



CALL FOR CHALLENGERS

ANNEX 5B: MODEL SUBGRANT AGREEMENT

PRIVATE CHALLENGERS

DOCUMENT REVISION HISTORY

Version	Date	Description of change
V1	31/01/2023	FIRST VERSION

DISCLAIMER

The European Commission is not liable for any use that may be made of the information contained herein.

© 2023 InnoBuyer

This document serves as a reference. The Subgrant Agreement that will be given to the winning applicants will be finalised during the contracting phase.

TABLE OF CONTENTS

1	ARTICLE 1 - ENTRY INTO FORCE & TERMINATION OF THE CONTRACT	6
2	ARTICLE 2 - OBLIGATIONS AND RESPONSIBILITIES OF THE BENEFICIARY.....	7
3	ARTICLE 3 - BREACH OF CONTRACTUAL OBLIGATIONS	7
4	ARTICLE 4 - FINANCIAL CONTRIBUTION AND FINANCIAL PROVISION	7
5	ARTICLE 5 - LIABILITY OF THE BENEFICIARY	9
6	ARTICLE 6 - CONFIDENTIALITY	10
7	ARTICLE 7 – FORCE MAJEURE.....	10
8	ARTICLE 8 – INFORMATION AND COMMUNICATION.....	11
9	ARTICLE 9 – DATA PROTECTION.....	12
10	ARTICLE 10 – FINANCIAL AUDITS AND CONTROLS	13
11	ARTICLE 11 - INTELLECTUAL PROPERTY RIGHTS (IPR)	14
12	ARTICLE 12 – AMENDMENTS	15
13	ARTICLE 13 – LANGUAGE	15
14	ARTICLE 14 – APPLICABLE LAW	15
15	ARTICLE 15 – SETTLEMENT OF DISPUTES	16
	ANNEX 1: GUIDELINES FOR APPLICANTS	17
	ANNEX 2: PROPOSAL.....	17
	ANNEX 3: BANK ACCOUNT INFORMATION	17
	ANNEX 4: DECLARATION OF HONOUR	17

LIST OF FIGURES

FIGURE 1: EXAMPLE ON EU RULES ON COMMUNICATION 12

LIST OF TABLES

TABLE 1 : INNOBUYER FUNDING SUPPORT FOR PRIVATE CHALLENGERS 9

CONTRACTING PARTIES

F6S NETWORK IRELAND LIMITED, hereinafter referred to as F6S, with legal address at 39 Fitzwilliam Place, Dublin D02 ND61, Ireland, the Coordinator, VAT number: IE3629141FH, represented for the purposes of signing the Agreement by the Head of F6S Innovation Services, Nuno Varandas, legal representative of F6S Network Ireland Limited.

Hereinafter referred as the “Contractor”.

Of the one part,

[ORGANISATION_NAME], a public organisation organised under the laws of [COUNTRY], established in [LEGAL_ADDRESS], with VAT number [VAT_NUMBER], duly represented by [LEGAL_REPRESENTATIVE], [LEGAL_REPRESENTATIVE_POSITION],

Hereinafter referred as the “Beneficiary”

HAVE AGREED to the following terms and conditions including those in the following Annexes, which form an integral part of this InnoBuyer Open Call for Challengers Sub-Grant Agreement (hereinafter referred as the “Contract”):

GENERAL PROVISIONS

European Innovation Council and SMEs Executive Agency (EISMEA) (‘EU executive agency’ or ‘granting authority’), under the powers delegated by the European Commission (‘European Commission’), (hereinafter referred as the “EC”) and the Contractor, as a member of the InnoBuyer consortium, have signed the Grant Agreement no 101071212 for the implementation of the project “LEARNING, SHARING AND CO-DESIGN IN INNOVATION PROCUREMENT BETWEEN INNOVATION SUPPLIERS AND BUYERS” in short INNOBUYER within the framework of the Programme Horizon Europe – the Framework Programme for Research and Innovation (2021-2027).

