



A Complicated SPIN contract template

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Content

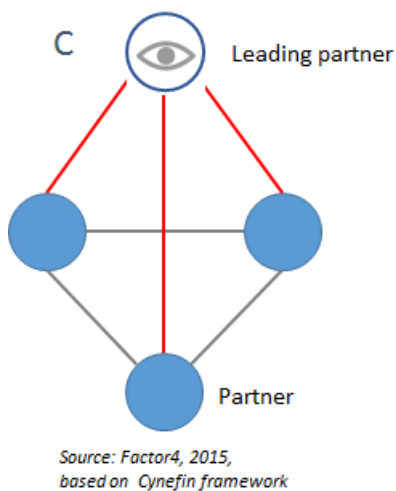
1. Introduction.....	4
2. Energy Services Partnership Agreement	5

1. Introduction

Earlier in the EPC+ project we learned that SPINs can have different organizational structures and relationships between the different actors. To understand these differences and its consequences for management decisions we introduced a categorization of SPINs in Simple, Complicated and Complex SPINs and clarified the various roles of SPIN members per SPIN type.¹

A Complex SPIN is the most appropriate organisation in a pre-market situation to foster the benefits of collaboration between SMEs and to support the creation of Simple or/and Complicated SPINs.

Simple and Complicated SPINs are created to provide innovative energy services when there is a potential willingness of parties to collaborate and a market for EPC services or an expectation that the market will take-up these services in the short to medium term (6 months to maximum 2 years).



A Complicated SPIN is a formal collaborative network of SMEs with strong connection strengths between all parties, referred to as “partners”, and a collective central control. Responsibilities and tasks are split and allocated to the different partners in the SPIN. A more leading role could be assigned to one partner, referred to as “leading partner”. The decision making process and how transactions are executed have to be defined before the creation of the SPIN. Complicated SPINs are difficult to create because of the large number of aspects to agree on between all partners. Collaboration can be based on a contract between all partners or integrated in a new legal entity (e.g. a joint venture). Simple SPINs, represented by their principals, can be partners in a Complicated SPIN.

Figure 1 - Complicated SPIN

The Complicated SPIN contract template in this document is based on the assumption that the SPIN is a real partnership between equal partners and that one or more partners will act as a contract partner with clients. In reality a Complicated SPIN can be situated near the border area between Complicated and Simple and have elements of a Principal – Associate contract.

Partners in a Complicated SPIN are recommended to read the master contract template of a Simple SPIN and to integrate parts of it in their contract if needed and to involve legal advisors.

¹ For more information on the categorisation of SPINs read Organisational tools for SME Partnerships for Innovative Energy Services.

2. Energy Services Partnership Agreement

This agreement (the "Agreement") dated as of [day month year], is made and entered into by and between [Company name], represented by [Name], [Position], with its registered office at [..], with enterprise number [..] (hereinafter referred to as the "Lead Partner / Partner A"),

and

[Company name], represented by [Name], [Position], with its registered office at [], with enterprise number [..] (hereinafter referred to as the "Partner B").

and

[Company name], represented by [Name], [Position], with its registered office at [], with enterprise number [..] (hereinafter referred to as the "Partner C").

Hereinafter collectively referred to as the "Parties" and separately as "Party".

WHEREAS:

A. Partner A is a firm that provides [description].

B. Partner B is a firm that provides [description].

C. Partner C is a firm that provides [description].

D. The Parties are independent energy efficiency service providers that wish to collaborate in the field of energy performance contracting and related services with the objective to strengthen their competitive situation in the market.

