

# Request for Proposals

Health Innovation Hub & Holding GmbH – Graphic Design Support

Mannheim | 7 December 2022

Health Innovation Hub & Holding GmbH | Franz-Volhard-Str. 5 | 68167 Mannheim (Germany)

# 1. Overview of Health Innovation Hub & Holding GmbH (“Innovation in Health”)

The Health Innovation Hub & Holding GmbH (HIHH GmbH) was established in 2015 to support and accelerate health innovation with a focus on the Rhine-Main Region in Germany as well as operating national, DACH-Region and international programmes. The HIHH GmbH aims to support innovators in creating effective therapies and diagnostic innovations; bringing innovative health technologies to the German and European markets faster.

For this purpose, the HIHH GmbH operates a range of cutting edge and open innovation programmes and services, involving experts and/or providing consulting services and access to a strong network of partners in the health care industry. The programmes support SMEs, Startups, researchers, PhD candidates and post-docs, and other innovators from various institutions to successfully develop their health care and health tech ideas and get health innovation started.

## 2. General objectives and scope of work

### 2.1. General objectives

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

- Online & Digital Content
- Social Media Content, Visuals and share pics
- 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:

#### Graphic Design Support

- Regular and ad-hoc support to create and complement our communication materials for online, social media and print channels by providing high-quality graphic design services as requested by the HIHH team, this may include but is not limited to the following:
  - Graphic design of social media visuals and imagery for social media communication
  - 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 HHH GmbH'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:

Graphic Design Support (Q1 – Q4 2023)

- 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)
- International social media and online campaign for our "Startups meets" family of programmes in close collaboration with our project and communications managers
- Print data for print flyers, brochures and other print products

### 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 a health and/or innovation context) that involved the development of online, social media and print material and visual campaign strategies for small to medium size organizations similar to Health Innovation Hub & Holding GmbH.*)
- Name and CV of the participating individual(s) and in addition, the organizational 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 organization. Video conferences and telephone conferences are preferred options for team meetings.

## 2.6. Start date & period of implementation

The intended start date is 1 February 2023, and the period of implementation of the contract will be until 31 December 2023 – with a possible extension of a maximum of six (6) additional months in case of further need. Health Innovation Hub & Holding GmbH 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, **January 9th, 2023 16:00** Central European Time, to:

Contact name: Ms. Wiebke Schultz, Health Innovation Hub & Holding GmbH.  
E-mail: [wiebke.schultz@innovationinhealth.eu](mailto:wiebke.schultz@innovationinhealth.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 January 16th, 2023 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 Health Innovation Hub & Holding GmbH public website	07/12/2022
Deadline for requesting clarification(s) from Health Innovation Hub & Holding GmbH	16/12/2022
Last date for the Health Innovation Hub & Holding GmbH to issue clarification(s) (if any)	21/12/2022
<b>Deadline for submission of proposals</b>	<b>09/01/2023</b>
Completion date for evaluation of proposals (indicative)	16/01/2023
Date of notification of award and start date of implementation (indicative)	20/01/2023
<b>Intended date of contract signature (indicative)</b>	<b>27/01/2020</b>

### 3.2. Evaluation of proposals

HIHH 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 HIHH GmbH 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><b>EXPERIENCE</b></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 in a health and/or innovation context) that involved the development of online, social media and print material and visual campaign strategies for small to medium size organizations similar in size to HIHH GmbH).</i></p> <p>During the evaluation HIHH 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, 2<sup>nd</sup> 10, 3<sup>rd</sup> 5, 4<sup>th</sup> 1.</p>	<p>maximum 15 points</p>
<p><b>EXPERIENCE</b></p> <p>Demonstrated experience in the specific areas of the development of online, social media and print material and visual campaign strategies, content creation.</p> <p>During the evaluation HIHH 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, 2<sup>nd</sup> 7, 3<sup>rd</sup> 4, 4<sup>th</sup> 1.</p>	<p>maximum 10 points</p>
<p><b>QUALITY</b></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"> <li>1. Description of the team setup based on the proposed timeline and support function(s) needed</li> <li>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).</li> <li>3. Overview of core communication channels and meetings</li> </ol> <p>During the evaluation HIHH 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, 2<sup>nd</sup> 10, 3<sup>rd</sup> 5, 4<sup>th</sup> 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, HHH GmbH will notify tenderers of the cancellation. Under no circumstances shall HHH 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 HHH 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 HHH 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*

HHH 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, HHH 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 HHH 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, HHH 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 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:**

**Health Innovation Hub & Holding GmbH**, a private limited company, having its registered office and place of business at Franz-Volhard-Str. 5, 68167 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, Health Innovation Hub & Holding GmbH; hereinafter referred to as “**Health Innovation Hub & Holding GmbH**” 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:**

HIHH GmbH is a company, which was established in 2015 to support and accelerate health innovation in Germany with a focus on the Rhine-Main Region as well as operating national, DACH-Region and international programmes. The HIHH GmbH aims to support innovators in creating effective therapies and diagnostic innovations; bringing innovative health technologies to the German and European markets faster. For this purpose, the HIHH GmbH operates a range of cutting edge and open innovation programmes and services, involving experts and/or providing consulting services and access to a strong network of partners in the health care industry. The programmes support SMEs, Startups, researchers, PhD candidates and post-docs, and other innovators from various institutions to successfully develop their health care and health tech ideas and get health innovation started.

HIHH GmbH 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 (“Request for Proposals: **Health Innovation Hub & Holding GmbH – Graphic Design Support**”) and the Supplier was selected as Service Provider 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 the Contracting Party, 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 the Contracting Party 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 the Contracting Party from the Supplier under this Agreement.