The Beneficiary has received the favourable resolution by the external evaluators and therefore is entitled to receive funding and services according to the terms and conditions set out under this Sub-Grant Agreement and in accordance with Annex 1: Guidelines for Applicants.

This Contract aims at defining the framework of rights and obligations of the Contracting Parties.

The Funding received by the Beneficiary is property of the EC. The Contractor is the mere holder and manager of the funds.

1 ARTICLE 1 - ENTRY INTO FORCE & TERMINATION OF THE CONTRACT

1.1 ENTRY INTO FORCE

This Contract shall enter into force on the day of its signature by the last Contracting Party. The Contractor shall sign this contract, only after all of the following documents have been received from the Beneficiary:

- o **Legal existence:** Organisation Register, Official Gazette or another official document per country showing the name of the organisation, the legal address and registration number and a copy of a document proving VAT registration (in case the VAT number does not show on the registration extract or its equivalent).
- o **Declaration of honour:** Document that ensures that the sub-grantee complies with the rules and is not in a situation that would exclude him/her from receiving EU funding.
- o **Bank account information:** The account where the funds will be transferred will be indicated via a form signed by the organisation representative and the bank representative. The account should be a business bank account of the public buyer.

All documents shall be sent to the Contractor first via email to the following address: info@innobuyer.eu

The Beneficiary is solely responsible for the accuracy of all data provided to the Contractor.

1.2 CONTRACT TERMINATION

This Contract covers all four actions of the InnoBuyer programme. At the end of each of the aforementioned phases, an evaluation of the Beneficiary projects' progress will take place as fully described in Annex 1 "Guidelines for Applicants".

In case the evaluators of the Beneficiary projects' progress do not receive or accept any due deliverable, at the end of each phase, this Contract is automatically terminated, and the Beneficiary fully accepts that no additional payments related to the phase of the missing or not accepted deliverable will be made by the Contractor.

This Contract also terminates in the event of unjustified withdraw by the Beneficiary of the current fulfilment of its Contract obligations. "Unjustified withdraw" covers any situation out of "Force Majeure" qualification which determines the absence of performance of the Beneficiary contractual obligations. In this particular case, it entitles the Contractor the right to claim the Beneficiary the full refund of all payments made to the Beneficiary up to date.

2 ARTICLE 2 - OBLIGATIONS AND RESPONSIBILITIES OF THE BENEFICIARY

The obligations and responsibilities of the Beneficiary are defined in detail in Annex 1 - "Guidelines for Applicants".

Additionally, the Beneficiary shall take every necessary precaution to avoid any risk of conflict of interest relating to economic interests, political or national affinities, personal or any other interests liable to influence the impartial and objective performance of the Project. In case the Beneficiary is involved in a conflict of interest or in a risk of conflict of interest, the Beneficiary must formally notify the situation to the Contractor without delay and immediately take all the necessary steps to rectify it.

3 ARTICLE 3 - BREACH OF CONTRACTUAL OBLIGATIONS

In the event of the breach of the contractual obligations by the Beneficiary, the Contractor reserves the right to claim the Beneficiary the full refund of all payments made to the Beneficiary up to date. The breach of the contractual obligations by the Beneficiary shall be determined by the InnoBuyer Consortium or Coordinator. Not participating in the Actions (unless in the case of Force Majeure) or participating in the Actions in a manner which intentionally disrupts the Actions, shall be deemed as a breach of the contractual obligations by the Beneficiary. The provision of false or misleading declarations by the Beneficiary or any unsolved situation of conflict of interest also constitutes examples of breach of contractual obligations by the Beneficiary.

4 ARTICLE 4 - FINANCIAL CONTRIBUTION AND FINANCIAL PROVISION

4.1 MAXIMUM FINANCIAL CONTRIBUTION

Maximum amount for private challengers

The maximum amount of funding a private Challenger can get and retain is €20.000. The maximum amounts that a Challenger can retain per action are the following: Action 1 €10.000, and Action 2 €10.000.

