Report on the audit of the Merger Agreement between
E.ON Verwaltungs SE,
Essen,
as the acquiring entity and
innogy SE,
Essen,
as the transferring entity,
based on the final draft of the Merger Agreement of 15 January 2020
pursuant to Articles 9(1)(c)(ii), 10 of the SE Regulation (SE-VO) in conjunction with secs. 2 no. 1, 60 et seq. in conjunction with secs. 9(1), 12 of the German Transformation of Companies Act (*Umwandlungsgesetz*, UmwG)
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A. ENGAGEMENT AND SCOPE OF WORK

E.ON Verwaltungs SE, Essen

(hereinafter also referred to as “E.ON Verwaltungs SE” or the “acquiring entity”),

and

innogy SE, Essen

(hereinafter also referred to as “innogy SE” or the “transferring entity”),

intend, on 22 January 2020, to conclude an agreement to transfer innogy SE’s assets in their entirety by way of a merger by absorption pursuant to Articles 9 (1)(c)(ii), 10 of the SE Regulation (in the document below, the references in Articles 9 and 10 of the SE Regulation will not be cited separately) in conjunction with sec. 2 no. 1 UmwG in conjunction with secs. 60 et seq. UmwG.

It is further intended that the Extraordinary General Meeting of innogy SE, to be held on 4 March 2020, i.e. within three months of the conclusion of the Merger Agreement, will pass a resolution pursuant to sec. 62 (1) and (5) sent. 1 UmwG in conjunction with secs. 327a et seq. AktG concerning the transfer of the shares of the minority shareholders of innogy SE to E.ON Verwaltungs SE, as the main shareholder, in return for an appropriate cash compensation to be paid by E.ON Verwaltungs SE, the amount of which is to be determined in the transfer resolution.

The decision of the Regional Court of Dortmund of 9 October 2019 (Appendix 2), amended, by way of clarification, by the decision of 8 January 2020 (Appendix 3), resulted in the appointment of Mazars GmbH & Co. KG Wirtschaftsprüfungsgesellschaft Steuerberatungsgesellschaft, Düsseldorf (hereinafter also referred to as “MAZARS”), as joint merger auditor and expert auditor of the appropriateness of the cash compensation pursuant to Articles 9(1)(c)(ii), 10 of the SE Regulation (SE-VO) in conjunction with secs. 60, 10 (1) sent. 2 UmwG and sec. 62 (1), (5) UmwG in conjunction with sec. 327c (2) sent. 3 AktG.

According to the lists of shares held in safe custody dated 16 January 2020, E.ON Verwaltungs SE currently holds 499,999,500 out of the total of 555,555,000 no-par value bearer shares of innogy SE directly. This corresponds to 90% of innogy SE’s share capital. innogy SE does not hold any treasury shares.

The merger of innogy SE with E.ON Verwaltungs SE shall – subject to the provisions of Clause 6 of the final draft of the Merger Agreement – take contractual effect upon the end of 31 December 2019. From the beginning of 1 January 2020 (hereinafter also referred to as the “Merger Date”), all acts and transactions performed by innogy SE will be deemed to have been performed for the account of E.ON Verwaltungs SE.
We carried out our work in the months of December and January up to 16 January 2020 on the business premises of E.ON SE and innogy SE and in our Düsseldorf office. We were essentially provided with the following documents for this purpose:

- Final draft of the Merger Agreement between E.ON Verwaltungs SE as the acquiring entity and innogy SE as the transferring entity dated 15 January 2020 together with Appendices and previous drafts.

- Draft of the joint merger report of the administrative board and the managing directors of E.ON Verwaltungs SE and the management board of innogy SE on the merger of innogy SE with E.ON Verwaltungs SE pursuant to sec. 8 UmwG dated 15 January 2020 (hereinafter also referred to as the “Merger Report”) and preceding drafts.

- Excerpts from the Commercial Register (Handelsregister) for innogy SE and E.ON Verwaltungs SE dated 15 January 2020.


We received all requested documents, details, explanations and information from the managing directors and the administrative board of E.ON Verwaltungs SE, as well as from the management board of innogy SE and their designated employees, and from employees of Linklaters LLP, Düsseldorf and Munich, as legal advisors to the acquiring entity, and from Hengeler Mueller Partnerschaft von Rechtsanwälten mbB, Berlin, as legal advisors to the transferring entity. The managing directors of E.ON Verwaltungs SE and the management board of innogy SE provided us with a letter of representation stating that from their perspective all of the information and documents relevant to our audit had been made available and that they were correct and complete.

The contracting companies are responsible for ensuring that the contents of the Merger Agreement are in order.

We expressly note that we have not conducted an audit of the accounting, the annual financial statements or the legal representatives of the companies concerned. Such audits form no part of a merger audit.

The merger audit report is prepared exclusively for the purposes set out below. This includes providing the merger audit report in advance of the Extraordinary General Meeting of innogy SE that will pass the resolution on the squeeze-out of minority shareholders (including publication thereof on the companies’ websites, making it available for inspection at the business premises, sending it to shareholders on request, making it available for inspection at the Extraordinary General Meeting of innogy SE) and submitting it to the respective competent courts. It is not intended for publication, reproduction or use for any purpose other than that specified above. It may not be passed to any third party without our prior written consent.
In our merger audit we observed the requirements relating to independence (sec. 60 in conjunction with sec. 11 (1) UmwG).

Our responsibility for the merger audit, including in relation to third parties, is determined in accordance with sec. 60 in conjunction with sec. 11 (2) UmwG in conjunction with sec. 323 of the German Commercial Code (Handelsgesetzbuch – HGB). In all other respects, including in relation to third parties, the General Engagement Terms for German Public Auditors and Public Audit Firms of 1 January 2017 will be decisive.

B. SUBJECT MATTER AND SCOPE OF THE MERGER AUDIT

I. Subject matter of the audit

According to sec. 60 in conjunction with sec. 9 (1) in conjunction with sec. 5 UmwG, the object of the merger audit is to verify the lawfulness of the merger agreement or its draft. The central task in this respect is to examine the appropriateness of the exchange ratio and the appropriateness of any cash compensation to be offered. The latter is not relevant in the case of a squeeze-out under transformation law, as in the present case.

The present case concerns a squeeze-out under transformation law pursuant to sec. 62 (5) UmwG. Under sec. 62 (5) sent. 1 UmwG, the Annual General Meeting of a stock corporation being absorbed may adopt a resolution pursuant to sec. 327a (1) sent. 1 AktG within three months following the conclusion of the merger agreement if the acquiring company (principal stockholder) owns stock amounting to nine tenths of the nominal capital.

Clause 2.1 of the final draft of the Merger Agreement states, pursuant to sec. 62 (5) sent. 2 UmwG, that a squeeze-out will be carried out in connection with the merger, so that, according to Clause 3 of the final draft of the Merger Agreement, the acquiring company E.ON Verwaltungs SE will grant no consideration to the shareholders of the transferring company innogy SE except for the cash compensation pursuant to sec. 62 (5) sent. 1 and 8 UmwG in conjunction with secs. 327a et seq. AktG. This is because, upon the merger becoming effective, all shares of the minority shareholders in innogy SE will be transferred to the acquiring company. This is ensured by the condition precedent for the effectiveness of the Merger Agreement (Clause 7.1) and the statutory provision of sec. 62 (5) sent. 7 UmwG. Consequently, the audit did not include an examination of appropriateness in the aforementioned sense.

The appropriateness of the cash compensation as consideration for the transfer of minority shareholders' shares in the transferring company innogy SE is to be determined pursuant to sec. 62 (5) sent. 8 UmwG in conjunction with sec. 327c (2) sends. 2 to 4 AktG by one or more court-appointed expert auditors.

The merger report pursuant to sec. 8 UmwG, which was prepared jointly by the administrative board and the managing directors of E.ON Verwaltungs SE and the management board of innogy SE as a matter of precaution, in which the merger and the Merger Agreement are explained and justified in detail in legal and financial terms, is not the subject of the merger audit according to the clear wording of sec. 9 (1) UmwG. We nevertheless used the information
Non-binding translation – only the German version is legally binding

contained in the merger report insofar as it was relevant to the examination of the legality of the Merger Agreement.

The audit did not address the expediency or economic efficiency of the merger. Verifying the expediency and economic efficiency of the merger is solely a matter for the participating entities.

Finally, it should be noted that the correctness of the merger process is not the subject of this audit.

II. Scope of the audit

The scope of the audit is not expressly defined in sec. 9 (1) UmwG. According to the case law of the Federal Court of Justice [BGH] (fundamental decisions of the Federal Court of Justice in civil matters [BGHZ] 107, p. 296), the merger agreement or its draft must first be checked for completeness and correctness. If shares are granted or cash compensation offered, the audit shall include an assessment of their appropriateness. The latter is not relevant in the case of a squeeze-out under transformation law, as in the present case.

The examination of the completeness of the Merger Agreement extends to whether the statutory general and legal-form-specific minimum disclosures are included. In the present case, these minimum disclosures are set out in sec. 5 UmwG and, in view of the squeeze-out under transformation law, sec. 62 (5) sent. 2 UmwG.

Naturally, optional contractual provisions cannot be checked for completeness.

The examination of the correctness of the (statutory, legal-form-specific and optional) provisions and disclosures in the Merger Agreement extends to whether they are objectively correct and free from contradiction. The decisive question is whether the circumstances on which the Merger Agreement is based correspond to the actual situation and whether any forecasts and estimates are plausible (among others: Zeidler, in Semler/Stengel, UmwG, sec. 9, margin nos. 27-29).

