIT context) that involved the development of PR & Media strategies for small to medium size organizations similar to EIT Health Germany GmbH.*)
- Name and CV of the participating individual(s) and in addition, the organisational chart of the expert team, presenting the proposed approach for the implementation of the contract.



2.5. Location

The project will not have a specific office location during its implementation. We intend to work like a virtual organisation. Video conferences and telephone conferences are preferred options for team meetings.

2.6. Start date & period of implementation

The intended start date is, at the latest, 1 Jan 2021, and the period of implementation of the contract will be until 31 Dec 2021 – with a possible extension of a maximum of six (6) additional months in case of further need. EIT Health Germany reserves the right to extend the contract with a new procurement procedure following a direct award procedure.

3. Proposal Process

3.1. Submission of proposals

Proposals are requested to be emailed in **German/English** to the following address until the deadline, 30 Nov 2020, 16:00 Central European Time, to:

Contact name: Ms. Sigrid Koller, EIT Health Germany GmbH.
E-mail: sigrid.koller@eithealth.eu

The proposal shall contain:

- a. The technical response to the services/support requested (see Section 2: “General objectives and scope of work and deliverables”)
- b. The financial offer (the price for the services.) The financial offer must be presented in EUR. Prices must be indicated as net amount + VAT.

The email including the proposal from the bidders should be sent and delivered by end of the day of 30 Nov 2020, 16:00 Central European Time.

Proposals received after the deadline (or by any other means than email) shall be rejected without any evaluation.

Proposals must be submitted in PDF format.

Responses should be concise and clear. The tenderer’s proposal will be incorporated into any contract that results from this procedure. Tenderers are, therefore, cautioned not to make claims or statements that they are not prepared to commit to contractually. Subsequent modifications and counter-proposals, if applicable, shall also become an integral part of any resulting contract.



By submitting a tender as per the above instructions, the tenderer represents that the individual submitting the natural or legal entity's proposal is duly authorized to bind its entity to the proposal as submitted. The tenderer further affirms that he/she has read the request for proposals and has the experience, skills and resources necessary to perform, according to the conditions set forth in this RFP and the tenderer's proposal.

Timeline

Post RfP on EIT Health Germany GmbH public website	12/11/2020
Deadline for requesting clarification(s) from EIT Health Germany GmbH	21/11/2020
Last date for the EIT Health Germany to issue clarification(s) (if any)	24/11/2020
Deadline for submission of proposals	30/11/2020
Completion date for evaluation of proposals (indicative)	7/12/2020
Date of notification of award and start date of implementation (indicative)	12/12/2020
Intended date of contract signature (indicative)	20/12/2020

3.2. Evaluation of proposals

EIT Health Germany GmbH will award the contract to the tenderer who/which submitted the most economically advantageous and quality regular tender, on the basis of the following criteria (including the weighting assigned to them). Proposals will be assessed based on the following criteria:

a) Financial Offer (time and material): 60 points

Tenderers will be required to submit hourly flat-rate prices excluding VAT covering the services described in Section 2. of this RfP. The VAT rate will also be mentioned. All types of expertise – junior/senior/partner level expertise – should be included as average in the flat-rate price irrespective of their share. At a minimum EIT Health Germany requires that at least 15% partner, 35% senior and at maximum 50% junior level service is included in the assignment.

The ranking of the price criterion will be done as follows:

The cheapest offer will be credited with the maximum points for this criterion. The other offers will be credited with a number of points as determined according to the formula below:

$$C = (P_{\min} * 60) / P$$

(whereby C = Grade, P_{\min} = cheapest offer, P = bid from the bidder whose bid is evaluated)



b) Quality of Offer :40 points

<p>EXPERIENCE</p> <p>Former experience working within a similar project with the description of the approach and the methodology used. <i>“(“Similar project” means at the minimum a project in a European context (preferably an EIT context) that involved the development of PR & Media strategies for small to medium size organizations similar in size to EIT Health Germany GmbH).</i></p> <p>During the evaluation EIT Health Germany GmbH shall - based on the information received by the tenderers - establish a ranking among the bids, considering the level of detail provided, years of experience of proposed team, alignment with Section 2, and based on international practices.</p> <p>The highest ranking bid in this category will receive 15 points, 2nd 10, 3rd 5, 4th 1.</p>	<p>maximum 15 points</p>
<p>EXPERIENCE</p> <p>Demonstrated experience in the specific areas of PR & Media Relations strategy development, content creation, operational targeting of relevant journalists and media.</p> <p>During the evaluation EIT Health Germany GmbH shall - based on the information received by the tenderers - establish a ranking among the bids, considering the level of detail provided, years of experience of proposed team, alignment with Section 2, and based on international practices.</p> <p>The highest ranking bid in this category will receive 10 points, 2nd 7, 3rd 4, 4th 1.</p>	<p>maximum 10 points</p>
<p>QUALITY</p> <p>Quality of the technical offer (as described in Section 2.2.) should include, but is not limited to:</p> <ol style="list-style-type: none"> 1. Description of the team setup based on the proposed timeline and support function(s) needed 2. Overview of the core tasks/work packages and timeframe needed to fulfil the contract and be supported by proper capabilities (e.g. people skills and tooling) and capacity (number of hours or FTEs to fulfil work packages). 3. Overview of core communication channels and meetings <p>During the evaluation EIT Health Germany GmbH shall - based on the information received by the tenderers - establish a ranking among the bids, considering the level of detail provided, years of experience of proposed team, alignment with Section 2, and based on international practices.</p> <p>The highest ranking bid in this category will receive 15 points, 2nd 10, 3rd 5, 4th 1.</p>	<p>maximum 15 points</p>