4.2 DISTRIBUTION OF THE FINANCIAL CONTRIBUTION

The financial grant to be paid will always be subject to

- o Reception of the relevant deliverables.
- o A favourable resolution by the InnoBuyer Consortium responsible for assessing the Beneficiary progress in each of the actions.
- o The Beneficiary Bank Account (Annex 4) matches the instructions for payment issued by the bank of the Subgrantee.
- o The availability of funds in Contractor bank account during the relevant payment period
- o Payments to the Beneficiary will be made by the Contractor. In particular:
 - The Contractor reserves the right to withhold the payments in case the Beneficiary does not fulfil its obligations and tasks as per Annex 1 - Guidelines for Applicants;
 - Banking and transaction costs charged by any of the banks related to the handling of any financial resources made available to the Beneficiary by the Contractor shall be covered by the holder of the bank account which originated the cost. This means that the Contractor bears the cost of transfers charged by its bank and the Beneficiary bears the cost of transfers charged by its bank.;
- o Payments will be released, on acceptance of the deliverables, no later than thirty (30) natural days after the Contractor receives the financial statement from the Beneficiary.
- o The Beneficiary is responsible for complying with any tax and legal obligations that might be attached to this financial contribution.

4.3 PAYMENTS SCHEDULE

The payment schedule is directly linked to the relevant phase of the Project as per the Guidelines for Applicants (Annex 1).

Summary of funding for private challengers

The summary of funding for each public Challenger is the following:

Actions	Deliverable	Payment trigger	Expected payment date	Amount
Action #1 Identification of challenges	Submission of the Challenge - a revised description of the proposed need using a template provided by the InnoBuyer Consortium.	Acceptance of the submitted deliverable by the InnoBuyer Consortium.	August 2023	€10.000 For private Challenger
Action #2 Open Market Consultation and Solver selection	Submission of an open market consultation and evaluation of solutions report.	Acceptance of the submitted deliverable by the InnoBuyer Consortium.	February 2024	€10.000 For private Challenger
Total private Challenger				Up to €20.000

TABLE 1 : INNOBUYER FUNDING SUPPORT FOR PRIVATE CHALLENGERS

The Beneficiary is entitled to receive exclusively those payments allocated to each specific phase of the Project provided that the conditions under Article 4.2 are met.

5 ARTICLE 5 - LIABILITY OF THE BENEFICIARY

Neither the Contractor nor the EC can be held liable for any acts or omissions of the Beneficiary in relation to the Contract. At the same time, the Beneficiary is responsible for any act or omission that causes damage to the Contractor, the Data Provider, and/or the EC in relation to this Contract.

The Beneficiary shall bear sole responsibility for ensuring that their acts within the framework of this Contract do not infringe on third parties' rights. There is no joint liability between the Contracting Parties.

6 ARTICLE 6 - CONFIDENTIALITY

With respect to all information of whatever nature or form as disclosed between the Contracting Parties in connection with the Project and identified in writing as confidential, the terms of this Article shall apply.

The Contracting Parties agree that such information is communicated on a confidential basis and its disclosure may be prejudicial to the owner of the information, and undertakes that:

- I. it will not, during the term of the Sub-project and for a period of five (5) years from the expiration date of the Sub-project, use any such information for any purpose other than in accordance with the terms of the Contract.
- II. it will, during the term of the Sub-project and for a period of five (5) years from the expiration date of the Sub-project, treat the same as (and to procure that the same be kept) confidential provided always that such agreement and undertaking shall not extend to any information which the receiving Party can show:
 - a. was, at the time of disclosure to the Subcontractor, published or otherwise generally available to the public, or
 - b. has, after disclosure to either of the Contracting Parties, been published or become generally available to the public otherwise than through any act or omission on the part of the receiving Party, or
 - c. was already in the possession of the Contracting Parties, without any restrictions on disclosure, at the time of disclosure to the Party, or
 - d. was rightfully acquired from others without any undertaking of confidentiality; or
 - e. is subsequently independently developed by the Contracting Parties without use of the information provided by the disclosing party.