We were not required to examine the general validity and legality of the provisions of the Merger Agreement. If, in the course of the audit, objections or concerns arise as to the legality and/or validity of individual agreements, the audit report should refer to these.

III. Audit and audit report

We conducted our audit in accordance with the International Standard on Assurance Engagements 3000 (ISAE 3000) of the International Federation of Accountants (IFAC). This standard requires that we comply with professional requirements and plan and perform our audit with due regard to the principle of materiality so as to be able to give our opinion with reasonable assurance. The selection of audit procedures was at our discretion based on our professional judgment.
The findings of the merger audit must be reported in writing. Under sec. 60 in conjunction with sec. 12 (2) UmwG, the auditor’s report must include a statement as to the appropriateness of the exchange ratio and of any cash compensation that is offered, indicating the methods used to calculate the proposed exchange ratio, the reasons for applying these methods and – if several measurement methods have been applied – the exchange ratio or equivalent value that would result from the application of different methods.

Since, in the present case, the acquiring company E.ON Verwaltungs SE does not have to grant any consideration to the shareholders of innogy SE – see the above comments on the squeeze-out under transformation law – we were not able to report such audit findings. Nor are such audit findings necessary. The audit findings were therefore essentially concerned with the completeness and correctness of the information in the Merger Agreement.

The general and legal-form-specific minimum requirements of transformation law are decisive for the audit procedures relating to the completeness of the Merger Agreement. Under sec. 5 (1) nos. 1, 2, 6, 7, 8 and 9 and sec. 62 (5) sent. 2 UmwG, the Merger Agreement should essentially include at least the following:

- The names or company names and registered offices of the legal entities involved in the merger (pursuant to sec. 5 (1) no. 1 UmwG)
- The agreement on the transfer of the entire assets of each transferring entity in return for shares in or memberships of the acquiring entity (pursuant to sec. 5 (1) no. 2 UmwG)
- The date from which the actions taken by the legal entity being absorbed will be deemed to have been taken for the account of the acquiring legal entity (Merger Date) (pursuant to sec. 5 (1) no. 6 UmwG)
- The rights conferred by the acquiring legal entity upon individual owners of shares as well as upon the holders of special rights, such as non-voting shares, preference shares, multiple voting shares, debt securities and participation rights, or measures provided for such persons (pursuant to sec. 5 (1) no. 7 UmwG)
- Any special advantage granted to a member of a representative body or of a supervisory body of the legal entities involved in the merger, to a managing shareholder, a partner, an auditor or a merger auditor (pursuant to sec. 5 (1) no. 8 UmwG)
- The consequences of the merger for employees and the bodies representing them, as well as the measures to be taken in that regard (pursuant to sec. 5 (1) no. 9 UmwG)
- The information that, under the merger, the minority shareholders of the company being absorbed are to be excluded (pursuant to sec. 62 (5) sent. 2 UmwG).

According to sec. 5 (2) UmwG, the information pursuant to sec. 5 (1) nos. 2 to 5 UmwG regarding the exchange of shares is not required, since at the time of the merger becoming effective, all shares of the legal entity being absorbed are held by the acquiring legal entity.
C. Audit of the Merger Agreement

I. Completeness and correctness of the relevant statutory minimum disclosures

1. Names of the legal entities involved in the merger (sec. 5 (1) no. 1 UmwG)

The company names and registered offices of the legal entities involved in the merger are stated in the preliminary remarks (Vorbemerkung) of the final draft of the Merger Agreement and correspond in each case to the provisions in the statutes of E.ON Verwaltungs SE and innogy SE as well as to the companies’ entries in the commercial register at the District Court (Amtsgericht) of Essen.

2. Agreement on the transfer of assets (sec. 5 (1) no. 2 UmwG)

In accordance with Clause 1.1 of the final draft of the Merger Agreement, E.ON Verwaltungs SE and innogy SE agree that innogy SE will transfer its assets in their entirety with all rights and obligations by dissolution without liquidation pursuant to sec. 2 no. 1 and secs. 60 et seq. UmwG, to E.ON Verwaltungs SE (merger by absorption). This Agreement correctly identifies the companies involved in the merger and correctly determines the transfer of assets and liabilities by way of merger to E.ON Verwaltungs SE.

In connection with the merger, according to Clause 2.1 of the final draft of the Merger Agreement, it is proposed to squeeze out the minority shareholders of innogy SE pursuant to sec. 62 (5) UmwG in conjunction with secs. 327a et seq. AktG. That is the intention according to the information provided to us.

The disclosures made in sec. C of the preliminary remarks (Vorbemerkung) concerning the ownership structure are objectively correct.

Upon the merger becoming effective, all shares of the minority shareholders in innogy SE will thus be transferred to E.ON Verwaltungs SE. This is ensured by Clause 7.1 of the final draft of the Merger Agreement, according to which the effectiveness of the merger is subject to the condition precedent of the resolution of the Extraordinary General Meeting of innogy SE on the transfer of the shares of the minority shareholders of innogy to E.ON Verwaltungs SE as principal shareholder pursuant to sec. 62 (5) sent. 1 UmwG in conjunction with sec. 327a (1) sent. 1 AktG being registered with the commercial register corresponding to the registered office of innogy SE, and by the statutory provision of sec. 62 (5) sent. 7 UmwG. Since E.ON Verwaltungs SE is the sole shareholder of innogy SE at the time of the merger taking effect, no consideration is to be granted in connection with the merger. These statements are correct.

Clause 3.1 of the final draft of the Merger Agreement therefore states, pursuant to sec. 68 (1) sent. 1 no. 1 UmwG, that, if the acquiring company holds shares in the company being absorbed, it may not increase its share capital in order to implement the merger. The stated underlying circumstances are correct and are subsumed under the relevant statutory provisions.
Pursuant to sec. 5 (2) UmwG, information regarding the exchange of shares is omitted (sec. 5 (1) nos. 2 to 5 UmwG). Clause 3.1 of the final draft of the Merger Agreement correctly states that the transfer of the assets of innogy SE takes place without shares being granted by way of consideration to E.ON Verwaltungs SE as the sole shareholder of innogy SE. As a precautionary measure, E.ON Verwaltungs SE as sole shareholder of innogy SE upon the merger taking effect, states in Clause 3.2 of the final draft of the Merger Agreement that it waives its right to be offered cash compensation in the Merger Agreement (sec. 29 UmwG).

3. **Merger Date (sec. 5 (1) no. 6 UmwG)**

According to Clause 1.3 of the final draft of the Merger Agreement, the assets of innogy SE will be transferred to E.ON Verwaltungs SE, as between the parties and for income tax purposes, with effect upon the end of 31 December 2019. From the beginning of the Merger Date, 1 January 2020, onwards, all acts and transactions performed by innogy SE will be deemed to have been carried out for the account of E.ON Verwaltungs SE.

In the event that the merger has not taken effect by registration with the commercial registry corresponding to the registered office of E.ON Verwaltungs SE as the acquiring entity by the end of 31 January 2021, in accordance with Clause 6 of the final draft of the Merger Agreement the merger will – in deviation from Clause 1.2 above – be based on the balance sheet of innogy SE as at 31 December 2020 as the closing balance sheet and the Merger Date will – in deviation from Clause 1.3 above – be postponed to 1 January 2021. If the time of the merger taking effect is further delayed beyond 31 January of the respective following year, the balance sheet dates and the Merger Date will be postponed for another year in accordance with Clause 6 of the final draft of the Merger Agreement. This provision ties in chronologically and consistently with the initially planned Merger Date.

The Merger Date immediately follows the closing balance sheet date of the transferring entity innogy SE in an objectively correct manner.

4. **Granting of special rights to individual owners of shares and to holders of special rights (sec. 5 (1) no. 7 UmwG)**

According to Clause 4.1 of the final draft of the Merger Agreement – subject to the circumstances set out in the final draft of the Merger Agreement, i.e. subject to the intended transfer of the shares of the minority shareholders of innogy SE to E.ON Verwaltungs SE as the principal shareholder as set out in Clause 2 in return for an appropriate cash compensation to be paid by E.ON Verwaltungs SE pursuant to sec. 62 (5) sent. 1 UmwG in conjunction with sec. 327a (1) sent. 1 AktG – no rights within the meaning of sec. 5 (1) no. 7 UmwG will be granted to individual shareholders or holders of special privileges. Nor is it intended to take any special measures within the meaning of sec. 5 (1) no. 7 UmwG with respect to such persons. These statements are correct based on the information provided to us.
5. **Granting of special benefits (sec. 5 (1) no. 8 UmwG)**

Subject to the circumstances set out in Clauses 4.3 to 4.6 and, with regard to (possible) supervisory board mandates of employees, in Clauses 5.2.10 and 5.2.11 of the final draft of the Merger Agreement, no special benefits within the meaning of sec. 5 (1) no. 8 UmwG will be granted to any member of the management board, supervisory board or administrative board or any managing director of any entity involved in the merger to the auditors or to any other person mentioned in this provision. This is objectively correct according to the documents available to us.

Clause 4.3 of the final draft of the Merger Agreement correctly states that, upon the merger taking effect, the offices of the members of innogy SE’s management board and supervisory board will end. The service agreements and pension agreements made between innogy SE and the members of innogy SE’s management board, i.e. Dr Leonhard Birnbaum, Dr Bernhard Günther and Dr Christoph Radke, and any other agreements between them and innogy SE will be transferred to E.ON Verwaltungs SE by universal succession upon the merger taking effect. These statements are correct based on the information provided to us.

