



A Simple SPIN master contract template

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Content

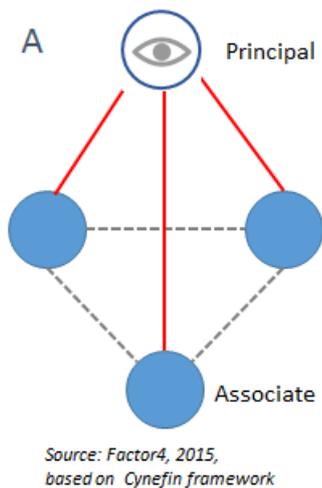
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1. Introduction

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 Simple SPIN is a formal organisation with one leading partner, referred to as the “principal” and partners, referred to as the “associates”, but without (much) interactions between these associates.

An example is an ESCO working with, often smaller, subcontractors. The number of associates depends on the expertise or domains covered by the SPIN and the total amount of (expected) work.

Marketing and sales as well as project management are executed by the principal, while associates are experts in different technical fields (e.g. heating, lighting, ...) performing specific contractual agreed tasks on behalf of the leading ESCO.

Figure 2 - Simple SPIN

Transactions between the principal and the associates are based on known and widely accepted procedures. The principal is leading and can choose the associates it prefers to work with. The contractual relationship is to a large degree determined by the principal.

An example of a Simple SPIN master contract template is given in this document. This contract template is based on the assumption that the Principal has a strong bargaining position. The contract is mainly a master subcontracting contract. In reality a Simple SPIN can be situated in the border area between the Simple and Complicated domains and have some elements of a partnership.

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

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

1. Energy Services Framework 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 "Principal"),

and

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

Hereinafter, the Principal and the Associate shall be collectively referred to as the "Parties", and "Party" shall mean any one of the Associate or the Principal as applicable in the context in which the term is being interpreted.

WHEREAS:

A. The Principal is a firm that provides innovative energy efficiency services and that has invested in the development of a network of associated sub-contractors and other business partners to provide these services.

B. The Associate is a firm that provides [..].

C. The Principal wishes to engage the Associate as a preferred sub-contractor, and the Associate agrees to undertake services in the field of energy efficiency services on behalf of the Principal.

NOW THEREFORE, THE PARTIE HAVE AGREED AS FOLLOWS:

Article 1. DEFINITIONS AND INTERPRETATION

"Client"	means any client of the Principal disclosed to the Associate in a Sub-contract.
"Client Contract"	means a contract between the Principal and the Client relating to the provision of energy efficiency services.
"Sub-contract"	means a contract between the Principal and the Associate relating to the supply of Goods and/or Services by the Associate on behalf of the Principal.
"Preferred Associates"	means the sub-contractors of the Principal as listed in Annex A and updates of this list when additional sub-contractors join the network of Preferred Associates.

“Business partners” means strategic business partners of the Principal as listed in Annex B and updates of this list when additional partners become strategic business partners of the Principal.

Article 2. REQUEST FOR SERVICES

- 2.1 When the Principal wants to request services from the Associate the Principal shall send a request for services to the Associate.
- 2.2 Within [three] working days of the request for services being sent, the Associate shall express to the Principal in writing, by email, its availability to carry out the services required.
- 2.3 Within [five] working days of a request for services being sent by the Principal, the Associate shall send a tender to the Principal for the services requested.

Article 3. CLIENT CONTRACT LEADING TO A SUB-CONTRACT

- 3.1 If a Client Contract is entered into, the Principal and the Associate shall enter into a Sub-Contract subject to the Principal and the Associate agreeing commercial terms.
- 3.2 Signature of this Agreement imposes no obligation on the Parties to Principal to purchase goods of services from the Associate. Only implementation of this Agreement through a Sub-Contract is binding on the Principal and the Associate.

Article 4. PERFORMANCE OF SERVICES

- 4.1 The Associate shall perform the Services in accordance with the terms of the Sub-Contract, the European Code of Conduct for Energy Performance Contracting and with good professional practice.
- 4.2 The Associate 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.
- 4.3 The Associate 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 5. NON- OR UNDERPERFORMANCE

- 5.1 In the event of services prepared, undertaken or supplied by the Associate not meeting the reasonable requirement of the Principal, the Associate agrees to take all reasonable means to ensure that the Services are rectified to the Principal's satisfaction.
- 5.2 Should the Associate fail to perform his obligations under the Agreement, the Principal may - without prejudice to its right to terminate the Agreement – reduce or recover payments in proportion to the scale of the failure.

Article 6. RESTRICTIONS

- 6.1 Following a request for services and in order to protect the business relationship and interests which the Principal has with its Client, the Associate agrees not to provide services directly or through another enterprise to the Client. This limitation applies for a period of [24] months from the last date of provision of services to the Client by the Associate through the Principal.
- 6.2 The Associate shall not directly or indirectly engage in any business with the Business partners of the Principal for the duration of this agreement and for a period of [24] months from the termination of this Agreement.
- 6.3 The Associate shall not directly or indirectly engage in any business that competes with the business of the Principal for the duration of this agreement and for a period of [12] months from the termination of this Agreement. This non-competition clause will apply to [description of services, description of network and/or geographic area].
- 6.4 The Associate shall not enter into a direct or indirect business relationship with any of the other Preferred Associates unless via the Associate for the duration of this Agreement and for a period of [24] months from the termination of this Agreement.
- 6.5 The Principle will send updates of the list of Preferred Associates and of the list of Business Partner to the Associate when additional Preferred Associates and/or Business will join its network.
- 6.6 When the Associate had already a business relationship with one or more Preferred Associates and/or Business partners prior to this agreement and for additional Preferred Associates and/or Business partners prior to the date mentioned on the update referred to in clause 6.5, it can continue this direct or indirect relationship. In the event of existing business relationships the Associate will give evidence of this to the Principal.

Article 7. COPYRIGHT AND CONFIDENTIALITY

- 7.1 The Associate agrees that all confidential information disclosed to the Associate by the Principal will be received and held in confidence by the Associate both during the term of this Agreement and after the termination thereof.
- 7.2 The Associate shall be bound by the Copyright and Confidentiality terms of the Client Contract, the terms of which shall be deemed to have been incorporated into the Sub-contract.
- 7.3 The Associate is allowed to disclose its relationship with the Principal, inclusive a general description of the assignment but without mentioning the name of the Client.

Article 8. PAYMENT RATES AND PAYMENT TERMS

- 8.1 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.

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

Article 9. INSURANCE AND LIABILITY

9.1 The Associate shall take out insurance against risks and damage relating to the performance of this Agreement as required by the relevant applicable legislation and as reasonably required by standard practice in the industry.

9.2 A copy of all the relevant insurance contracts shall be send by the Associate to the Principal if so requested by the Principal.

9.3 The Principal shall not be liable for damage sustained by the Associate in the performance of this Agreement except in the event of wilful misconduct or gross negligence on the part of the Principal.

Article 10. DURATION

10.1 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] years.

10.2 This Agreement shall be renewed automatically up to [two] 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 11. CHOICE OF LAW AND JUDICIAL COMPETENCE

This Agreement shall be governed and construed in accordance with the laws of [country]. The Parties hero 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 the Principal
Name: []
Title: [] duly authorised as he so declares

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

ANNEXES

- Annex A: Initial list of Preferred Associates
- Annex B: Initial list of Business Partners