The outcome of the award procedure will be communicated in writing (via e-mail) to the successful and unsuccessful tenderers.



3.3. Signature of contract

Successful and unsuccessful tenderers will be informed about the result of the award procedure.

For the contract the template in Annex 1 shall apply.

3.4. Cancellation of the proposal procedure

In the event of cancellation of the proposal procedure, EIT Health Germany GmbH will notify tenderers of the cancellation. Under no circumstances shall EIT Health Germany GmbH be liable for any damages whatsoever resulting from such a cancellation including, without limitation, damages for loss of profits, in any way connected with the cancellation of a proposal procedure, even if EIT Health Germany GmbH has been advised of the possibility of damages.

3.5. Appeals/complaints

Tenderers believing that they have been harmed by an error or irregularity during the award process may file a complaint. Appeals should be addressed to EIT Health Germany GmbH. The tenderers have three (3) days to file their complaints from the receipt of the letter of notification of award.

3.6. Ethics clauses / Corruptive practices

EIT Health Germany GmbH reserves the right to suspend or cancel the procedure, where the award procedure proves to have been subject to substantial errors, irregularities or fraud. If substantial errors, irregularities or fraud are discovered after the award of the Contract, EIT Health Germany GmbH may refrain from concluding the Contract.

The supplier shall take all measures to prevent any situation where the impartial and objective implementation of the contract is compromised for reasons involving economic interest, political or national affinity, family or emotional ties or any other shared interest ('conflict of interests'). The supplier should inform EIT Health Germany GmbH immediately if there is any change in the above circumstances at any stage during the implementation of the tasks.

3.7. Safeguarding of EU's financial interest

The potential or actual supplier should accept that during the implementation of the contract and for up to four years after the completion of the contract, EIT Health Germany GmbH has the right (and in some cases the obligation), for the purposes of safeguarding the EU's financial interests, to transfer the proposal and the contract of the supplier to internal audit services, to the EIT, to the European Court of Auditors, to the Financial Irregularities Panel or to the European Anti-Fraud Office.

Annexes:

Annex 1: Contract Template / Terms and Conditions



Title of Agreement

This Service Agreement (“Agreement”) is hereby made by and between:

EIT Health Germany GmbH, a private limited company, having its registered office and place of business at Sandhofer Str. 116, 63805 Mannheim, Germany, with company registration HRB 722969 (Registergericht: Amtsgericht Mannheim, and VAT number DE300170234, legally represented herein by Dr. Katharina Ladewig acting as Managing Director, EIT Health Germany GmbH; hereinafter referred to as “**EIT Health Germany**” or the “**Contracting Party**”;

And

[Company name], a private limited company, having its registered office and place of business at **[insert registered address]** with company registration number **[insert company registration number]** and VAT number **[insert VAT number]**, legally represented herein by **[insert name of representative]**, acting as **[position of representative]**; hereinafter referred to as the “**Supplier**”;

Hereinafter jointly referred to as: the “**Parties**” or individually as a “**Party**”;

WHEREAS:

EIT Health Germany is a company whose purpose is to promote EIT Health’s mission and goals in innovation, entrepreneurship and education in the field of healthcare in Europe with a specific focus on the DACH-region;

EIT Health Germany launched a procurement procedure for the performance of certain Services described in Annex 1 to this Agreement, via a tender referred to in Annex 2 (“**EIT Health Germany Tender**”) and the Supplier was selected as Service Provider for EIT Health Germany for such Services, based on the Supplier’s Offer as referred to in Annex 3;

The Supplier has knowledge and experience in performing the aforementioned Services described in Annex 1, (hereinafter: the “**Services**”);

The Supplier is willing and able to provide the Services to EIT Health Germany, as further provided for in this Agreement;

NOW, THEREFORE, THE PARTIES HAVE AGREED AS FOLLOWS:

Article 1. Structure of the Agreement and precedence

1.1 This Agreement consists of the body of this Agreement and Annex 1 attached to this Agreement.

1.2 The body contains standard general provisions applicable to all Services purchased by EIT Health Germany from the Supplier under this Agreement.

1.3 Annex 1 contains the description of the Services and the time schedule for the delivery of such Services (extracted from the Supplier’s Offer), as well as additional specific conditions and details adapted to the type of Services purchased by EIT health Germany from the Supplier under this Agreement.