Clause 4.4 of the final draft of the Merger Agreement correctly states that Dr Leonhard Birnbaum is also a member of E.ON SE’s management board. In the event that his service agreement with innogy SE to be transferred to E.ON Verwaltungs SE was terminated, those parts of Dr Birnbaum’s service agreement with E.ON SE which are relevant to remuneration and had been suspended for the term of his service agreement with innogy SE would automatically revive. These statements are correct based on the information provided to us.

Clause 4.5 of the final draft of the Merger Agreement correctly states that, upon the merger taking effect, the individual agreements between the management board members and innogy SE on short term incentives and long term incentives will also be transferred unchanged to E.ON Verwaltungs SE by way of universal succession; it is not intended to terminate these agreements. The bonuses under these agreements are based on the achievement of collective and/or individual objectives reflecting the company’s operating results, ensuring business continuity and co-operation with E.ON SE to prepare and effect the intended structural measures and to gradually implement the integration of innogy SE and its businesses in the E.ON Group, to the extent this is in line with the company’s interests. The supervisory board, duly exercising its discretion, will determine whether the objectives have been achieved. These statements are correct based on the information provided to us.

According to Clause 4.6 of the final draft of the Merger Agreement, it is intended for E.ON Verwaltungs SE’s statutes to be amended to the effect that E.ON Verwaltungs SE will become a two-tier SE with a supervisory board and a management board, which will replace its current administrative board and the managing directors, prior to the merger taking effect. Without prejudice to E.ON Verwaltungs SE’s general meeting’s competence in this respect, it is intended that three of the current members of E.ON Verwaltungs SE’s administrative board, namely Dr Marc Spieker, Dr Verena Volpert and Dr Guntram Würzberg, will also be members of E.ON Verwaltungs SE’s future supervisory board. Without prejudice to E.ON Verwaltungs
SE’s future supervisory board’s competence in this respect, it is intended that the current members of innogy SE’s management board, namely Dr Leonhard Birnbaum, Dr Bernhard Günther and Dr Christoph Radke, will be members of E.ON Verwaltungs SE’s future management board after the merger has taken effect. In addition, without prejudice to E.ON SE’s supervisory board’s competence in this respect, it is intended that the current members of E.ON SE’s management board after the merger has taken effect. Three of the current employee representatives in innogy SE’s supervisory board, Ms Monika Krebber, Mr Stefan May and Mr René Pöhls, have also been employee representatives in E.ON SE’s supervisory board since September 2019. Without prejudice to E.ON SE’s general meeting’s competence in this respect, it is not intended to change the composition of E.ON SE’s supervisory board as a result of the merger taking effect. The aforementioned intentions have been confirmed to us by E.ON Verwaltungs SE.

In the course of our audit, we found nothing to suggest that any further special benefits within the meaning of sec. 5 (1) no. 8 UmwG are to be granted.

6. Consequences for employees (sec. 5 (1) no. 9 UmwG)

With regard to disclosures concerning the consequences of the merger for employees and their representatives and the measures planned in this respect, see Clause 5 of the final draft of the Merger Agreement.

In the course of our audit, we found nothing to suggest that the disclosures in the final draft of the Merger Agreement are other than correct and complete.

7. Disclosure concerning the exclusion of minority shareholders (sec. 62 (5) sent. 2 UmwG)

Clauses 2.1 and 2.2 of the final draft of the Merger Agreement state that, in connection with the merger, it is intended to squeeze out the minority shareholders of the transferring company pursuant to sec. 62 (5) UmwG in conjunction with secs. 327a et seq. AktG, and show how the merger and squeeze-out processes are intertwined. The disclosures are objectively correct according to the documents available to us.

According to Clause 2.2 of the final draft of the Merger Agreement, it is intended that, within three months of concluding the Merger Agreement, innogy SE’s General Meeting will pass a resolution pursuant to sec. 62 (5) sent. 1 UmwG in conjunction with sec. 327a (1) sent. 1 AktG (“Transfer Resolution”) to transfer the shares of innogy SE’s minority shareholders to E.ON Verwaltungs SE in its capacity as principal shareholder against payment by E.ON Verwaltungs SE of appropriate cash compensation, the amount of which is to be determined in the Transfer Resolution.

The Extraordinary General Meeting of innogy SE at which a resolution is to be passed to transfer the shares in innogy SE to E.ON Verwaltungs SE is scheduled to take place within three months of the notarisation of the Merger Agreement planned for 22 January 2020, namely on 4 March 2020. Consequently, the time limit for the transfer resolution is respected.
II. Correctness of the optional provisions of the Merger Agreement

The agreements on a rolling effective date set out in Clause 6 of the final draft of the Merger Agreement are objectively correct; they tie in with the currently planned Merger Date and are therefore consistent in themselves.

The circumstances set out in Clauses 7.1, 7.2 and 7.3 of the final draft of the Merger Agreement regarding the validity of the Merger Agreement accurately reflect the underlying statutory provisions.

The agreement on costs in Clause 8 of the final draft of the Merger Agreement is a voluntary agreement and its content is correct according to the information provided to us.

Clause 9.2 of the final draft of the Merger Agreement concerns the intended renaming of E.ON Verwaltungs SE to innogy SE. Furthermore, it is intended that the corporate purpose of E.ON Verwaltungs SE will be changed immediately after the merger takes effect to also include parts of the previous corporate purpose of innogy SE. This intention has been confirmed to us by E.ON Verwaltungs SE.

Clause 9.3 of the final draft of the Merger Agreement mentions that E.ON Beteiligungen GmbH as sole shareholder of E.ON Verwaltungs SE and E.ON SE as sole shareholder of E.ON Beteiligungen GmbH have declared to E.ON Verwaltungs SE that they share the intentions of E.ON Verwaltungs SE as set out in the final draft of the Merger Agreement. This intention has been confirmed to us by E.ON Verwaltungs SE.

The reference in Clause 9.4 of the final draft of the Merger Agreement to the fact that the assets of innogy SE include property is objectively correct.

The other acts agreed in Clause 9.5 of the final draft of the Merger Agreement with a view to its execution underline the will of the parties to implement the merger and have been confirmed to us by E.ON Verwaltungs SE and innogy SE.

The severability clause in Clause 9.6 of the final draft of the Merger Agreement is consistent in itself and in this respect is a typical contractual clause.
D. Audit opinion

The company innogy SE, Essen, as the transferring entity, is to be merged into E.ON Verwaltungs SE, Essen, as the acquiring entity pursuant to sec. 2 no. 1 in conjunction with secs. 60 et seq. UmwG. In connection with this merger, the minority shareholders of the transferring company are to be excluded (‘squeezed out’ pursuant to sec. 62 (5) UmwG).

As the court-appointed merger auditor, based on the decision of the Regional Court of Dortmund (Landgericht Dortmund), we are entrusted – in accordance with Appendices 2 and 3 – with the audit of the merger pursuant to sec. 60 in conjunction with secs. 9 et seq. UmwG.

As the final result of our merger audit, we confirm, on the basis of the clarifications and evidence provided to us and the information, explanations and disclosures given to us, that

- the final draft of the Merger Agreement contains the legally required minimum information completely and correctly

and

- the optional information contained in the final draft of the Merger Agreement is correct.

The appropriateness of an exchange ratio, which is usually examined in the case of mergers within the meaning of the German Transformation of Companies Act (UmwG), was not the object of the audit in the present case. Due to the intended squeeze-out of minority shareholders under transformation law (sec. 62 (5) UmwG), no shares are to be granted to shareholders of the legal entity being absorbed in connection with the merger. The minority shareholders receive cash compensation for the loss of the shares by a squeeze-out procedure according to sec. 62 (5) UmwG in conjunction with secs. 327a to 327f AktG. In this procedure, the appropriateness of this cash compensation must be examined by an auditor to be appointed for this purpose by the court pursuant to sec. 62 (5) sent. 8 UmwG in conjunction with sec. 327c (2) sent. 2 AktG.

Düsseldorf, 16 January 2020

Kind regards,

Mazars GmbH & Co. KG
Wirtschaftsprüfungsgesellschaft
Steuerberatungsgesellschaft

Susann Ihlau per procura Hendrik Duscha
German Public Auditor German Public Auditor
Non-binding translation – only the German version is legally binding

