

# **CONTRACT CONCERNING**

## **Analysis of infrastructure for digital preservation**



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## 1 CONTRACTING PARTIES

This contract has been entered into between the following parties:

The Danish National Archives, Copenhagen  
Rigsdagsgaarden 9  
DK-1218 Copenhagen K.  
(hereinafter referred to as “the customer”)

and

[The name of the supplier]  
[Address of the supplier]  
[Postal code and town]  
[Company registration number (VAT-number)]

(hereinafter referred to as “the supplier”)

## 2 CONTENT OF THE CONTRACT

This contract has been entered into on the basis of the customer’s tender concerning “Analysis of infrastructure for digital preservation”, as published by the contract notice [number of the contract notice].

The content of the contract consists of the following documents:

- The contract (this document)
- Annex 1 – Questions, answers and changes to the procurement documents
- Annex 2 – Customer’s description of the task
- Annex 3 – Supplier’s offer (including any list of offers)

If there is an inconsistency between the contract and the annexes, the contract takes precedence over the annexes. If there is an inconsistency between the annexes, an annex with a lower number takes precedence over an annex with a higher number

However, any modifications, additions or amendments to the services that are agreed between the parties after the conclusion of this contract will take precedence over the other documents.

Suppliers’ standard terms and conditions do not form part of the contract.

## 3 CONTRACT SCOPE

### 3.1 Scope

The contract covers the performance of consultancy services related to the acquisition of a new infrastructure for digital archiving by the customer. The services are described in more detail in Annex 1 and 2 of the advertising conditions.



### **3.2 Changes to the contract scope**

To the extent that this does not contravene the applicable procurement rules, the customer may request changes to contract scope.

The customer's change request must be submitted in writing. The supplier shall then, if so requested by the customer, prepare a draft amendment annex describing any requirements for changes in the contract in regard to price, time and safety or security as a result of the change.

Any amendment to the contract takes effect only once the parties have entered into a written amendment annex to the contract. The supplier is not entitled to additional payment, unless a written amendment annex to the contract entitles the supplier to additional payment.

## **4 THE TERM OF THE CONTRACT**

The contract comes into force when it is signed by both parties and expires when delivery has been made, cf. section 5.

The customer has the right to use the consultancy services on an ad hoc basis and on the terms of this contract until the infrastructure has been acquired and implemented.

## **5 DELIVERY**

Delivery will happen upon completion and approval of the final activity in the overall plan. As detailed in Annex 1 the product to be delivered consists of system requirements, marked analysis, maybe three to four solution scenarios and pros and cons for each of them. The completion and approval shall be no later than December 18., 2020.

## **6 QUALITY**

The services covered by the contract shall comply with all applicable directives, laws, other regulatory requirements and industry standards at the time when the contract is entered into and throughout the term of the contract.

The services shall comply with customer's description of the task and be in accordance with the supplier's offer throughout the term of the contract.

## **7 PRICES AND PRICE ADJUSTMENT**

### **7.1 Price**

The prices of the services covered by the contract are specified in Annex 3.

Prices are exclusive of VAT, but inclusive of all forms of fees, charges, disbursement, travel expenses, secretarial assistance, duplication and other office expenses, etc., unless otherwise stated in the offer list and/or the requirements specification.



## 7.2 Price adjustment

The prices are fixed throughout the term of the contract (including any extensions).

## 7.3 Bonuses for the customer and the customer's employees

The turnover for this contract shall not form the basis for any payment of bonuses, discounts or any other form of compensation for the customer or the customer's employees.

## 8 INVOICING

The supplier may request payment monthly based on work performed after delivery of status report compliant with agreed standards.

Invoicing shall conform to applicable rules concerning electronic settlement with public authorities.

Invoices shall be submitted electronically to the requesting department/institution (cf. EAN number 5798000794382).

The invoice shall include:

- Issue date (invoice date)
- Invoice number (number for identifying the invoice)
- The supplier's VAT number
- The supplier's name and address as well as the name and address of the customer
- The customer's recipient
- Contract or order number (if exists)
- Description of the services provided – each service is described at its own line in the invoice
- Quantity and nature of the services provided
- Price exclusive of VAT
- VAT percentage and amount
- Latest timely payment date

The customer is entitled to reject invoices that are not received electronically, in which the above information is insufficient, or if the invoice is otherwise not in compliance with the Danish Act regarding Public Payments (in Danish: "lov om offentlige betalinger").

## 9 PAYMENT TERMS

The invoiced amount is due for payment 30 days after a satisfactory invoice has been submitted electronically, cf. section 8.

If the latest payment date does not fall on a banking business day, the payment date is postponed until the next banking day.



In case of late payment, the supplier is entitled to request interest in accordance with the provisions of the Danish Act regarding Interest on Overdue Payments (in Danish: “renteloven”).

## 10 COOPERATION

Each of the parties appoints the employees who are responsible for day-to-day contact in relation to the contract.

The supplier’s responsible persons must keep the customer’s responsible persons informed regularly about the progress of the services covered by the contract.