NOW THEREFORE, THE PARTIES HAVE AGREED AS FOLLOWS:

Article 1. DEFINITIONS AND INTERPRETATION

"Agreement" this agreement, as varied in writing from time to time in accordance with its terms;

"Associates" means sub-contractors of a Partner;

"Client" means any client of the Principal(s) disclosed to the other Partners in a Sub-contract;

"Client Contract" means a contract between a Principal / a Partner] and the Client relating to the provision of energy efficiency services;

"Effective Date" The date this agreement is made and entered into by and between

	the Partners;
“Energy Efficiency Services”	[description of the specific energy services that will be developed and conducted by the SPIN];
“Initial Business Plan”	the initial business plan as set out in annex A;
“Initial Joint Development Cost Budget”	the initial joint development cost budget as set out in annex B;
“Joint Steering Committee”	the joint steering committee as specified in Clause 3;
“Principal(s)”	the party/parties that commercialise the Energy Efficiency Services;
“SME Partnerships for Innovative Energy Services” or “SPIN”	the collaborative network organisation of the Parties that will be created by this Agreement;
“Subcontract”	a contract between a Party that will act as Principal and a Party that will act as subcontractor;
“Subcontractor”	the party that will be a subcontractor of a Principal.

Article 2. OBJECTIVES OF THE COLLABORATION

The Parties will collaborate with the objectives to develop common Energy Efficiency Services, to perform these services according to the European Code of Conduct for Energy Performance Contracting and to commercialise these service in [country].

Article 3. JOINT STEERING COMMITTEE

3.1 Within [20] working days after the Effective Date, the Parties shall establish a Joint Steering Committee for the overall coordination and management of the SPIN and activities under this agreement. The Joint Steering Committee shall conduct its discussions in good faith with a view to operating to the mutual benefit of the Parties and in furtherance of the successful development and commercialisation of the Energy Efficiency Services.

3.2 The role of the Joint Steering Committee shall be:

- (a) to oversee the collaborative activities of the Parties under this Agreement;
- (b) to discuss and establish the overall strategy for the development of Energy Efficiency Services;
- (c) to discuss and establish the overall strategy for the branding and commercialization of the SPIN and the Energy Efficiency Services;

(d) to review and approve updates or amendments to the Initial Business Plan and any subsequent versions of this Business Plan;

(e) to allocate responsibilities and tasks to the respective Parties;

(f) to review and approve updates or amendments to the Initial Joint Costs Budget and any subsequent versions of this budget;

(g) to define the most appropriate liability policy vis-à-vis clients;

(h) to perform such other functions as appropriate to further the purposes of this Agreement, as mutually determined by the Parties.

3.3 Each Party will have an equal vote in the Joint Steering Committee and decisions will be taken unanimously.

3.4 Each Party shall appoint a representative in the Joint Steering Committee with sufficient seniority within the applicable Party to make decisions arising within the scope of the Partnership.

3.5 The Joint Steering Committee shall meet as frequently as required, but in no event less than [six (6) times a year]. The meetings of the Joint Steering Meeting may be held in person or by audio or video conference.

3.6 The [Lead Partner] shall be responsible for preparing and issuing minutes of each such meeting within [fifteen (15) days] thereafter. Such minutes shall not be finalized until each Party reviews and confirms the accuracy of such minutes in writing; provided that any minutes shall be deemed approved unless a Partner objects to the accuracy of such minutes within [thirty (30)] days after the dissemination of the minutes by the Lead Partner.

3.7 If the Joint Steering Committee fails to reach an agreement on a matter deemed to be important by one or more Parties, the Joint Steering Committee shall submit the respective positions of the Parties with respect to such matter for discussion in good faith by the Parties' respective Executive Officers.

3.8 Any dispute arising out of the interpretation or implementation of this agreement which cannot be settled by mutual agreement shall be referred for decision to an arbitrator chosen by agreement between the Parties or, failing such agreement on the choice of the arbitrator within three months of the request for arbitration to an arbitrator appointed by [the Court]

Article 4. RESPONSIBILITIES, TASKS AND DUTIES OF EACH PARTNER

4.1 Each Party shall:

- Inform its clients and prospects on the services of the SPIN;
- ...

4.2 The Parties agree to allocate specific responsibilities and tasks to each other.

The Lead Partner shall fulfil the following specific tasks:

- Provide the overall coordination and management of the SPIN;
- Organise the Joint Steering Committee, preparing and issuing of meeting minutes;
- Setting-up a common document storage and sharing application;
- Create a common logo;
- Develop and manage a common website;
- Develop marketing tools including a brochure;
- Marketing of the Energy Efficiency Services;
- Prospecting and sales;
- Manage requests for services;
- ...