**LIST OF ABBREVIATIONS**

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<thead>
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<th>Abbreviation</th>
<th>Full Form</th>
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<tbody>
<tr>
<td>Abs.</td>
<td>German abbreviation for <em>Absatz</em> (paragraph) – not used in English text</td>
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<tr>
<td>AG</td>
<td>Aktiengesellschaft: German stock corporation</td>
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<td>AktG</td>
<td>Aktiengesetz: German Stock Corporation Act</td>
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<td>Art.</td>
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<td>BGH</td>
<td>Bundesgerichtshof: German Federal Court of Justice</td>
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<td>e.V.</td>
<td>eingetragener Verein: German Registered Association</td>
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<td>et seq.</td>
<td>and the following</td>
</tr>
<tr>
<td>GmbH</td>
<td>Gesellschaft mit beschränkter Haftung: German limited liability company</td>
</tr>
<tr>
<td>grdl.</td>
<td>German abbreviation for <em>grundlegend</em> (fundamental) – not used in English text</td>
</tr>
<tr>
<td>HGB</td>
<td>Handelsgesetzbuch - German Commercial Code</td>
</tr>
<tr>
<td>IFAC</td>
<td>International Federation of Accountants</td>
</tr>
<tr>
<td>innogy SE</td>
<td>innogy SE, Essen</td>
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<tr>
<td>ISAE</td>
<td>International Standard on Assurance Engagements</td>
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<tr>
<td>i.V.m.</td>
<td>German abbreviation for <em>in Verbindung mit</em> (in conjunction with) – not used in English text</td>
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<tr>
<td>MAZARS</td>
<td>Mazars GmbH &amp; Co. KG Wirtschaftsprüfungsgesellschaft Steuerberatungsgesellschaft (auditors and tax consultants), Düsseldorf, Germany</td>
</tr>
<tr>
<td>m.w.N.</td>
<td>German abbreviation for <em>mit weiteren Nachweisen</em> (with further citations) – not used in English text</td>
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<td>no.</td>
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<td>ppa.</td>
<td>per procura; per procrurationem; signed on behalf of</td>
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<td>rd.</td>
<td>German abbreviation for <em>rund</em> (approximately) – not used in English text</td>
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<td>Rn.</td>
<td>German abbreviation for <em>Randnummer</em> (margin no.) – not used in English text</td>
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<td>p.</td>
<td>page</td>
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<tr>
<td>SE</td>
<td>Societas Europaea</td>
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</tbody>
</table>
Non-binding translation – only the German version is legally binding

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tbody>
<tr>
<td>UmwG</td>
<td>Umwandlungsgesetz: German Transformation of Companies Act</td>
</tr>
<tr>
<td>vgl.</td>
<td>German abbreviation for vergleiche (c.f, compare, see) – not used in English text</td>
</tr>
<tr>
<td>Ziff.</td>
<td>German abbreviation for Ziffer (Clause) – not used in English text</td>
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</tbody>
</table>
In dem Verfahren
betreffend die Verschmelzung der
innogy SE mit dem Sitz in Essen, eingetragen im Handelsregister des
Amtsgerichts Essen unter HRB 27091 auf die E.ON Verwaltungs SE,
eingetragen im Handelsregister des Amtsgerichts Düsseldorf, HRB 73520

wird – nach Verbindung der getrennt eingereichten Anträge unter dem hiesigen
Aktenzeiten - auf Antrag

beider Gesellschaften

die

Mazars GmbH & Co. KG Wirtschaftsprüfungsgesellschaft
Steuerberatungsgesellschaft, Düsseldorf

zum gemeinsamen Verschmelzungsprüfer sowie sachverständigen Prüfer der
Angemessenheit der Barabfindung zur Prüfung gemäß §§ 122a, 60, 10 Abs. 1
UmwG und § 62 Abs. 1, 5 UmwG i.V.m. § 327c Abs. 2 S. 3 AktG bestellt.
Der Wirtschaftsprüfer erfüllt nach der dem Gericht gegenüber abgegebenen Erklärung vom 02.10.2019 die Bedingungen des § 62 Abs. 5 UmwG i.V.m. § 327c AktG, §§ 43 ff. WPO und ist insbesondere nicht nach §§ 319, 319a, 319b HGB von der Prüftätigkeit ausgeschlossen.

Dortmund, 09.10.2019
Landgericht, 20. Zivilkammer - VI. Kammer für Handelssachen

Dr. Klumpe
Vorsitzender Richter am
Landgericht

Beglaubigt
Urkundsbeamter/in der Geschäftsstelle
Landgericht Dortmund
Die Verfahren 20 O 25/19 AktE und 26/19 AktE werden zur gemeinsamen Bearbeitung und Entscheidung miteinander verbunden, wobei das Aktenzeichen 20 O 25/19 AktE führt.

Dortmund, 09.10.2019
Landgericht, 20. Zivilkammer - VI. Kammer für Handelssachen

Dr. Klumpe
Vorsitzender Richter am
Landgericht

Beglaubigt
Urkundsbeamter/in der Geschäftsstelle
Landgericht Dortmund
Beglaubigte Abschrift

20 O 25/19 [AktE]

Landgericht Dortmund

Beschluss

In dem Verfahren
betreffend die Verschmelzung der

innogy SE mit dem Sitz in Essen, eingetragen im Handelsregister des
Amtsgerichts Essen unter HRB 27091 auf die E.ON Verwaltungs SE,
eingetragen im Handelsregister des Amtsgerichts Düsseldorf, HRB 73520

Der Beschluss der Kammer vom 09.10.2019 wird dahingehend – klarstellend –
errichtigt, dass die Prüferbestellung gemäß „Art. 9 Abs. 1 lit c) ii), 10 SE-VO i.V.m.
§§ 60, 10 Abs. 1 S. 2 UmwG und gemäß § 62 Abs. 1 und Abs. 5 UmwG i.V.m. §
327c Abs. 2 S. 3 AktG“ (und nicht § 122a UmwG) erfolgt ist.

Dortmund, 08.01.2020
Landgericht, VI. Kammer für Handelssachen

Der Vorsitzende

Dr. Klumpe
Vorsitzender Richter am
Landgericht
Beglaubigt
Urkundsbeamter/in der Geschäftsstelle
Landgericht Dortmund
MERGER AGREEMENT

between

E.ON Verwaltungs SE,
Essen,
as the acquiring entity

and

innogy SE,
Essen,
as the transferring entity

- hereinafter individually referred to as a "Party" and collectively as the "Parties"-
Recitals

(A) E.ON Verwaltungs SE is a European Company (Societas Europaea) registered in the commercial register of the Local Court (Amtsgericht) of Essen under HRB 30592 having its seat in Essen ("EVSE"). EVSE’s share capital registered in the commercial register amounts to €121,000.00. It is represented by 121,000 no-par-value registered shares, with each share having a notional share in the share capital of €1.00. EVSE’s financial year is the calendar year. EVSE’s sole shareholder is E.ON Beteiligungen GmbH, registered in the commercial register of the Local Court of Essen under HRB 30582 and having its seat in Essen ("EOB"), whose share capital is fully held by E.ON SE, registered in the commercial register of the Local Court of Essen under HRB 28196 and having its seat in Essen ("E.ON").

(B) innogy SE is a European Company (Societas Europaea) registered in the commercial register of the Local Court of Essen under HRB 27091 having its seat in Essen ("innogy"). innogy’s shares have been admitted to trading in the regulated market of the Frankfurt Stock Exchange (Prime Standard) and are traded in the regulated unofficial market (Freiverkehr) of the Stuttgart, Berlin, Düsseldorf, Hamburg, Hanover and Munich stock exchanges. innogy’s share capital registered in the commercial register amounts to €1,111,110,000.00 and is represented by 555,555,000 no-par-value bearer shares, with each share having a notional share in the share capital of €2.00 ("innogy Shares"). innogy’s financial year is the calendar year.

(C) EVSE currently directly holds 499,999,500 of all 555,555,000 innogy Shares. This equals 90% of innogy’s share capital. Hence, EVSE is the principal shareholder (Hauptaktionärin) of innogy within the meaning of Article 9(1)(c)(ii), Article 10 of the Council Regulation (EC) No 2157/2001 on the Statute for a European company (SE Regulation; hereinafter, no further specific reference will be made to the fact that Articles 9 and 10 of the SE Regulation refer to provisions under national law being applicable) in conjunction with section 62 para. 5 sentence 1 of the German Transformation Act (Umwandlungsgesetz). EVSE and innogy intend to transfer innogy’s assets as a whole to EVSE by way of a merger by acquisition (Verschmelzung durch Aufnahme) pursuant to section 2 no. 1 and sections 60 et seq. of the German Transformation Act. In connection with the merger, it is intended to squeeze out all shareholders of innogy other than EVSE ("Minority Shareholders"). For this purpose, it is intended that innogy’s general meeting will pass a resolution within three months of concluding this Merger Agreement to transfer the Minority Shareholders’ shares to EVSE against appropriate cash compensation (Barabfindung).

(D) It is intended that the merger will only take effect if the squeeze-out of innogy’s Minority Shareholders and thus the transfer of all shares of innogy’s Minority Shareholders to EVSE in its capacity as principal shareholder takes effect simultaneously; hence, this Merger Agreement is concluded subject to a condition precedent. Conversely, the squeeze-out of the Minority Shareholders and thus the transfer of the shares of innogy’s Minority Shareholders to EVSE in its capacity as principal shareholder pursuant to section 62 para. 5 sentence 7 of the German Transformation Act will only take effect simultaneously with the registration of the merger in EVSE’s commercial register. Hence, since EVSE will be innogy’s sole shareholder upon the merger taking effect, no shares in EVSE will be granted to the shareholders of the transferring entity. EVSE’s capital will not be increased to implement the merger.

Now therefore the Parties agree as follows:
Transfer of assets, closing balance sheet and Merger Date

1.1 innogy will transfer its assets as a whole together with all rights and obligations to EVSE by dissolution without liquidation (Auflösung ohne Abwicklung) pursuant to section 2 no. 1 and sections 60 et seq. of the German Transformation Act in accordance with the provisions of this Merger Agreement (merger by acquisition).

1.2 Subject to the provisions of Clause 6 of this Merger Agreement, the merger will be based on the balance sheet of innogy in its capacity as transferring entity as audited by PricewaterhouseCoopers GmbH, Wirtschaftsprüfungsgesellschaft, Essen, as at 31 December 2019 as the closing balance sheet (effective transfer date for tax purposes).