1.4 Both the body and Annex 1, as well as the EIT Health Germany Tender Specifications and the Suppliers’ Offer (as referred to in Annex 1, clause 6, and Annexes 2 and 3) form the Agreement.

1.5 In case of a discrepancy between a provision in the body and a provision in Annex 1, the provision in the body shall prevail unless the deviating provision in Annex 1 states expressly that it is specifically agreed by both Parties as being in deviation of a specific provision of the body and refers clearly to the provision of the body concerned.

Article 2. Ordering of Services, non-applicability of Supplier's (standard) terms and conditions

2.1 The Supplier does not commit to provide the Services exclusively to EIT Health Germany, unless and to the extent provided in Annex 1 for certain specific types of Services.

2.2 The contractual relationship between EIT Health Germany and the Supplier shall solely be governed by the terms and conditions of this Agreement. EIT Health Germany is therefore not bound by and expressly rejects the Supplier's general conditions of services and any additional or different terms or provisions that may appear on any proposal, quotation, price list, acknowledgment, invoice, packing slip or the like used by the Supplier.

Article 3. Performance of the Services, organization, quality, timely delivery, subcontracting, reporting of progress, acceptance, changes

3.1 With due observance of the other provisions of the Agreement, Supplier shall perform the Services specified under Annex 1 for EIT Health Germany under this Agreement, within the time schedule specified under Annex 1.

3.2 Supplier agrees to perform the Services by exercising due skill, speed and care, at a level generally required of well-reputed Suppliers in the same field as the one covered by this Agreement and shall make every effort to the best of Supplier's abilities to serve the interests of EIT Health Germany as much as possible.

3.3 The Supplier is free to organize the way it provides the Services and the timing thereof autonomously and at its own discretion without supervision or authority of EIT Health Germany, (i) provided the Services are performed accurately and diligently and in accordance with the requirements of this Agreement, including the timely delivery of the Services as specified under Annex 1, and (ii) subject to specific requirements as may be stated in Annex 1 regarding the way the Services shall be provided. The Supplier may conduct its business activities from its own premises but may be requested to operate from EIT Health Germany's premises whenever it is necessary for the performance of the Services. The Supplier shall arrange their own travel, should they need to travel in order to perform the Services. When performing the Services, the Service Provider shall use its own tools and materials, work forces. The Supplier shall be fully responsible for the proper execution of this Agreement in all respects.

3.4 The Supplier shall use personnel who possess the qualifications and experience necessary for the performance of the Services. Additional requirements relating to personnel may be provided in Annex 1, as the case may be.

3.5 Unless otherwise specifically provided under Annex 1, the Supplier may subcontract part of the provision of the Services to subcontractors, provided such subcontractors are contractually bound by similar obligations as under this Agreement, and provided the Supplier has disclosed the elements of the Agreement to be subcontracted and the identity of the relevant subcontractor to the subcontracting. The Supplier remains at all times responsible for the work performed by its subcontractors and for the acts, defaults and negligence of such subcontractors, and no subcontract shall create any contractual relationship between any subcontractor and EIT Health Germany. Additional requirements relating to subcontracting may be provided in Annex 1, as the case may be.

3.6 In order for EIT Health Germany and the Supplier to monitor the proper delivery of the Services throughout the Term of the Agreement, the Supplier shall report to EIT Health Germany their progress with regards to the performance of the Services, in writing, at regular intervals and upon request as per the conditions specified under Annex 1. The Supplier shall provide EIT Health Germany with time sheets describing the tasks performed by the Supplier and the time spent on each task, pursuant to the regularity provided under Annex 1 and pursuant to the time sheet template provided by EIT Health Germany separately.

3.7 If, for whatever reason, the Supplier is not able to perform the agreed Services, or is not able to meet the deadlines agreed in Annex 1, the Supplier shall notify EIT Health Germany hereof promptly in

writing, and shall take any reasonable measure to mitigate the consequences of such situation, in agreement with EIT Health Germany.

3.8 Services delivered are subject to the acceptance of EIT Health Germany. EIT Health Germany shall issue a Performance certificate after completion of the Services. Should EIT Health Germany fail to reject part or all of the Services provided within 15 (or other deadline set forth in Annex 1) calendar days from such delivery, on the grounds of a lack of quality or compliance, or because of late delivery, Services shall be considered as accepted. Should EIT Health Germany reject a Service (within the above deadline) because of lack of quality or compliance, and such failure is capable of remedy, the Supplier shall re-perform the rejected (part of the) Service promptly (but no later than 5 days in absence of any further instructions) at no additional charge to EIT Health Germany. Should such failure be not capable of remedy (given the type of Service and/or the extent of the failure) or should the delivery have occurred after an essential delivery deadline which renders the Service irrelevant or useless, the Services at stake shall be considered as rescinded, and EIT Health Germany is not obliged to provide any compensation to the Supplier for such Services.