Partner B shall fulfil the following specific tasks:

- ...;
- ...

Partner C shall fulfil the following specific tasks:

- ...;
- ...

Article 5. Associates

Each Partner is allowed to engage Associates provided that the use of such Associates shall not relieve the Partner of any of its obligations under this Agreement.

Article 6. JOINT DEVELOPMENT COSTS

6.1 The joint development costs will be equally shared between the Partners. The allocation of joint development tasks to Partners and related estimated maximum agreed Initial Joint Development Cost Budget are set forth in annex B. An amendment of the maximum agreed Joint Development Cost Budget and/or the allocation of tasks and budget to Partners needs to be approved by all Partners.

6.2 Within [five (5) working days] following the end of each month beginning from the Effective Date, each Partner will prepare and deliver to the Lead Partner a report detailing its Joint Development Costs incurred during such period.

6.3 The Lead Partner will prepare a monthly composite report that summarizes the Joint development costs incurred by each Party for such month and computes the amount that each Party has to receive or pay from or to other Parties as the case may be.

6.4 The Parties will settle their mutual payments [per trimester].

Article 7. COMMERCIALISATION

7.1 The Energy Efficiency Services will be commercialised by [name of parties] who/which will act as Principal(s). Only (the) Principal(s) can enter into a Client Contract. The other Parties will work as Subcontractors of the Principal(s).

7.2 The sales price of Energy Efficiency Services proposed to a Client will be defined by the Principal after consultation with the Subcontractors involved in the particular proposal.

Article 8. FINDERS' FEE

8.1 When a Principal can close a contract with a Client introduced to the Principal by another Party or through the other Party during the term of this Agreement, then the Principal shall pay the other Party a finder's fee equal to [5] % of the contract value, VAT excluded.

8.2 The finders' fees are due when the Principal has invoiced and collected the related payment from the referred client and will be paid within 30 days of receipt of an invoice.

Article 9. PROFIT SHARING

9.1 The objective of the Parties is to share the profit between each other, generated by the commercialisation of the common Energy Efficiency Services. The Parties will investigate the requirements and feasibility of an open book cost calculation methodology or alternative approach to provide transparency in each other costs and of a fair profit sharing methodology.

9.2 Prior to an agreement on profit sharing each Party will use competitive prices in quotations.

Article 10. REQUEST FOR SERVICES

10.1 When a Principal has to make an offer for Energy Efficiency Services it shall send a request for services to the respective Subcontractors.

10.2 Within [three] working days of the request for services being sent, the Subcontractor shall express to the Principal in writing, by email, its availability to carry out the services required.

10.3 Within [five] working days of a request for services being sent by the Principal, the Subcontractor shall send a quotation to the Principal for the services requested including detailed information on the different cost elements.

Article 11. CLIENT CONTRACT LEADING TO A SUB-CONTRACT

11.1 If a Client Contract is entered into, the Principal and the Subcontractors shall enter into a Sub-Contract subject to the Principal and the Subcontractors agreeing commercial terms in line with what has been agreed in the Client Contract.

Article 12. PERFORMANCE OF SERVICES

12.1 The Subcontractor shall perform the Services in accordance with the terms of the Sub-Contract and with good professional practice.

12.2 The Subcontractor shall have sole responsibility for taking the necessary steps to obtain any permit, certification or licence required for performance of the Agreement under the laws and regulations in force.

12.3 The Subcontractor must ensure that any staff performing the Services has the professional qualifications and experience required for the execution of the tasks assigned to him or her.

Article 13. PAYMENT RATES AND PAYMENT TERMS UNDER A SUBCONTRACT

13.1 The payment rates and payment terms may vary depending on the nature and duration of the work and will be agreed prior to the commencement of the services for a Client.

13.2 The payment rates and payment terms shall be detailed in each Sub-contract.

Article 14. NON- OR UNDERPERFORMANCE

14.1 In the event of services prepared, undertaken or supplied by the Subcontractor not meeting the reasonable requirement of the Principal, the Subcontractor agrees to take all reasonable means to ensure that the Services are rectified to the Principal's satisfaction.