1.3 The assets of innogy in its capacity as transferring entity to EVSE in its capacity as acquiring entity will be transferred — subject to the provisions of Clause 6 of this Merger Agreement — as between the Parties with effect upon the end of 31 December 2019. From the beginning of 1 January 2020 ("Merger Date"), all acts and transactions carried out by innogy will be deemed to have been carried out for the account of EVSE.

Squeeze-out of the transferring entity’s Minority Shareholders

2.1 In connection with the merger of innogy into EVSE, it is intended to squeeze out innogy’s Minority Shareholders pursuant to section 62 para. 5 of the German Transformation Act in conjunction with sections 327a et seq. of the German Stock Corporation Act (Aktiengesetz). As can be seen from the confirmations of shares held (Depotbestätigungen) issued by Deutsche Bank AG and BNP Paribas Securities Services S.C.A., Zweigniederlassung Frankfurt am Main, and annexed to this deed as Annex 2.1, EVSE today directly holds 499,999,500 of all 555,555,000 bearer innogy Shares. This equals 90% of innogy’s share capital. Hence, EVSE is the principal shareholder within the meaning of section 62 para. 5 sentence 1 of the German Transformation Act.

2.2 It is intended that, within three months of concluding this Merger Agreement, innogy’s general meeting will pass a resolution pursuant to section 62 para. 5 sentence 1 of the German Transformation Act in conjunction with section 327a para. 1 sentence 1 of the German Stock Corporation Act ("Transfer Resolution") to transfer the shares of innogy’s Minority Shareholders to EVSE in its capacity as principal shareholder against payment by EVSE of appropriate cash compensation, the amount of which has to be determined in the Transfer Resolution. The Transfer Resolution will be registered in the commercial register of the transferring entity’s seat stating that such Transfer Resolution will take effect at the same time that the merger is registered in the register of the acquiring entity’s seat (section 62 para. 5 sentence 7 of the German Transformation Act).

No consideration

3.1 Upon the merger taking effect, EVSE in its capacity as acquiring entity will hold all shares in innogy. This is ensured by the condition precedent of this Merger Agreement taking effect pursuant to Clause 7.1 of this Merger Agreement and the statutory provision of section 62 para. 5 sentence 7 of the German Transformation Act. Hence, no consideration is to be granted for the merger. Pursuant to section 68 para. 1 sentence 1 no. 1 of the German Transformation Act, EVSE in its capacity as acquiring entity may not increase its share capital in order to implement the merger. Accordingly, none of the information required by section 5 para. 1 nos. 2 to 5 of the German Transformation Act on exchanging shares is required pursuant to section 5 para. 2 of the German Transformation Act.
3.2 As a precautionary measure, EVSE, in its capacity as being innogy’s sole shareholder upon the merger taking effect, waives its right to be offered cash compensation in the Merger Agreement (section 29 of the German Transformation Act).

4 Special rights and benefits

4.1 Subject to the circumstances set out in Clause 2 of this Merger Agreement, no rights within the meaning of section 5 para. 1 no. 7 of the German Transformation Act will be granted to individual shareholders or holders of special rights. In addition, it is not intended to take any measures within the meaning of such provision with respect to such persons.

4.2 Subject to the circumstances set out in the provisions of Clauses 4.3 to 4.6 and, in relation to any (potential) seats of employees on the supervisory board, in Clauses 5.2.10 and 5.2.11 of this Merger Agreement, no special benefits within the meaning of section 5 para. 1 no. 8 of the German Transformation Act will be granted to any member of the management board, supervisory board or administrative board or any managing director of any entity involved in the merger, to the auditors or to any other person mentioned in this provision.

4.3 Upon the merger taking effect, the offices of the members of innogy’s management and supervisory boards will end. The service agreements and pension agreements made between innogy and the members of innogy’s management board, i.e. Dr Leonhard Birnbaum, Dr Bernhard Günther and Dr Christoph Radke, and any other agreements between them and innogy will be transferred to EVSE by universal succession upon the merger taking effect.

4.4 Dr Leonhard Birnbaum is also a member of E.ON’s management board. In the event that his service agreement with innogy to be transferred to EVSE was terminated, those parts of Dr Birnbaum’s service agreement with E.ON which are relevant to remuneration and had been suspended for the term of his service agreement with innogy would automatically revive.

4.5 Upon the merger taking effect, the individual agreements between the management board members and innogy on short term incentives and long term incentives will also be transferred unchanged to EVSE by way of universal succession; it is not intended to terminate these agreements. The bonuses under these agreements are based on the achievement of collective and/or individual objectives reflecting the company’s operating results, ensuring business continuity and co-operation with E.ON to prepare and effect the intended structural measures and to gradually implement the integration of innogy and its businesses in the E.ON group, to the extent this is in line with the company’s interests. The supervisory board, duly exercising its discretion, will determine whether the objectives have been achieved.

4.6 It is intended for EVSE’s statutes to be amended to the effect that EVSE will become a two-tier SE with a supervisory board and a management board, which will replace its current administrative board and the managing directors, prior to the merger taking effect. Without prejudice to EVSE’s general meeting’s competence in this respect, it is intended that three of the current members of EVSE’s administrative board, namely Dr Marc Spieker, Dr Verena Volpert and Dr Guntram Würzburg, will also be members of EVSE’s future supervisory board. Without prejudice to EVSE’s future supervisory board’s competence in this respect, it is intended that the current members of innogy’s management board, namely Dr Leonhard Birnbaum, Dr Bernhard Günther and Dr Christoph Radke, will constitute EVSE’s future management board after the merger has taken effect. In addition, without prejudice to
E.ON's supervisory board's competence in this respect, it is intended that the current members of E.ON's management board will continue to hold their offices of members of E.ON's management board after the merger has taken effect. Three of the current employee representatives in innogy's supervisory board, Ms Monika Krebber, Mr Stefan May and Mr René Pöhls, have also been employee representatives in E.ON's supervisory board since September 2019. Without prejudice to E.ON's general meeting's competence in this respect, it is not intended to change the composition of E.ON's supervisory board as a result of the merger taking effect.

5

Consequences of the merger for the employees and their representatives

5.1 The merger will not have any consequences for EVSE's employees and their representatives since EVSE will not have any employees as at the Merger Date and, therefore, there will be no employees' representatives.

5.2 The merger will have the following consequences for innogy's employees and their representatives:

5.2.1 Upon the merger taking effect and the associated transfer of the power to issue management directions to innogy's businesses, the employment agreements existing at that time at innogy will be transferred pursuant to section 613a of the German Civil Code (Bürgerliches Gesetzbuch) in conjunction with section 324 of the German Transformation Act as a result of a transfer of business (Betriebsübergang). Upon the merger taking effect, EVSE in its capacity as acquiring entity will assume, as the new employer, all rights and obligations under the employment agreements of all employees of innogy in its capacity as transferring entity and will continue the employment agreements (section 613a para. 1 sentence 1 of the German Civil Code). The employees' existing or contractually agreed length of service with innogy and any of its legal predecessors will be acknowledged by virtue of law. Any termination of employment agreements being transferred upon the merger taking effect by reason of the merger will be invalid (section 613a para. 4 sentence 1 of the German Civil Code). The right of termination for other reasons remains unaffected (section 613a para. 4 sentence 2 of the German Civil Code).

5.2.2 All employees of innogy affected by the merger will be informed pursuant to section 613a para. 5 of the German Civil Code. In line with the Federal Labour Court's (Bundesarbeitsgericht) case law, innogy's employees will not be entitled to object pursuant to section 613a para. 6 of the German Civil Code to their employment agreements being transferred because, after the merger has taken effect, their previous employer, innogy, will no longer exist and it will therefore not be possible to continue the employment agreements with innogy. The employees' right to (extraordinarily) terminate their employment agreements on the grounds of the merger remains unaffected.

5.2.3 Upon the merger taking effect, EVSE will assume pursuant to section 613a para. 1 sentence 1 of the German Civil Code all rights and obligations (if any) under individual law with respect to any corporate pension scheme to the extent that such a scheme exists for innogy's employees whose employment agreements will be transferred to EVSE upon the merger taking effect. Taking into account any agreements made between the relevant competent employer and works council, any rights and obligations under works agreements or company-wide works agreements (Betriebs- oder Gesamtbetriebsvereinbarungen) with respect to a corporate pension
scheme will continue to exist under collective law irrespective of whether or not the merger takes effect. In addition, as a consequence of universal succession, EVSE will assume any pension obligations owed by innogy to innogy’s former employees.

5.2.4 As a result of the merger, EVSE will become innogy’s universal successor (section 5 and section 20 para. 1 no. 1 of the German Transformation Act). EVSE will be liable for any claims under the employment agreements of innogy’s employees. This will also apply to any claims originating before the merger takes effect. innogy will not additionally be jointly and severally liable within the meaning of section 613a para. 2 of the German Civil Code because, upon the merger taking effect, innogy will cease to exist as a legal entity (section 613a para. 3 of the German Civil Code).

5.2.5 innogy is a member of the Employers’ Association of Gas, Water and Electric Utilities (Arbeitgeberverband von Gas-, Wasser- und Elektrizitätsunternehmungen e.V.). EVSE is not a member of this employers’ association and it is not intended that it will become a member. However, by means of a collective bargaining agreement on acknowledging the association-level collective bargaining agreements (Verbandstarifverträge) applicable to innogy, which is intended to be concluded even before the merger takes effect ("Transition Collective Bargaining Agreement"), it is intended to agree that the association-level collective bargaining agreements applicable at innogy until the merger takes effect will continue to apply as applicable at the time the merger takes effect. It is also intended for the Transition Collective Bargaining Agreement to provide that the same will apply to the collective bargaining agreement on works council structures at innogy SE dated 27 January 2017/7 February 2017 ("Structural Collective Bargaining Agreement") as applicable at the time the merger takes effect.