3.9 Modifications to the Services and/or other provisions of this Agreement may only be agreed by the Parties as per the EIT Health Germany procurement rules, i.e. if:

- (a) mutually agreed in writing; and
- (b) the need for modification has been brought about by circumstances which a diligent contracting entity could not foresee; and
- (c) the modification does not alter the overall nature of the contract; and
- (d) any increase in price is not higher than 25 % of the original value of the Agreement. In addition, if several successive increases in price would be agreed, the total cumulating of such successive increases shall not exceed 25% of the original value of the Agreement; and
- (e) modifications above 10% of the original value of the Agreement should only amend specific conditions of the Agreement and be made by way of an amendment to this Agreement signed by both Parties.

3.10 The Parties designate the following contact persons for communication with respect to this Contract:

For EIT Health Germany:

Name: Dr Katharina Ladewig

Email: katharina.ladewig@eithealth.eu

For the Supplier:

Name: [insert name of contact]

Email: [insert email address of contact person]

Article 4. Compensation, invoicing and payment, expenses

4.1 The Supplier is entitled to charge, in respect of the Supplier's Services as described under Annex 1, the compensation specified in Annex 1 per Service.

4.2 The Supplier may only charge the amounts under Section 4.1. corresponding to the delivered Services, after acceptance of such Services by EIT Health Germany.

4.3 Further, the Supplier may only charge the amounts under 4.1. subject to (i) EIT Health Germany having received a correct invoice bearing the essential elements below, (ii) all relevant Progress Reports relating to the delivered Services so invoiced having been properly delivered to EIT Health Germany in a timely manner and accepted by EIT Health Germany in writing (as the case may be).

4.4 An invoice shall be considered as correct when containing the following essential elements:

- (a) the name and address of the Supplier
- (b) the VAT identification number of the Supplier
- (c) the VAT identification number of EIT Health Germany
- (d) the name and address of EIT Health Germany
- (e) the invoice number
- (f) the invoice date
- (g) the date on which the Services were supplied (provided EIT Health Germany has accepted them pursuant to this Agreement)
- (h) the quantity and type of goods supplied (if applicable)
- (i) the nature and type of Services supplied
- (j) the following data for every VAT tariff or exemption:
 - (i) the price per piece or unit, excluding 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, if this is different from the invoice date
 - (vi) the amount of VAT

4.5 By deviation to Section 4.2., the Supplier may charge the amounts under Section 4.1., at the beginning of each (quarterly, monthly or other) period specified in Annex 1, if such alternative is specifically agreed by EIT Health Germany in Annex 1. In such a case, requirements of Section 4.3. shall apply to each regular invoice.

4.6 The payment term applying to Supplier invoices fulfilling the requirements of this Section 4 is fixed in Annex 1.

4.7 All amounts corresponding to the compensation per Service, as fixed in Annex 1, shall be fixed tariffs, which may not be revised during the Term of this Agreement, unless specifically provided otherwise in Annex 1 (and within the limits of the price revision mechanisms authorized under the procurement procedure).

4.8 The Supplier may charge expenses to EIT Health Germany, to the extent Annex 1 provides for such possibility. Expenses shall only be paid if EIT Health Germany has given its written approval prior to the Supplier incurring said costs.

4.9 If the Supplier fails to fulfil any of its obligations under the Agreement, EIT Health Germany may suspend payment to the Supplier, upon notice to the Supplier.

4.10 the Supplier hereby unconditionally accepts that EIT Health Germany has the right to set off any amount that EIT Health Germany owes to the Supplier under this Agreement, with any amount the Supplier owes to EIT Health Germany under this Agreement or any other agreement.

Article 5: Taxes, other contributions, no employment agreement and related indemnification

5.1 All tariffs are gross amounts but exclusive of any value added tax (VAT), sales tax, GST, consumption tax or any other similar tax (“**Taxes**”).

5.2 If the Services under this Agreement are subject to any other Taxes, the Supplier may charge such Taxes to EIT Health Germany, and said taxes shall be paid by EIT Health Germany in addition to the compensation for the Supplier. The Supplier is responsible for paying any applicable Taxes to the appropriate (tax) authorities.

5.3 In addition to Section 5.1. and 5.2., all social security, fiscal charges or taxation of any kind and contributions of any kind including but not limited to value added, levies, withholdings, unemployment, medical insurance and insurance of any kind, pensions, national insurance contributions and social security benefits, as imposed by any law, accommodation and travel costs, living expenses, or other expenses and charges arising from this Agreement, will be the exclusive responsibility of the Supplier, who must pay such taxes, charges, any kind of expenses and contributions directly to the competent authorities or employees (as the case may be) (altogether called “**Contributions**”).

5.4 the Supplier shall perform the Services hereunder as an independent contractor and not as an agent of EIT Health Germany and nothing contained in the Agreement is intended to create a partnership, joint venture or employment relationship between the Parties irrespective of the extent of economic dependency of the Supplier on EIT Health Germany.

5.5 The Supplier shall indemnify and keep EIT Health Germany harmless from any claims from any authority for payment of any Contributions, including all interest charged in respect thereof, surcharges and possible administrative fines in connection with the Services performed by the Supplier on the basis of the Agreement.