In case of breach of the confidential rules hereinabove set, the Contracting Party breaching the confidentiality will remain solely liable towards possible claims.

7 ARTICLE 7 – FORCE MAJEURE

“Force Majeure” shall mean, any unforeseeable exceptional situation or event beyond the Contracting Parties control, which prevents either of them from fulfilling any of their obligations under the Agreement, which was not attributable to error or negligence on their part and which proves to be inevitable in spite of the exercising all due diligence.

Any default of a service, defect in equipment or material or delays in making them available, unless they stem directly from a relevant case of force majeure, as well as labour disputes, strikes or financial difficulties cannot be invoked as force majeure.

The Contracting Parties shall take the necessary measures to limit any damage due to force majeure. They shall do their best to resume the implementation of the action as soon as possible.

No Contracting Party shall be considered to be in breach of its obligations and tasks if such breach is caused by Force Majeure. A Contracting Party will notify the other Contracting Party of any Force Majeure as soon as possible. In case the Beneficiary is not able to overcome the consequences of Force Majeure within 10 (ten) days after such notification, the Contractor will decide accordingly including the termination of the Contract.

8 ARTICLE 8 – INFORMATION AND COMMUNICATION

Any publicity made by the Beneficiary in respect of the project, in whatever form and on or by whatever medium, must specify that it reflects only the author's views and that the Contractor, InnoBuyer consortium or EC are not liable for any use that may be made of the information contained therein.

The Contractor, InnoBuyer consortium and EC shall be authorised to publish, in whatever form and on or by whatever medium, the following information:

- o the name of the Beneficiary;
- o contact address of the Beneficiary;
- o the general purpose of the project;
- o the amount of the financial contribution of the EC.

The Beneficiary shall ensure that all necessary authorizations for such publication have been obtained and that the publication of the information by the Contractor, InnoBuyer Consortium or EC does not infringe any rights of third parties.

Unless the EC or the Coordinator requests or agrees otherwise or unless it is impossible, any communication activity related to the action (including in electronic form, via social media, etc.), any publicity, including at a conference or seminar or any type of information or promotional material (brochure, leaflet, poster, presentation etc.), and any infrastructure, equipment and major results funded by the grant must:

- (a) display the EU emblem;
- (b) display the InnoBuyer logo and
- (c) include the following text:

“This project has received funding from the European Union’s Horizon Europe research and innovation programme under the InnoBuyer project (Grant Agreement 101071212)”

See an example below from the InnoBuyer website:

FIGURE 1: EXAMPLE ON EU RULES ON COMMUNICATION



When displayed in association with a logo, the European emblem should be given appropriate prominence. This obligation to use the European emblem in respect of projects to which the EC contributes implies no right of exclusive use. It is subject to general third-party use restrictions which do not permit the appropriation of the emblem, or of any similar trademark or logo, whether by registration or by any other means. Under these conditions, the Beneficiary is exempted from the obligation to obtain prior permission from the EC to use the emblem. Further detailed information on the EU emblem can be found on the European Commission web page¹.

Upon a duly substantiated request by the Contractor on behalf of the Beneficiary, the EC may agree to forego such publicity if disclosure of the information indicated above would risk compromising the beneficiary's security, academic or commercial interests.

9 ARTICLE 9 – DATA PROTECTION

9.1 DATA PROTECTION OBLIGATIONS

The Contracting Parties have the obligation to abide by the Regulation (EU) 2016/679 (General Data Protection Regulation – GDPR) of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data.

¹ https://ec.europa.eu/info/funding-tenders/managing-your-project/communicating-and-raising-eu-visibility_en

The processing of personal data shall be carried out lawfully, fairly and in a transparent manner, collected for specified purposes and adequate, relevant and limited to what is necessary in relation to the purposes for which it is processed.