If the above employers’ association agrees any amendment to any of the association-level collective bargaining agreements after the merger takes effect, it is intended to agree in the Transition Collective Bargaining Agreement an obligation of the parties to the Transition Collective Bargaining Agreement to commence negotiations in due time for the purposes of including these amendments by accordingly amending the acknowledged collective bargaining agreement. This does not apply to amendments with respect to remuneration; in this respect, any amendments to the acknowledged collective bargaining agreement after the merger takes effect are intended to be based on any remuneration increases of the energy-sector bargaining unit (Tarifgemeinschaft Energie) of the Employers’ Association for Energy-Sector Entities (Arbeitgebervereinigung energiewirtschaftlicher Unternehmen e.V.). To the extent that the above-mentioned collective bargaining agreements apply as a result of commitments under individual law (reference), EVSE will assume such commitment unchanged by universal succession.

5.2.6 It is intended that any businesses existing at innogy at the time the merger takes effect will be transferred to EVSE as a result of acknowledging (as intended) the Structural Collective Bargaining Agreement, maintaining their identity under works constitution law. It is intended that the merger will not result in an organisational change (Betriebsänderung).

5.2.7 Works agreements and company-wide works agreements applying at innogy before the merger takes effect will continue to apply after the merger has taken effect as works agreements or company-wide works agreements under collective law. This will also apply with respect to the (company-wide) works agreement supplementing
the collective bargaining agreement on works council structures at innogy SE dated 25 January 2017 as applicable at the time of the merger. Group works agreements (Konzernbetriebsvereinbarungen) of innogy and group works agreements of E.ON will continue to apply following the merger in accordance with the provisions of Konzernbetriebsvereinbarung KBV 33-E.ON dated 31 July 2019 and the supplements thereto dated 31 July 2019 and dated 24 October 2019.

5.2.8 Any works councils, representative committees for executive staff (Sprecherausschüsse) and representative committees for disabled staff (Schwerbehindertenvertretungen) existing at innogy’s businesses at the time of the merger will not be affected by the merger. The term of office of the relevant employee representatives will continue. innogy’s central works council (Gesamtbetriebsrat) and the representative committee for executive staff across businesses (Unternehmenssprecherausschuss) and the central representative committee for disabled staff (Gesamtschwerbehindertenvertretung) will continue following the merger as central works council, central representative committee for executive staff (Gesamtsprecherausschuss) and central representative committee for disabled staff of EVSE. The central works council’s economic committee (Wirtschaftsausschuss) and the offices of its members will also remain unaffected by the merger. Since the time E.ON acquired the majority shareholding in innogy, innogy’s group works council has existed as an additional committee of the E.ON group under works constitution law (”innogy Group Works Council”) in accordance with the Collective bargaining agreement on the establishment and composition of a group works council for the E.ON group and other co-determination bodies (Tarifvertrag zur Bildung und Zusammensetzung eines Konzernbetriebsrates für den Konzern der E.ON sowie weiterer Mitbestimmungsgremien) dated 18 September 2019 ("2019 Group Works Council Collective Bargaining Agreement"). E.ON’s group works council, the innogy Group Works Council and the other (group) employee representative bodies established in accordance with the 2019 Group Works Council Collective Bargaining Agreement will continue to exist after the merger has taken effect.

5.2.9 The SE works council of innogy will cease to exist upon the merger taking effect. The SE works council of E.ON will remain responsible for the employees of innogy upon the merger taking effect. In accordance with the agreement on the involvement of employees in E.ON SE dated 18 July 2019 ("E.ON Employee Involvement Agreement"), which was updated and adjusted in preparation of the consolidation of E.ON’s and innogy’s business areas in July 2019, the SE works council of E.ON will, upon the merger taking effect, be extended to the members listed for the relevant countries in the E.ON Employee Involvement Agreement. When appointing the members, the focus was on ensuring a fair balance between the representatives from the entities belonging to innogy and those belonging to E.ON and on personnel continuity. The new composition agreed in the E.ON Employee Involvement Agreement ensures broad representation of the interests of innogy’s employees in the SE works council of E.ON. innogy’s SE works council approved the E.ON Employee Involvement Agreement.

5.2.10 In order to ensure that innogy’s employees, too, would be represented at the supervisory board of E.ON, being the group’s parent company, just shortly after E.ON’s acquisition of the majority shareholding in innogy in September 2019, E.ON’s general meeting resolved on 14 May 2019 that the supervisory board of E.ON be
temporarily, namely until the annual general meeting in 2023, extended from 14 to 20 members. The enlargement of the supervisory board took effect upon the acquisition of the majority shareholding in September 2019. Three of the six additional supervisory board members were shareholder representatives judicially appointed for the period until the annual general meeting in 2020; three employee representatives of innogy and its subsidiaries were elected in accordance with the E.ON Employee Involvement Agreement.

5.2.11 Upon the merger taking effect, all members of innogy’s supervisory board will cease to hold office. At present, EVSE has an administrative board without employee involvement. This will not be altered by the merger. Irrespective of this, it is intended for EVSE’s statutes to be amended to the effect that EVSE will become a two-tier SE with a supervisory board and a management board, instead of its current administrative board and managing directors, prior to the merger taking effect. On this basis, it is intended to hold discussions concerning the voluntary involvement of employee representatives of innogy and its subsidiaries in EVSE’s future supervisory board. If, in addition to the agreement on employees’ rights of involvement already concluded at the level of E.ON, any negotiations about employees’ rights of involvement pursuant to section 18 para. 3 of the German SE Employee Involvement Act (Gesetz über die Beteiligung der Arbeitnehmer in einer Europäischen Gesellschaft) are initiated at the level of EVSE, EVSE’s management will duly conduct such negotiations in line with its legal obligations.

5.2.12 The Parties intend to carry out an extensive restructuring of innogy and – upon the merger taking effect – of EVSE which is intended to result, before and after the merger takes effect, in changes to the businesses, the working and operational processes, in individual staff measures (e.g. shifting of employees) and in a transfer of all employees to various target entities of the E.ON group. In preparation for this, it is intended that all employees of innogy will be allocated to corresponding independent business divisions (Teilbetriebe) under employment law. To that end, on 21 November 2019, a supplement to the reconciliation of interests agreement/social compensation plan (Interessenausgleich/Sozialplan) dated 28 November 2018 regarding the establishment of the various independent business divisions was entered into with innogy’s central works council; the local works councils are also involved in allocating innogy’s employees to the independent business divisions. According to the current plans set out in Annex 5.2.12, it is intended that, during further restructuring measures, the independent business divisions specified and the relevant employees allocated to them will be transferred to the target entities specified. As a result, all employees of innogy who will transfer to EVSE upon the merger taking effect are intended to be transferred to the target entities gradually by no later than 1 December 2020, with the result that, at that time at the latest, EVSE will no longer have any employees. The time of the divisional splits necessary for this purpose at innogy and EVSE and the number of businesses to exist within the target entities are not clear yet. In view of this, it is intended that collective bargaining agreements will be entered into pursuant to section 3 of the German Works Constitution Act (Betriebsverfassungsgesetz) where appropriate. The consequences resulting therefrom for the existing employee representatives are determined by section 21a of the German Works Constitution Act. In addition, it is intended that transition collective bargaining agreements will be entered into between EVSE, the relevant target entity and the competent trade union and that
transition works agreements will be entered into with the works councils competent in each case. The structure of the target organisation to be established in the target entities in each case and the time when the employees will be transferred to such target organisation are currently not clear yet; the employee representatives competent in each case will be involved in a timely manner, in particular in accordance with sections 99, 106, 111, 112 of the German Works Constitution Act.

Where businesses or parts of businesses are transferred from EVSE to target entities, such transfers fall under the scope of application of section 613a of the German Civil Code. In this respect, in particular splits pursuant to section 123 of the German Transformation Act, purchase agreements, usufructuary lease agreements and the accession to existing lease or service agreements are intended to be agreed. It is also intended that the employment relationships be transferred by way of individual contractual agreements. These measures will also be associated with further individual staff measures and changes to the working and operational processes; the relevant competent employee representatives will also be involved in this context in a timely manner, in particular in accordance with sections 99, 106, 111, 112 of the German Works Constitution Act.

5.2.13 The merger will not result in any changes for the employees of entities affiliated (verbundene Unternehmen) with innogy and for such employees' representatives. As regards group works agreements, the statements made under Clause 5.2.7 also apply to the employees of entities affiliated with innogy.

5.2.14 In accordance with section 5 para. 3 in conjunction with section 62 para. 5 sentence 4 of the German Transformation Act, the draft of this Merger Agreement has been properly and timely submitted to the central works council of innogy and, as a matter of precaution, to the group works council of E.ON. EVSE does not have any works council.

5.2.15 If, on the basis of the provisions in Clause 6, the merger takes effect at a later time, the consequences described above in relation to the merger taking effect will occur at a later time. In addition, innogy and EVSE will assess whether the measures described in Clause 5.2.12 will already be implemented, in full or in part, before the merger takes effect.