Article 6: Intellectual property, ownership and licensing, IP infringement indemnification

6.1 “**Intellectual Property Rights**” or “**IP**” shall mean 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.

6.2 Unless expressly specified otherwise in Annex 1, should the performance of the Services entail the delivery of (written) advice, reports or any other materials or results (“**Deliverables**”), the ownership of any Intellectual Property Rights in such Deliverables shall be vested in EIT Health Germany.

6.3 In addition to Section 6.1., any item provided by EIT Health Germany (or by a third party designated by EIT Health Germany on behalf of EIT Health Germany) and used to perform the Services and/or embedded in the delivered Services, shall at all times remain the ownership of EIT Health Germany. The Supplier shall have no right, title or interest in any of these items nor any trademark or trade name from EIT Health Germany.

6.4 By exception to Section 6.1., Intellectual Property Rights owned or controlled by the Supplier before the start of the performance of the Services shall remain the ownership of Supplier (“**Background IP**”).

6.5 The Supplier hereby grants a non-exclusive, royalty-free and fully paid-up, worldwide, irrevocable and perpetual license under its Background IP used for the performance of the Services, to EIT Health Germany, with the right to sublicense, for the use, make, have made, build-in, market, sell, lease, license distribute and/or otherwise dispose of the Services and/or Deliverables.

6.6 The Supplier shall not, without EIT Health Germany’s prior written consent, publicly make any reference to EIT Health Germany, whether in press releases, advertisements, sales literature or otherwise.

6.7 Unless expressly specified otherwise in Annex 1,

6.7.1 The Supplier shall indemnify and hold harmless EIT Health Germany, its Affiliates, partners, contractors and employees in respect of any and all claims, damages, costs and expenses (including but not limited to loss of profit and reasonable attorneys’ fees) in connection with any third party claim that any of the Services alone or in any combination or their use infringes any third party IPRs, or, if so directed by EIT Health Germany, shall defend any such claim at the Supplier’s own expense. By “Affiliate” is meant any and all companies, firms and legal entities with respect to which now or hereafter EIT Health Germany, directly or indirectly holds 50% or more of the nominal value of the issued share capital or 50% or more of the voting power at general meetings or has the power to appoint a majority of directors or otherwise to direct the activities of such company, firm or legal entity, including but not limitedly through a domination agreement.

6.7.2 EIT Health Germany shall give the Supplier prompt written notice of any such claim, provided, however, any delay in notice shall not relieve the Supplier of its obligations hereunder except to the extent it is prejudiced by such delay. The Supplier shall provide all assistance in connection with any such claim as EIT Health Germany may reasonably require.

6.7.3 If any Services alone or in any combination, provided under the Agreement are held to constitute an infringement or if their use is enjoined, the Supplier shall, as directed by EIT Health Germany, but at its own expense: either 1) procure for EIT Health Germany or its users the right to continue using the Services alone or in any combination;; or 2) replace or modify the Services alone or in any combination with a functional, non- infringing equivalent.

6.7.4 If the Supplier is unable either to procure for EIT Health Germany the right to continue to use the Services alone or in any combination or to replace or modify the Services alone or in any combination in accordance with the above, EIT Health Germany may terminate the Agreement and upon such termination, the Supplier shall reimburse to EIT Health Germany the price paid, without prejudice to the Supplier's obligation to indemnify EIT Health Germany as set forth herein.

Article 7: Confidentiality, documents

7.1 Confidential Information means any and all proprietary and/or confidential data and information, such as but not limited to commercial and/or technical information, that EIT Health Germany, its Affiliates or representatives may disclose directly or indirectly, whether in writing or any other form, to the Supplier that is related to the Service, which (a) is marked as “confidential” or “proprietary” or words of similar import when disclosed, and (b) is orally disclosed and is summarized and described as confidential in a writing that is delivered to Supplier within fifteen (15) days of disclosure.

7.2 During the period beginning on the Effective Date and continuing for a period of five (5) years thereafter (the “**Confidentiality Period**”), the Supplier agrees not to: (i) use EIT Health Germany's Confidential Information for any purpose other than for the Service;; and (ii) disclose EIT Health Germany Confidential Information to any third party, except to its employees and other persons under its supervision that are operating within its organization, including without limitation, its Partners' employees who (A) have a legitimate “need to know” to accomplish the Service, and (B) are obligated to protect such Confidential Information pursuant to terms and conditions not less restrictive than those contained in this Agreement. Supplier shall protect EIT Health Germany's Confidential Information as required hereunder using the same degree of care, but no less than a reasonable degree of care.

7.3 The Supplier uses to protect its own confidential information of a like nature. The Supplier's obligations above shall not apply to any data or information that it can prove: (a) is lawfully available to EIT Health Germany, prior to the time of receipt from EIT Health Germany as verified by written records; (b) is or becomes publicly available without violation of this Agreement or any other obligation of confidentiality and through no act or omission of Supplier; (c) is lawfully furnished to the Supplier by a third party without use or disclosure restrictions; or (d) is developed by the Supplier without use of or reference to any of EIT Health Germany's Confidential Information. Furthermore, a disclosure by the Supplier that is required pursuant to any judicial or governmental proceeding shall not be considered a breach of this Agreement, provided that the Supplier promptly after learning of such action shall notify, to the extent permitted by applicable law, EIT Health Germany thereof to give the Supplier the opportunity to contest disclosure or to seek any available legal remedies to maintain such information in confidence.