The Beneficiary will use and process the data only for the purposes of this Contract and during the length of the Contract. Any unauthorised use is forbidden. In any event, neither the Contractor nor the Data Provider will be held responsible for any abusive use of data incurred by the Beneficiary.

The Beneficiary shall not try to re-identify anonymised data. In the event that re-identification occurs, the Beneficiary commits not to use such data.

The Beneficiary shall delete, at the end of this Contract, the data to which the Beneficiary has been granted access during the pilot implementation, except where an agreement is entered into with the Data Provider.

9.2 NEW DATA PRODUCED

The Beneficiary acknowledges that he/she will be the “data controller” of any new dataset of pieces of personal information that the Beneficiary may produce in the course of the InnoBuyer programme.

10 ARTICLE 10 – FINANCIAL AUDITS AND CONTROLS

The EC may, at any time during the implementation of the Project and up to five years after the end of the InnoBuyer project (foreseen for 31 August 2025), arrange for financial audits to be carried out, by external auditors, or by the EC services themselves including the European Anti-Fraud Office (OLAF), on the Beneficiary. The audit procedure shall be deemed to be initiated on the date of receipt of the relevant letter sent by the EC. Such audits may cover financial, systemic and other aspects (such as accounting and management principles) relating to the proper execution of the Grant Agreement. They shall be carried out on a confidential basis.

The Beneficiary shall make available directly to the EC all detailed information and data that may be requested by the EC or any representative authorised by it, with a view to verifying that the Grant Agreement is properly managed and performed in accordance with its provisions and that costs have been charged in compliance with it. This information and data must be precise, complete, and effective.

The Beneficiary shall keep the originals or, in exceptional cases, duly authenticated copies – including electronic copies - of all documents relating to the Contract until 2030. These shall be made available to the EC when requested during any audit under the Grant Agreement.

In order to carry out these audits, the Beneficiary shall ensure that the EC's services and any external body(ies) authorised by it have on-the-spot access at all reasonable times, notably to the Beneficiary's offices, to its computer data, to its accounting data and to all the information needed to carry out those audits, including information on individual salaries of persons involved in the project. They shall ensure that the information is readily available on the spot at the moment of the audit and, if so requested, that data be handed over in an appropriate form.

On the basis of the findings made during the financial audit, a provisional report shall be drawn up. It shall be sent by the EC or its authorised representative to the beneficiary concerned, which may make observations thereon within one month of receiving it. The EC may decide not to take into account observations conveyed or documents sent after that deadline. The final report shall be sent to the beneficiary concerned within two months of the expiry of the aforesaid deadline.

On the basis of the conclusions of the audit, the EC shall take all appropriate measures that it considers necessary, including the issuing of recovery orders regarding all or part of the payments made by it and the application of any applicable sanction.

The European Court of Auditors shall have the same rights as the EC, notably the right of access, for the purpose of checks and audits, without prejudice to its own rules. In addition, the EC may carry out on-the-spot checks and inspections in accordance with Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the EC in order to protect the European Communities' financial interests against fraud and other irregularities.

11 ARTICLE 11 - INTELLECTUAL PROPERTY RIGHTS (IPR)

11.1 INNOBUYER CONSORTIUM

The InnoBuyer Consortium itself will not retain an equity stake in any applicant's organisation, nor will it retain any IPR.

11.2 CHALLENGERS AND SOLVERS

The conditions regarding the intellectual property rights of Challengers and Solvers will be defined in the pilot co-creation agreements. But in general, the following principles must be respected:

- o They must give each other the background identified as needed for implementing the pilot,

- o Each Solver will own the foreground it generates and also the foreground generated or jointly generated by/with the Challenger in the context of the co-creation of the pilot in action 3. This is to ensure that Solvers can widely exploit the newly developed solutions commercially. In return, the Challenger can receive rights to use the results for internal use and licensing rights subject to certain conditions to be described in the co-creation agreement to be signed at the beginning of action 3.