1.4 Both the body and Annex 1, as well as the 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 the Contracting Party, unless and to the extent provided in Annex 1 for certain specific types of Services.

2.2 The contractual relationship between the Contracting Party and the Supplier shall solely be governed by the terms and conditions of this Agreement. The Contracting Party 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 the Contracting Party 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 the Contracting Party 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 the Contracting Party, (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 the Contracting Party'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 the Contracting Party. Additional requirements relating to subcontracting may be provided in Annex 1, as the case may be.

3.6 In order for the Contracting Party and the Supplier to monitor the proper delivery of the Services throughout the Term of the Agreement, the Supplier shall report to the Contracting Party 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 the Contracting Party 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 the Contracting Party 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 the Contracting Party hereof promptly in writing, and shall take any reasonable measure to mitigate the consequences of such situation, in agreement with the Contracting Party.

3.8 Services delivered are subject to the acceptance of the Contracting Party. The Contracting Party shall issue a Performance certificate after completion of the Services. Should the Contracting Party 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 the Contracting Party 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 the Contracting Party. 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 the Contracting Party 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 the Contracting Party 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 the Contracting Party:

Name: Dr Katharina Ladewig

Email: katharina.ladewig@innovationinhealth.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 the Contracting Party.

4.3 Further, the Supplier may only charge the amounts under 4.1. subject to (i) the Contracting Party 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 the Contracting Party in a timely manner and accepted by the Contracting Party 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 the Contracting Party
- (d) the name and address of the Contracting Party
- (e) the invoice number
- (f) the invoice date
- (g) the date on which the Services were supplied (provided the Contracting Party 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 the Contracting Party 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 the Contracting Party, to the extent Annex 1 provides for such possibility. Expenses shall only be paid if the Contracting Party 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, the Contracting Party may suspend payment to the Supplier, upon notice to the Supplier.

4.10 the Supplier hereby unconditionally accepts that the Contracting Party has the right to set off any amount that the Contracting Party owes to the Supplier under this Agreement, with any amount the Supplier owes to the Contracting Party 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 the Contracting Party, and said taxes shall be paid by the Contracting Party 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 the Contracting Party 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 the Contracting Party.

5.5 The Supplier shall indemnify and keep the Contracting Party 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 the Contracting Party.

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

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 the Contracting Party, 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 the Contracting Party’s prior written consent, publicly make any reference to the Contracting Party, 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 the Contracting Party, 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 the Contracting Party, 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 the Contracting Party, 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 the Contracting Party 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 the Contracting Party 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 the Contracting Party, but at its own expense: either 1) procure for the Contracting Party 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 the Contracting Party 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, the Contracting Party may terminate the Agreement and upon such termination, the Supplier shall reimburse to the Contracting Party the price paid, without prejudice to the Supplier's obligation to indemnify the Contracting Party 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 the Contracting Party, 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 the Contracting Party's Confidential Information for any purpose other than for the Service;; and (ii) disclose the Contracting Party 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 the Contracting Party'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 the Contracting Party, prior to the time of receipt from the Contracting Party 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 the Contracting Party'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, the Contracting Party 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 the Contracting Party 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 the Contracting Party has given its prior written permission to any such action.

7.5 the Contracting Party 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 the Contracting Party (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 the Contracting Party 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 the Contracting Party 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 the Contracting Party,
  - (ii) in accordance with the Contracting Party’s instructions, and
  - (iii) for the purposes authorized by this Agreement or otherwise by the Contracting Party, and
  - (iv) insofar necessary for the Services rendered to the Contracting Party 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 the Contracting Party 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 the Contracting Party, 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 the Contracting Party, 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 the Contracting Party 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 the Contracting Party immediately upon initial request all the (policy conditions of the) aforementioned insurance(s) and/or provisions. The Supplier shall indemnify the Contracting Party and shall pay its insurance proceeds to the Contracting Party 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. The Contracting Party 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 the Contracting Party 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 the Contracting Party has been advised of the possibility of such damages and in no event shall the Contracting Party 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 the Contracting Party.

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 the Contracting Party, as specified in Annex 1 ("**Term**").

10.2 As an exception to the above, the Contracting Party 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 the Contracting Party 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 the Contracting Party in the notice; or
- (b) the Contracting Party, in its reasonable discretion, determines that the Supplier is not able to perform the Services as required; or
- (c) the Supplier fails to provide the Contracting Party with adequate assurance of performance following a request by the Contracting Party; 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 the Contracting Party requested the services from the Supplier is terminated (as the case may be).

10.3 After receipt of a termination notice from the Contracting Party (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 the Contracting Party, terminate the Agreement if the Contracting Party:

- (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, the Contracting Party 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 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 the Contracting Party 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. The Contracting Party 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 the Contracting Party. 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 the Contracting Party 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 the Contracting Party to enforce any provision of the Agreement shall constitute a waiver of such provision or of the right of the Contracting Party 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 the Contracting Party 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 the Contracting Party each consent to the exclusive jurisdiction of the competent courts in (i) the city of Mannheim, Germany; or (ii), at the discretion of the Contracting Party, the jurisdiction of the entity of the Supplier to which the order was placed, or (iii), at the discretion of the Contracting Party, 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 the Contracting Party 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 the Contracting Party declare to be known to them. Supplier and the Contracting Party 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 the Contracting Party entity mentioned in the recitals or, at the option of the Contracting Party, 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:

-----  
Health Innovation Hub & Holding 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	Price
(subject for the services)	(Unit; price of the services)

3. Charging the compensation to the Contracting Party (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.)
<b>Starting Date of the contract</b>	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 “Health Innovation Hub & Holding - Graphic Design Services” 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**