14.2 Should the Subcontractor fail to perform his obligations under the Subcontract, the Principal may - without prejudice to its right to terminate the Subcontract – reduce or recover payments in proportion to the scale of the failure.

Article 15. CONFIDENTIALITY

15.1 Except to the extent expressly authorized by this Agreement or otherwise agreed in writing by the Parties, each Party agrees that it shall keep confidential and shall not publish or otherwise disclose any of the other Party's confidential Information.

15.2 Each Party shall be bound by the confidentiality terms of the Client Contract, the terms of which shall be deemed to have been incorporated into the Sub-contract.

Article 16. INTELLECTUAL PROPERTY RIGHTS

- 16.1 Neither Partner shall use any trade or service marks, trade names , emblems or logos belonging to one of the other Partners except in accordance with the provisions of this Agreement or any directions given by such other Party.
- 16.2 Neither Partner shall, by virtue of this agreement, acquire (including the right to acquire) any Intellectual Property Right owned by another Party.
- 16.3 The Parties shall jointly own any intellectual property rights that are a result of the work performed under this agreement.

Article 17. INSURANCE AND LIABILITY

- 17.1 The liabilities vis-à- vis the Client that can be accepted as well as limitation of liabilities will be defined and agreed between the Partners in the Joint Steering Committee.
- 17.2 The Principal agrees to carry and maintain insurance policies in line with the liabilities accepted between the Parties and required by the relevant applicable legislation and as reasonably required by standard practice in the industry.
- 17.3 Each Party shall be liable to the other Parties and shall indemnify and hold harmless such other partners for and against any liabilities, damages and costs resulting from the non-compliance of its duties and obligations as set forth in this agreement and its annexes.
- 17.4 Each Partner shall take out insurance against risks and damage relating to the performance of this Agreement and as required by the relevant applicable legislation.
- 17.5 A copy of all the relevant insurance contracts shall be send by each Partner to the Lead Partner who will store and share these documents with the other Partners on a common web based information storage and sharing platform.
- 17.6 The Lead Partner will investigate, within 3 months after this Agreement shall enter into force, the differences between the insurance contracts of Partners and the opportunities for harmonisation and cost reductions.

Article 18. DURATION

- 18.1 This Agreement shall enter into force on the date of with it is signed by both Parties as is concluded for a period of [three (3)] years.
- 18.2 This Agreement shall be renewed automatically up to [two (2)] times under the same conditions, unless written notification to the contrary is sent by one of the Parties to the other Party at the latest one month before the expiry date.

Article 19. EARLY TERMINATION

19.1 Each Partner shall have the right to terminate this Agreement upon written notice to all other Partners if another Party materially breaches an obligation under this Agreement, and, after receiving written notice from the non-breaching Party identifying such material breach in reasonable detail, fails to cure such material breach (including failure to pay any amounts due hereunder) within [twenty (20)] working days from the date of such notice.

19.2 In the event that a Partner is acquired by, or merged with, another third party the other Partners shall have a period of [sixty (60)] days to determine whether to continue or to terminate this Agreement upon written notice to the other Partners.

Article 20. ASSIGNMENTS.

20.1 Neither Partner may assign or transfer this Agreement or any rights or obligations hereunder to a third party without the prior written consent of the other Partners, except that a Party may make such an assignment without the other Parties' consent to an Associate of the assigning Party.

Article 21. CHOICE OF LAW AND JUDICIAL COMPETENCE

This Agreement shall be governed and construed in accordance with the laws of [country]. The Parties hereto accept the exclusive jurisdiction of the courts of [town].

This Agreement has been signed on [dd Month yyyy] in two original copies, each Party having received a copy.

For and on behalf of Partner A
Name: []
Title: [] duly authorised as he so declares

For and on behalf of Partner B
Name: []
Title: [] duly authorised as he so declares

For and on behalf of Partner C
Name: []
Title: [] duly authorised as he so declares

For and on behalf of Partner D
Name: []
Title: [] duly authorised as he so declares

ANNEXES

- Annex A : Initial Business Plan
- Annex B : Initial Joint Development Cost Budget