7.4 The Supplier is not permitted – alone or with or through others – to remove, dispatch, transmit or allow any third parties to inspect, use or otherwise have access to any property belonging to EIT Health Germany or any of its Affiliates, including but not limited to any notes, drawings, letters, formulas, recipes, other documents and/or any copies thereof, tools, designs, products manufactured or (copies of) computer files or other data carriers, unless EIT Health Germany has given its prior written permission to any such action.

7.5 EIT Health Germany shall remain the owner of all property it has made available to the Supplier in connection with this Agreement.

7.6 The Supplier shall make all property belonging to EIT Health Germany (or its Affiliates) such as, but not limited to any notes, drawings, letters, formulas, recipes, other documents and/or copies of such matters, tools, models, finished products, (copies of) automated files or other data carriers, which come into its possession during the term of this Agreement, available to EIT Health Germany in good condition immediately upon initial request, but in any case on the day on which the Agreement ends.

Article 8: Personal data

8.1 For the purpose of this Agreement,

- **“Personal Data”** shall mean any and all information relating to an identified or identifiable individual, including but not limited to EIT Health Germany current or former employees, employee family members, dependents or beneficiaries, customers, consumers, suppliers, business partners or contractors;
- **“Processing”** shall mean any operation or set of operations performed or to be performed upon Personal Data, whether or not by automatic means, such as creation, access, collection, recording, organization, storage, loading, employing, adaptation or alteration, retrieval, consultation, displaying, use, disclosure, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction (hereinafter also referred to as a verb **“Process”**).

8.2 Where the Supplier in the performance of the Agreement processes Personal Data, then Supplier agrees and warrants that the Supplier shall:

- (a) comply with all privacy and data protection law and regulations applicable to its Services;
- (b) process Personal Data only
 - (i) on behalf of and for the benefit of EIT Health Germany,
 - (ii) in accordance with EIT Health Germany’s instructions, and
 - (iii) for the purposes authorized by this Agreement or otherwise by EIT Health Germany, and
 - (iv) insofar necessary for the Services rendered to EIT Health Germany and as permitted or required by law;
- (c) maintain the security, confidentiality, integrity and availability of the Personal Data;
- (d) implement and maintain appropriate technical, physical, organizational and administrative security measures, procedures, practices and other safeguards to protect the Personal Data against
 - (i) anticipatable threats or hazards to its security and integrity; and
 - (ii) loss, unauthorized access to, or acquisition or use of or unlawful Processing;
- (e) promptly inform EIT Health Germany of any actual or suspected security incident involving the Personal Data.

8.3 To the extent that the Supplier allows a (sub)contractor to process the Personal Data, the Supplier shall ensure that it binds such (sub)contractor to obligations which provide a similar level of protection, but in no way less restrictive, as this Section 8.

8.4 The Supplier shall, upon the termination of the Agreement, securely erase or destroy all records or documents containing the Personal Data. The Supplier accepts and confirms that it is solely liable for any unauthorized or illegal processing or loss of the Personal Data, if the Supplier fails to erase or destroy the Personal Data upon termination of the Agreement.

8.5 The Supplier shall indemnify and hold harmless EIT Health Germany, their officers, agents and personnel from any damages, fines, losses and claims arising out of a breach of this Section.

Article 9: Liability, indemnification, insurance

9.1 The Supplier shall indemnify and hold harmless EIT Health Germany, its Affiliates, agents and employees, from and against all suits, actions, legal or administrative proceedings, claims, demands, damages, judgments, liabilities, interest, attorneys' fees, costs and expenses of whatsoever kind or nature (including but not limited to special, indirect, incidental, consequential damages), whether arising before or after completion of the performance of the Services covered by the Agreement, in any manner caused or claimed to be caused by the acts, omissions, faults, breach of express or implied warranty, breach of any of the provisions of this Agreement, or negligence of the Supplier, or of anyone acting under its direction or control or on its behalf, in connection with Services or any other information furnished by the Supplier to EIT Health Germany under the Agreement.

9.2 The Supplier warrants that it has taken out sufficient insurance against the aforementioned damage, costs and interest, or has made a sufficient provision for this purpose and is obliged to fully disclose to EIT Health Germany immediately upon initial request all the (policy conditions of the) aforementioned insurance(s) and/or provisions. The Supplier shall indemnify EIT Health Germany and shall pay its insurance proceeds to EIT Health Germany and furthermore indemnify for the excess amount of the total claim of damages that is not covered by the insurance of Supplier or any other insurance. EIT Health Germany shall be entitled to take legal action against the Supplier.