The parties shall notify each other if during the performance of the contract there arises any uncertainty concerning the conditions, purpose or performance of a service.

The parties shall also notify each other if there is dissatisfaction with the other party’s efforts, work performance or quality of the work.

At a party’s request there shall be conducted a joint evaluation of the cooperation between the supplier and the customer.

## 11 STAFF

The supplier shall appoint the employees (both their own and those of any subcontractors), as specified in the supplier’s offer for performance of the services.

The supplier shall as far as possible avoid replacing employees or making significant changes in the roles of the employees during the performance of the services.

The supplier shall, in case of replacement of an employee, explain the reason for the replacement and appoint a new employee with at least the same professional qualifications as those possessed by the former employee. The supplier shall present a complete and detailed CV for the new employee to document the employee’s professional qualifications.

The supplier’s replacement of employees must not affect the performance of the services and must not lead to additional costs or delays for the customer. This means, for example, that the customer shall not pay for a new employee to gain insight into the services and the customer’s needs, corresponding to the level of the replaced employee. The customer may reject a new employee if he/she is deemed not to have the same professional qualifications as the original employee.

At the customer’s request, the supplier must replace an employee if the request is reasonably justified.

## 12 SUBCONTRACTORS

The supplier will use the following subcontractors in the performance of the contract:

- [enter name and company registration no. (VAT no.) of the subcontractors specified in the offer]
- [etc....]



If the supplier has based specific parts of its offer on a subcontractor's technical and professional capabilities, this subcontractor must perform these specific parts of the services, cf. section 144(3) of the Danish Public Procurement Act.

The supplier shall not without the prior written consent of the customer assign the performance of the contract or parts thereof to subcontractors, replace a subcontractor or change the roles between the supplier and a subcontractor.

When using subcontractors, the supplier guarantees and is liable for the subcontractor's services to the same extent as the supplier guarantees and is liable for the supplier's own circumstances.

Under this contract, subcontractors cannot raise any claims against the customer, including claims for payment or compensation.

## **13 PERSONAL DATA**

### **13.1 The supplier's handling of personal data**

If the supplier handles personal data on behalf of the customer as part of the performance of the contract, the supplier is obliged to ensure that the supplier's handling of personal data complies with the personal data laws applicable in Denmark at any time – currently in particular the General Data Protection Regulation<sup>1</sup> and the Danish Data Protection Act (in Danish: “databeskyttelsesloven”)<sup>2</sup>.

The supplier and its employees are obliged to handle personal data in such a way that guarantees sufficient security and confidentiality, hereunder protects against unauthorized access or use of the personal data, to which the supplier gains access in connection with the performance of the contract. The supplier shall hereunder ensure that personnel, which are authorized to handle personal data in connection with the performance of this contract, are committed to confidentiality or are under a lawful obligation to appropriate duty of confidentiality, cf. section 14.1.

The supplier is not entitled to process personal data independently as part of the performance of the contract for the supplier's own purposes or to disclose information to third parties, unless such use or disclosure is explicitly required by EU-law or national law.

## **14 DUTY OF CONFIDENTIALITY AND SECURITY CLEARANCE**

### **14.1 Duty of confidentiality**

The customer is as a public authority subject to applicable public administrative regulations, hereunder the duty of confidentiality, which follows from section 27 of the Danish Act on Public Administration (in Danish: “forvaltningsloven”). When performing tasks for a public authority, the supplier shall undertake a similar duty of confidentiality, cf. section 152a of the Danish Criminal Code (in Danish:

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<sup>1</sup> Regulation (EU) 2016/679 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, and repealing Directive 95/46/EC (General Data Protection Regulation).

<sup>2</sup> Act no. 502 of 23 May 2018 on supplementary provisions for a regulation on the protection of individuals with regard to the processing of personal data and on the free movement of such data (the Data Protection Act).





“straffeloven”). The supplier shall notify the personnel, which are engaged in the performance of the contract, of this duty of confidentiality.

The customer is furthermore subject to the rules of public access in the public administration, hereunder the rules of public access to documents. After the circumstances, the customer can be entitled and obliged to grant public access to the extent that follows from relevant regulation.

## **15 PUBLICITY**

The supplier is entitled to include the customer in a simple reference list, after the performance of the delivery. Any other publicity regarding the content of this contract requires prior written consent of the customer.

## **16 SUPPLIER'S IMPARTIALITY**

The supplier and the supplier's personnel engaged in the performance of the contract have the freedom of scientific research and the following does not impose any limitation hereto.

The supplier guarantees that the supplier has not undertaken, and will not undertake, any task that may cause reasonable doubt about the supplier's ability to duly perform the services under this contract.

The supplier may in the performance of the services and without being obliged to inform the customer thereof provide advice to or provide services to other customers whose interests may be in conflict with those of the customer, provided that no conflicts of interest arise for the supplier as regards the tasks to be performed for the customer.

The supplier may not engage employees if there is reasonable doubt as to their ability to fully protect the customer's interests in connection with the performance of the contract. Similar requirements apply to any of the supplier's subcontractors and their employees.