6 Change of the balance sheet date and the Merger Date

In the event that the merger has not taken effect by registration in the commercial register of the seat of EVSE as the acquiring entity by the end of 31 January 2021, the merger will — in deviation from Clause 1.2 above — be based on the balance sheet of innogy as the transferring entity as at 31 December 2020 as the closing balance sheet and the Merger Date will — in deviation from Clause 1.3 above — be postponed to the beginning of 1 January 2021. If the time of the merger taking effect is further delayed beyond 31 January of the respective following year, the balance sheet date and the Merger Date will be postponed for another year in accordance with the preceding provision.

7 Conditions precedent and taking effect

7.1 The effectiveness of this Merger Agreement is subject to the condition precedent of the resolution of the general meeting of innogy on the transfer of the shares of the minority shareholders of innogy to EVSE as principal shareholder pursuant to section 62 para. 5
sentence 1 of the German Transformation Act in conjunction with section 327a para. 1 sentence 1 of the German Stock Corporation Act being registered in the commercial register of innogy’s seat (with a note pursuant to section 62 para. 5 sentence 7 of the German Transformation Act to the effect that the Transfer Resolution will take effect only at the same time as the merger is registered in the commercial register of EVSE’s seat).

7.2 The merger will take effect upon registration in the commercial register of EVSE’s seat. An approval of the general meeting of innogy with regard to this Merger Agreement is not required for the merger to take effect pursuant to section 62 para. 4 sentences 1 and 2 of the German Transformation Act because, according to Clause 7.1, the effectiveness of this Merger Agreement is subject to the condition precedent that a Transfer Resolution of the general meeting of innogy as the transferring entity is passed pursuant to section 62 para. 5 sentence 1 of the German Transformation Act in conjunction with section 327a para. 1 sentence 1 of the German Stock Corporation Act and that the resolution is registered in the commercial register of innogy’s seat with a note pursuant to section 62 para. 5 sentence 7 of the German Transformation Act.

7.3 Pursuant to section 62 para. 1 in conjunction with para. 2 sentence 1 of the German Transformation Act, an approval of the general meeting of EVSE with regard to this Merger Agreement is only required if shareholders of EVSE holding in aggregate at least 5% in the share capital of EVSE request that a general meeting be convened in which it will be resolved as to whether the merger should be approved. The sole shareholder of EVSE, EOB, has declared to EVSE that it will not make use of any such right.

8 Costs
The costs of the notarisation of this Merger Agreement and its implementation will be borne by EVSE. Apart from that, each Party will bear its own costs. These provisions will also apply if the merger does not take effect.

9 Miscellaneous

9.1 The Annexes to this Merger Agreement form part of the Merger Agreement.

9.2 Subject to the decision-making competence of EVSE’s general meeting under stock corporation law, it is intended that the name of EVSE will be changed to “innogy SE” directly upon the merger taking effect. Furthermore, it is intended that the corporate purpose of EVSE will be changed directly upon the merger taking effect to also include parts of innogy’s previous corporate purpose.

9.3 EOB in its capacity as EVSE’s sole shareholder and E.ON in its capacity as EOB’s sole shareholder have confirmed to EVSE that they share EVSE’s intentions expressed in this Agreement.

9.4 The assets of innogy, in its capacity as transferring entity, include property.

9.5 The Parties will make all declarations, issue all deeds and perform all other acts which may still be necessary or expedient in connection with the transfer of the assets of innogy at the time when the merger into EVSE takes effect or in connection with the correction of public registers or other lists. innogy grants EVSE the power of attorney to the fullest extent permitted by law to make all declarations that are required or helpful for the performance of these obligations. This power of attorney will apply beyond the time the merger takes effect.
9.6 Should individual provisions of this Merger Agreement be or become invalid or be impracticable, the validity of the other provisions of this Merger Agreement will remain unaffected thereby. In such a case, the Parties undertake to replace the invalid or impracticable provision with such valid and practicable provision as comes closest, to the extent legally permitted, to what the Parties intended from an economic perspective when agreeing such invalid or impracticable provision or what they would have intended if they had been aware of the invalidity or impracticability. The same will apply to any omissions in this Merger Agreement.
Annex 2.1

to the Merger Agreement

Confirmations of shares of innogy SE held by E.ON Verwaltungs SE, issued by Deutsche Bank AG and BNP Paribas Securities Services S.C.A., Zweigniederlassung Frankfurt am Main
Annex 5.2.12

to the Merger Agreement

Description of the current plans for further restructuring
### Annex 5.2.12

<table>
<thead>
<tr>
<th>Transferring entity</th>
<th>Target entity</th>
<th>Number of FTEs</th>
</tr>
</thead>
<tbody>
<tr>
<td>EVSE (ex innogy SE)</td>
<td>E.ON Energy Solutions GmbH</td>
<td>385</td>
</tr>
<tr>
<td>EVSE (ex innogy SE)</td>
<td>innogy Westenergie GmbH</td>
<td>356</td>
</tr>
<tr>
<td>EVSE (ex innogy SE)</td>
<td>E.ON Energie Deutschland GmbH</td>
<td>1375</td>
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<tr>
<td>EVSE (ex innogy SE)</td>
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<td>EVSE (ex innogy SE)</td>
<td>E.ON Solutions GmbH</td>
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<tr>
<td>EVSE (ex innogy SE)</td>
<td>E.ON SE</td>
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</tr>
<tr>
<td>EVSE (ex innogy SE)</td>
<td>E.ON Digital Technology GmbH</td>
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<tr>
<td>EVSE (ex innogy SE)</td>
<td>E.ON Country Hub Germany GmbH</td>
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</tr>
<tr>
<td>EVSE (ex innogy SE)</td>
<td>E.ON Service GmbH</td>
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<tr>
<td>EVSE (ex innogy SE)</td>
<td>E.ON Business Services Regensburg GmbH</td>
<td>85</td>
</tr>
<tr>
<td>EVSE (ex innogy SE)</td>
<td>:agile accelerator GmbH</td>
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<tr>
<td>EVSE (ex innogy SE)</td>
<td>e.kundenservice Netz GmbH</td>
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<tr>
<td>EVSE (ex innogy SE)</td>
<td>E.ON 26. Verwaltungs GmbH (in future operating as E.ON Energy Markets GmbH)</td>
<td>48</td>
</tr>
<tr>
<td>EVSE (ex innogy SE)</td>
<td>Westnetz GmbH</td>
<td>166</td>
</tr>
<tr>
<td>EVSE (ex innogy SE)</td>
<td>innogy eMobility Solutions GmbH</td>
<td>181</td>
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<tr>
<td>EVSE (ex innogy SE)</td>
<td>iSWITCH GmbH</td>
<td>29</td>
</tr>
<tr>
<td>EVSE (ex innogy SE)</td>
<td>RWE Renewables GmbH</td>
<td>719</td>
</tr>
</tbody>
</table>

"**Number of FTEs**" means the approximate number of full time equivalents affected in each case by the planned transfer, on the basis of the data available as at 31 October 2019. The number of employees actually affected (in FTEs) can differ from the number listed here due to personnel changes up to the implementation of the further integration process.

"**Target entity**" means the entity to which, according to the current plan, the employees transferring to EVSE will move in the process of the merger.
General Engagement Terms
for Wirtschaftsprüfer and Wirtschaftsprüfungsgesellschaften
[German Public Auditors and Public Audit Firms]
as of January 1, 2017

1. Scope of application

(1) These engagement terms apply to contracts between German Public Auditors (Wirtschaftsprüfer) or German Public Audit Firms (Wirtschaftsprüfungsgesellschaften) – hereinafter collectively referred to as “German Public Auditor” – and their engaging parties for assurance services, tax advisory services, advice on business matters and other engagements except as otherwise agreed in writing or prescribed by a mandatory rule.

(2) Third parties may derive claims from contracts between German Public Auditors and engaging parties only when this is expressly agreed or results from mandatory rules prescribed by law. In relation to such claims, these engagement terms also apply to these third parties.

2. Scope and execution of the engagement

(1) Object of the engagement is the agreed service – not a particular economic result. The engagement will be performed in accordance with the German Principles of Professional Conduct (Grundsätze ordnungsmäßiger Berufsaußübung). The German Public Auditor does not assume any management functions in connection with his services. The German Public Auditor is not responsible for the use or implementation of the results of his services. The German Public Auditor is entitled to make use of competent persons to conduct the engagement.

(2) Except for assurance engagements (betriebswirtschaftliche Prüfungen), the consideration of foreign law requires an express written agreement.

(3) If circumstances or the legal situation change subsequent to the release of the final professional statement, the German Public Auditor is not obliged to refer to the engaging party to changes or any consequences resulting therefrom.

3. The obligations of the engaging party to cooperate

(1) The engaging party shall ensure that all documents and further information necessary for the performance of the engagement are provided to the German Public Auditor on a timely basis, and that he is informed of all events and circumstances that may be of significance to the performance of the engagement. This also applies to those documents and further information, events and circumstances that first become known during the German Public Auditor’s work. The engaging party will also designate suitable persons to provide information.

(2) Upon the request of the German Public Auditor, the engaging party shall confirm the completeness of the documents and further information provided as well as the explanations and statements, in a written statement drafted by the German Public Auditor.

4. Ensuring independence

(1) The engaging party shall refrain from anything that endangers the independence of the German Public Auditor’s staff. This applies throughout the term of the engagement, and in particular to offers of employment or to assume an executive or non-executive role, and to offers to accept engagements on their own behalf.

(2) Were the performance of the engagement to impair the independence of the German Public Auditor, of related firms, firms within his network, or such firms associated with him, to which the independence requirements apply in the same way as to the German Public Auditor in other engagement relationships, the German Public Auditor is entitled to terminate the engagement for good cause.