9.3 Neither Party excludes or limits its liability for death or personal injury arising from its own negligence, fraud, breach of confidentiality or for any liability that cannot by law be excluded or limited.

9.4 Subject to Section 9.3 in no event shall EIT Health Germany be liable under any theory of liability, for indirect, incidental, special, consequential or punitive damages, which includes without limitation damages for lost profits or revenues, lost business opportunities, loss of image or lost data, even if EIT Health Germany has been advised of the possibility of such damages and in no event shall EIT Health Germany be liable to the Supplier, its successors or assigns for damages in excess of the amount due to the Supplier for complete performance under the Agreement, less any amounts already paid to the Supplier by EIT Health Germany.

9.5 Subject always to Section 9.3., depending on the nature of the Services and the liability risk associated therewith, a cap to the liability of the Supplier under this Agreement may apply only if expressly mutually agreed in writing in Annex 1.

Article 10: Suspension, termination of the Agreement

10.1 The Agreement is entered into as from the Effective Date specified in Annex 1 and shall end by operation of law, without the requirement of prior notice of termination, on the date the last of the Services have been delivered by the Supplier, accepted and paid by EIT Health Germany, as specified in Annex 1 ("**Term**").

10.2 As an exception to the above, EIT Health Germany may suspend, withdraw, dissolve or terminate this Agreement fully or partially with immediate effect without incurring any penalty or compensation if and as soon as:

- (a) the Supplier breaches any of its material obligations under this Agreement and, notwithstanding a written request from EIT Health Germany to repair the current breach and to take appropriate measures to prevent such a breach in the future, fails to comply with such a request within a reasonable deadline fixed by EIT Health Germany in the notice; or
- (b) EIT Health Germany, in its reasonable discretion, determines that the Supplier is not able to perform the Services as required; or
- (c) the Supplier fails to provide EIT Health Germany with adequate assurance of performance following a request by EIT Health Germany; or
- (d) the Supplier files a petition for bankruptcy or is declared bankrupt; or
- (e) the Supplier has become unable to pay its debts as they fall due or make any special arrangement(s) or composition with its creditors;

- (f) the Supplier enters into voluntary or judicial liquidation;
- (g) the business of the Supplier ceases to exist or control or ownership is taken over by a third party;
- (h) the European Programme(s) under which EIT Health Germany requested the services from the Supplier is terminated (as the case may be).

10.3 After receipt of a termination notice from EIT Health Germany (under any legal grounds) the Supplier shall take immediate steps to bring the terminated Services to a closure in a prompt and orderly manner and to reduce expenditure to a minimum.

10.4 The Supplier may, after giving 14 calendar days written notice to EIT Health Germany, terminate the Agreement if EIT Health Germany:

- (a) Fails for more than 120 calendar days to pay the Supplier the amounts due after the expiration of the payment term stated in Section 4; or
- (b) Consistently fails to meet its material obligations after repeated reminders; or
- (c) Suspends the progress of the Services or any part thereof for more than 90 calendar days for reasons not specified in the Agreement, or not attributable to the Supplier's breach or default.

Article 11: Safeguarding of EU's financial interest and conflict of interest

11.1 The Supplier accepts without reservation that during the implementation of the Agreement and for four (4) years after the completion of the Agreement, EIT Health Germany has the right for the purposes of safeguarding the EU's financial interests, to transfer the tender proposal and the Agreement with the Supplier to internal audit services, to the EIT, to the European Court of Auditors, to the Financial Irregularities Panel or to the European Anti-Fraud Office ('safeguarding the EU's financial interests').

11.2 The Supplier confirms that it shall take measures to prevent any situation where the impartial and objective implementation of the Agreement is compromised for reasons involving economic interest, political or national affinity, family or emotional ties or any other shared interest ('conflict of interests'). The contractor is obliged to inform EIT Health Germany immediately if there is any change in the above circumstances at any stage during the implementation of the tasks under the Agreement.

Article 12: Miscellaneous

12.1 All notices given under this Agreement shall be given in writing. Any subsequent change of address shall be promptly notified by the Party concerned to the other Party and embodied in an amendment to the preamble of this Agreement.

12.2 In the event that the Supplier is prevented from performing any of its obligations under the Agreement for reason of force majeure (being an event unforeseeable and beyond the control of the Supplier) and the Supplier has provided sufficient proof for the existence of the force majeure, the performance of the obligation concerned shall be suspended for the duration of the force majeure. EIT Health Germany shall be entitled to terminate the Agreement with immediate effect by written notice to the Supplier, immediately if the context of the non- performance justifies immediate termination, and in any event if the circumstance constituting force majeure endures for more than thirty (30) days and, upon such notice, the Supplier shall not be entitled to any form of compensation in relation to the termination. Force majeure on the part of the Supplier shall in any event not include shortage of personnel or production materials or resources, strikes, not officially declared epidemic or pandemic, breach of contract by third parties contracted by the Supplier, financial problems of the Supplier, nor the inability of the Supplier to secure the necessary licenses in respect of software to be supplied or the necessary legal or administrative permits or authorizations in relation to the Services to be supplied.