11.3 ORIGINALITY OF THE SUB-GRANTED PROJECTS

It is required that proposals submitted are based on original situations of the applicants and that their foreseen developments (pilot co-creation in action 3) are free from third-party rights. InnoBuyer consortium is not obliged to verify the authenticity of the ownership of the foreseen products/ services. Any issues delivered from third-party claims that arise as a result of the sub-granted projects/pilots are the sole responsibility of the sub-grantees.

11.4 EVALUATORS

Each evaluator will sign a non-disclosure agreement (NDA) before receiving access to the database of proposals in order to protect the intellectual property of the applicants. However, InnoBuyer and the European Commission may ask participants who have received funding to present their work as part of public relations and networking events in order to showcase the benefits of the InnoBuyer project.

12 ARTICLE 12 – AMENDMENTS

Amendments or changes to this Contract shall be made in writing and signed by the duly authorised representative of the Contracting Parties. Nevertheless, if the EC modifies the conditions, the Contractor will amend the Contract accordingly. However, please note that no time extensions are foreseen.

13 ARTICLE 13 – LANGUAGE

This contract is drawn up in English, the language which shall govern all documents, notices, meetings and processes relative thereto.

14 ARTICLE 14 – APPLICABLE LAW

This Contract shall be construed in accordance with and governed by the laws of Belgium.

15 ARTICLE 15 – SETTLEMENT OF DISPUTES

If the Contracting Parties are unable to resolve a dispute amicably, such dispute will be finally settled under the Rules of Arbitration of the International Chamber of Commerce by three (3) arbitrators in Brussels.

Each of the Contracting Parties to the dispute shall appoint one (1) arbitrator and the two (2) arbitrators so appointed shall elect the presiding arbitrator. Should a Party to the dispute which should appoint an arbitrator fails to do so within fourteen (14) days of the delivery of the written notice to do so from the other Party to the dispute or should the appointed arbitrators fail to reach an agreement on the presiding arbitrator within fourteen (14) days after their appointment, such arbitrator shall be appointed in accordance with the Rules upon request of any of the Parties to the dispute.

The seat of arbitration shall be Brussels.

The Contracting Parties agree that the language of the arbitration, including oral hearings, written evidence and correspondence, shall be English.

A duly rendered arbitration award shall be final and binding on the Contracting Parties to the dispute. Each Contracting Party to the arbitration conducted in accordance with this section hereof shall bear its own expenses incurred in connection with such arbitration, including fees of its legal counsels. All other costs and expenses shall be apportioned between the Contracting Parties to the arbitration in accordance with the decision of the arbitrators.

Nothing in this Contract shall limit the Contracting Parties right to seek injunctive relief or to enforce an arbitration award in any applicable competent court of law.

AS WITNESS:

The Contracting Parties have caused this Contract to be duly signed by the undersigned authorised representatives in two (2) copies:

<p>For F6S (the contractor) Mr. Nuno Varandas Head of Innovation Services Signature</p> <p>Done at _____ on DD/MM/2022</p>	<p>For [ORGANISATION_NAME] (the beneficiary) Mr./Ms. [NAME SURNAME] [POSITION IN ORGANISATION] Signature</p> <p>Done at _____ on DD/MM/2022</p>
---	--

ANNEXES

ANNEX 1: GUIDELINES FOR APPLICANTS

[This refers to the Guidelines for applicants published by the time the call is open]

ANNEX 2: PROPOSAL

[This refers to the proposal after introducing the changes, if any, during the negotiation phase.]

ANNEX 3: BANK ACCOUNT INFORMATION

[This refers to the document including the bank account information of the coordinator where the funds will be transferred]

ANNEX 4: DECLARATION OF HONOUR

[Document which declares that all conditions related to the Call for Challengers are accepted by the applicants' legal representatives]