5. Reporting and oral information

To the extent that the German Public Auditor is required to present results in writing as part of the work in executing the engagement, only that written work is authoritative. Drafts are non-binding. Except as otherwise agreed, oral statements and explanations by the German Public Auditor are binding only when they are confirmed in writing. Statements and information of the German Public Auditor outside of the engagement are always non-binding.

6. Distribution of a German Public Auditor’s professional statement

(1) The distribution to a third party of professional statements of the German Public Auditor (results of work or extracts of the results of work whether in draft or in a final version) or information about the German Public Auditor acting for the engaging party requires the German Public Auditor’s written consent, unless the engaging party is obligated to distribute or inform due to law or a regulatory requirement.

(2) The use by the engaging party for promotional purposes of the German Public Auditor’s professional statements and of information about the German Public Auditor acting for the engaging party is prohibited.

7. Deficiency rectification

(1) In case there are any deficiencies, the engaging party is entitled to specific subsequent performance by the German Public Auditor. The engaging party may reduce the fees or cancel the contract for failure of such subsequent performance, for subsequent non-performance or unjustified refusal to perform subsequently, or for unconscionability or impossibility of subsequent performance. If the engagement was not commissioned by a consumer, the engaging party may only cancel the contract due to a deficiency if the service rendered is not relevant to him due to failure of subsequent performance, to subsequent non-performance, to unconscionability or impossibility of subsequent performance. No. 9 applies to the extent that further claims for damages exist.

(2) The engaging party must assert a claim for the rectification of deficiencies in writing (Textform) [Translators Note: The German term “Textform” means in written form, but without requiring a signature] without delay. Claims pursuant to paragraph 1 not arising from an intentional act expire after one year subsequent to the commencement of the time limit under the statute of limitations.

(3) Apparent deficiencies, such as clerical errors, arithmetical errors and deficiencies associated with technicalities contained in a German Public Auditor’s professional statement (long-form reports, expert opinions etc.) may be corrected – also versus third parties – by the German Public Auditor at any time. Misstatements which may call into question the results contained in a German Public Auditor’s professional statement entitle the German Public Auditor to withdraw such statement – also versus third parties. In such cases the German Public Auditor should first hear the engaging party, if practicable.

8. Confidentiality towards third parties, and data protection

(1) Pursuant to the law (§ Article, 323 Abs 1 [paragraph] 1 HGB [German Commercial Code: Handelsgesetzbuch], § 43 WPO [German Law regulating the Profession of Wirtschaftsprüfer: Wirtschaftsprüferordnung], § 203 StGB [German Criminal Code: Strafgesetzbuch]) the German Public Auditor is obligated to maintain confidentiality regarding facts and circumstances confided to him or of which he becomes aware in the course of his professional work, unless the engaging party releases him from this confidentiality obligation.

(2) When processing personal data, the German Public Auditor will observe national and European legal provisions on data protection.

9. Liability

(1) For legally required services by German Public Auditors, in particular audits, the respective legal limitations of liability, in particular the limitation of liability pursuant to § 323 Abs. 2 HGB, apply.

(2) Insofar neither a statutory limitation of liability is applicable, nor an individual contractual limitation of liability exists, the liability of the German Public Auditor for claims for damages of any other kind, except for damages resulting from injury to life, body or health as well as for damages that constitute a duty of replacement by a producer pursuant to § 1 ProdHaftG [German Product Liability Act: Produkthaftungsgesetz], for an individual case of damages caused by negligence is limited to € 4 million pursuant to § 54 a Abs. 1 Nr. 2 WPO.

(3) The German Public Auditor is entitled to invoke demurrers and defenses based on the contractual relationship with the engaging party also towards third parties.
(4) When multiple claimants assert a claim for damages arising from an existing contractual relationship with the German Public Auditor due to the German Public Auditor’s negligent breach of duty, the maximum amount stipulated in paragraph 2 applies to the respective claims of all claimants collectively.

(5) An individual case of damages within the meaning of paragraph 2 also exists in relation to a uniform damage arising from a number of breaches of duty. The individual case of damages encompasses all consequences from a breach of duty regardless of whether the damages occurred in one year or in a number of successive years. In this case, multiple acts or omissions based on the same source of error or on a source of error of an equivalent nature are deemed to be a single breach of duty if the matters in question are legally or economically connected to one another. In this event the claim against the German Public Auditor is limited to € 5 million. The limitation to the fivefold of the minimum amount insured does not apply to compulsory audits required by law.

(6) A claim for damages expires if a suit is not filed within six months subsequent to the written refusal of acceptance of the indemnity and the engaging party has been informed of this consequence. This does not apply to claims for damages resulting from scienter, a culpable injury to life, body or health as well as for damages that constitute a liability for replacement by a producer pursuant to § 1 ProdHaftG. The right to invoke a plea of the statute of limitations remains unaffected.

10. Supplementary provisions for audit engagements

(1) If the engaging party subsequently amends the financial statements or management report audited by a German Public Auditor and accompanied by an auditor’s report, he may no longer use this auditor’s report.

If the German Public Auditor has not issued an auditor’s report, a reference to the audit conducted by the German Public Auditor in the management report or any other public reference is permitted only with the German Public Auditor’s written consent and with a wording authorized by him.

(2) If the German Public Auditor revokes the auditor’s report, it may no longer be used. If the engaging party has already made use of the auditor’s report, then upon the request of the German Public Auditor he must give notification of the revocation.

(3) The engaging party has a right to five official copies of the report. Additional official copies will be charged separately.

11. Supplementary provisions for assistance in tax matters

(1) When advising on an individual tax issue as well as when providing ongoing tax advice, the German Public Auditor is entitled to use as a correct and complete basis the facts provided by the engaging party – especially numerical disclosures; this also applies to bookkeeping engagements. Nevertheless, he is obligated to indicate to the engaging party any errors he has identified.

(2) The tax advisory engagement does not encompass procedures required to observe deadlines, unless the German Public Auditor has explicitly accepted a corresponding engagement. In this case the engaging party must provide the German Public Auditor with all documents required to observe deadlines – in particular tax assessments – on such a timely basis that the German Public Auditor has an appropriate lead time.

(3) Except as agreed otherwise in writing, ongoing tax advice encompasses the following work during the contract period:

(a) preparation of annual tax returns for income tax, corporate tax and business tax, as well as wealth tax returns, namely on the basis of the annual financial statements, and on other schedules and evidence documents required for the taxation, to be provided by the engaging party

(b) examination of tax assessments in relation to the taxes referred to in (a)

c) negotiations with tax authorities in connection with the returns and assessments mentioned in (a) and (b)

d) support in tax audits and evaluation of the results of tax audits with respect to the taxes referred to in (a)

e) participation in petition or protest and appeal procedures with respect to the taxes mentioned in (a).

In the aforementioned tasks the German Public Auditor takes into account material published legal decisions and administrative interpretations.

(4) If the German Public auditor receives a fixed fee for ongoing tax advice, the work mentioned under paragraph 3 (d) and (e) is to be remunerated separately, except as agreed otherwise in writing.

(5) Insofar the German Public Auditor is also a German Tax Advisor and the German Tax Advice Remuneration Regulation (Steuerberatungsvergütungsverordnung) is to be applied to calculate the remuneration, a greater or lesser remuneration than the legal default remuneration can be agreed in writing (Textform).

(6) Work relating to special individual issues for income tax, corporate tax, business tax, valuation assessments for property units, wealth tax, as well as all issues in relation to sales tax, payroll tax, other taxes and dues requires a separate engagement. This also applies to:

a) work on non-recurring tax matters, e.g. in the field of estate tax, capital transactions tax, and real estate sales tax;

b) support and representation in proceedings before tax and administrative courts and in criminal tax matters;

c) advisory work and work related to expert opinions in connection with changes in legal form and other re-organizations, capital increases and reductions, insolvency related business reorganizations, admission and retirement of owners, sale of a business, liquidations and the like, and

d) support in complying with disclosure and documentation obligations.

(7) To the extent that the preparation of the annual sales tax return is undertaken as additional work, this includes neither the review of any special accounting prerequisites nor the issue as to whether all potential sales tax allowances have been identified. No guarantee is given for the complete compilation of documents to claim the input tax credit.

12. Electronic communication

Communication between the German Public Auditor and the engaging party may be via e-mail. In the event that the engaging party does not wish to communicate via e-mail or sets special security requirements, such as the encryption of e-mails, the engaging party will inform the German Public Auditor in writing (Textform) accordingly.

13. Remuneration

(1) In addition to his claims for fees, the German Public Auditor is entitled to claim reimbursement of his expenses; sales tax will be billed additionally. He may claim appropriate advances on remuneration and reimbursement of expenses and may make the delivery of his services dependent upon the complete satisfaction of his claims. Multiple engaging parties are jointly and severally liable.

(2) If the engaging party is not a consumer, then a set-off against the German Public Auditor’s claims for remuneration and reimbursement of expenses is admissible only for undisputed claims or claims determined to be legally binding.

14. Dispute Settlement

The German Public Auditor is not prepared to participate in dispute settlement procedures before a consumer arbitration board (Verbraucherschlichtungsstelle) within the meaning of § 2 of the German Act on Consumer Dispute Settlements (Verbraucherstreitbeilegungsgesetz).

15. Applicable law

The contract, the performance of the services and all claims resulting therefrom are exclusively governed by German law.