12.3 the Supplier shall not transfer, pledge or assign any of its rights or obligations under the Agreement without the prior written consent of EIT Health Germany. Any such pre-approved, transfer, pledge or assignment shall be null and void and have no effect vis-à-vis such third party.

12.4 The rights and remedies reserved to EIT Health Germany are cumulative and are in addition to any other or future rights and remedies available under the Agreement, at law or in equity.

12.5 Neither the failure nor the delay of EIT Health Germany to enforce any provision of the Agreement shall constitute a waiver of such provision or of the right of EIT Health Germany to enforce each and every provision of the Agreement.

12.6 No course or prior dealings between the parties, no course of performance, and no usage of the trade shall be relevant to determine the meaning of the Agreement and to modify the provisions of this Agreement.

12.7 No waiver, consent, modification or amendment of the terms of the Agreement shall be binding unless made in a writing specifically referring to the Agreement signed by EIT Health Germany and the Supplier.

12.8 In the event that any provision(s) of this Agreement shall be held invalid, unlawful or unenforceable by a court of competent jurisdiction or by any future legislative or administrative action, such holding or action shall not negate the validity or enforceability of any other provisions of the Agreement. Any such provision held invalid, unlawful or unenforceable, shall be substituted by a provision of similar import reflecting the original intent of the clause to the extent permissible under applicable law.

12.9 All terms and conditions of the Agreement which are destined, whether express or implied, to survive the termination or the expiration of the Agreement, including but not limited to Intellectual Property, Confidentiality and Personal Data, shall survive.

12.10 The Agreement shall be governed by and construed in accordance with the laws of Germany.

12.11 The Supplier and EIT Health Germany each consent to the exclusive jurisdiction of the competent courts in (i) the city of Mannheim, Germany; or (ii), at the discretion of EIT Health Germany, the jurisdiction of the entity of the Supplier to which the order was placed, or (iii), at the discretion of EIT Health Germany, for arbitration in which case Section 12.12. applies. The Supplier hereby waives all defenses of lack of personal jurisdiction and forum non- convenience.

12.12 If so chosen by EIT Health Germany in accordance with Section 12.11, any dispute, controversy or claim arising out of or in connection with this Agreement, or their breach, termination or invalidity shall be finally settled solely under the International Chamber of Commerce Rules of arbitration, which the Supplier and EIT Health Germany declare to be known to them. Supplier and EIT Health Germany agree that: (i) the appointing authority shall be the ICC-International Chamber of Commerce of Paris, France; (ii) there shall be three (3) arbitrators; (iii) arbitration shall take place in the jurisdiction of EIT Health Germany entity mentioned in the recitals or, at the option of EIT Health Germany, the jurisdiction of the Supplier's entity mentioned in the recitals; (iv) the language to be used in the arbitration proceedings shall be English; and (v) the material laws to be applied by the arbitrators shall be the laws as determined under Section 12.10.

12.13 The United Nations Convention on International Sale of Goods shall not apply to the Agreement.

Drawn up on [DATE] and signed in two copies:

EIT Health Germany GmbH
Dr. Katharina Ladewig
Managing Director

[Company name]
[Name of representative]
[Position of representative]

Annex 1 to the Service Agreement

In addition to the general terms and conditions specified in the body of the Service Agreement, the Parties hereby agree on the following specific conditions and details:

1. Description and timing of the Services subject to the procurement procedure (as per the Whereas section, Section 3.1., of the Agreement) and detailed description of the types of Services and Deliverables (as per Section 6.2 of the Agreement) covered by the Agreement:

• **XXX**

2. Price of the Services (as per Section 4 of the Agreement):

In application of Section 4.1. of the Agreement, the following Services shall be remunerated on the basis of an hourly rate, fixed per type of Services, as follows:

Services (subject fo the services)	Price (Unit; price of the services)
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3. Charging the compensation to EIT Health Germany (as per Section 4. of the Agreement)

The Supplier is entitled to submit monthly invoices covering the costs incurred for the related month, including a breakdown of the tasks performed and the related time (quantity), unit price, and total price (quantity multiplied by the unit price) per single item.

Payment shall be made upon the acceptance of the deliverables completed.

4. Payment term applying to Supplier invoices (as per Section 4 of the Agreement):

Payment term (expressed in calendar days)	
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5. Term of the Agreement (as per Section 10 of the Agreement):

In application of Section 10.1. of the Agreement, the Effective Date on which the Agreement starts and the Termination Date on which the Agreement shall terminate automatically are set forth below:

Effective Date (Start of the Agreement)	Termination Date (i.e.)
Starting Date of the contract	Date on which the last Service is expected to be delivered and paid,

6. Other obligations:

Any other obligation set forth in the Request for proposals **[date]** of the EIT Health Germany Tender shall apply (Annex 2).

The Supplier shall also comply with any other obligation derived from its Offer (Annex 3).

Annex 2: Request for proposals (Date)

xxx

Annex 3: Supplier's Offer

xxx