The supplier shall immediately notify the customer of any matter, which may question the impartiality of the supplier or any subcontractors.

## **17 RIGHTS**

The customer acquires the right of ownership, copyright and any other intellectual property rights to material produced by the supplier in the performance of the services, including reports, any sub-reports, data, supporting documents and survey material. The customer's acquisition of the rights takes place on an ongoing basis as the supplier prepares the material.

The customer decides whether any reporting should be published and the customer has the exclusive right to publish the results and may also use the material and the results, wholly or in part, in all contexts in which the customer considers it relevant.

The supplier retains right of use relating to the general expertise developed in connection with performance of the task.

The supplier shall secure the necessary rights and permits that are a prerequisite for the services. The supplier is responsible for ensuring that fulfilment of this contract does not violate any third party



rights, including ownership or intellectual property rights. The supplier shall indemnify the customer against any claim that may arise as a result of a violation of third-party rights.

## **18 LABOUR CLAUSE**

### **18.1**

The supplier must ensure that employees of the supplier and any subcontractors contributing to the performance of the contract are guaranteed wages (including special benefits), working hours and other working conditions, which are no less favourable than those applicable to work of the same kind in accordance with a collective agreement concluded by the most representative labour market partners within the relevant field in Denmark, and which applies throughout the Danish territories.

Suppliers and any subcontractors must ensure that employees are informed of the terms of the labour clause.

### **18.2**

By “contributing to the performance of the contract”, cf. 18.1., it is understood to be work performed in Denmark for the purpose of fulfilling the contract.

### **18.3**

The customer may at any given time request relevant documentation that the pay and working conditions for the employees comply with the obligation set by the labour clause. The customer may thus require the supplier upon written request to do so within 10 working days to provide relevant documentation such as pay slips, time sheets, payroll accounts and employment contracts from both their own and any subcontractor’s employees.

### **18.4**

Failure to provide documentation in accordance with clause 18.3 triggers a fine of DKK 1,000 per commenced Workday after the deadline for delivery.

### **18.5**

The customer may, for the purpose of assessing whether the supplier or the subcontractor has complied with the labour clause, seek advice from the relevant employer and/or employee organisation

### **18.6**

If the supplier does not fulfil their obligations under the labour clause and if this results in a legitimate claim from the employees for additional wages, the customer may withhold remuneration in order to meet such requirements.

### **18.7**

The supplier may also be required to pay a penalty equal to 2 (two) times the amount paid in additional wages to the employees.



## **19 TERMINATION**

### **19.1 Termination of the contract for convenience**

The customer may terminate the contract with 2 week's notice, upon the customer's payment to the supplier for the work performed until the termination comes into force.

In such a case, the supplier must transfer the materials and data produced in connection with the task to the customer.

Payment to the supplier will be made on the basis of a specified statement of time spent. The supplier will not be entitled to any other form of remuneration or compensation, including compensation for operating losses, loss of profits or other indirect losses, other remuneration or the like.

### **19.2 Termination as a result of a finding or judgement**

If a court or the Danish Complaints Board for Public Procurement:

- annul the customer's decision to award this contract to the supplier,
- declares this contract "ineffective",
- considers an amendment to this contract to be an amendment to the substantial elements that would have required a new contract notice, or
- otherwise orders the customer to terminate this contract, wholly or in part,

this contract may be terminated at any time during the contract term, wholly or in part, by the customer with 2 weeks' notice. Regardless of when the contract is terminated as a result of a finding or a judgement, the supplier cannot claim compensation in such a case.

## **20 INDEPENDENT AGREEMENT**

The parties agree that section 19.2 of the contract constitutes an independent agreement between the parties, which is in force, regardless of whether the contract is otherwise declared to be ineffective.

## **21 CONTINUED VALIDITY**

All provisions of the contract, which by their nature shall continue notwithstanding termination of the contract, regardless of the grounds for termination, including, but not limited to, provisions regarding liability, rights and duty of confidentiality, shall continue to be in force after the termination of the contract.

## **22 BREACH OF CONTRACT**

Each party is required to immediately notify the other party in writing of any breach that has occurred or when a breach is expected to occur and to specify the reason for the breach and the time when the breach is expected to be remedied.



If a party substantially or repeatedly, without each breach being substantial, breaches its obligations under this contract, the other party may terminate this contract in writing.

Each of the following situations shall always be considered as a substantial breach that entitles the customer to terminate the contract by means of written notice to the supplier with immediate effect:

- The supplier enters into restructuring negotiations, or there is other significant degradation of the supplier's financial situation which jeopardizes the proper performance of the contract.
- The bankruptcy of the supplier, if the bankruptcy estate does not indicate that it will enter into this contract within 10 working days after receiving a written request from the customer.
- The supplier terminates the activities to which the contract relates, or if there are other circumstances that jeopardize the proper performance of the contract.
- Failure to comply with the provisions regarding on quality, cf. section 6.
- Failure to comply with the duty of confidentiality, cf. section 14.1.
- Failure to comply with the provision on cooperation, cf. section 10.
- Failure to comply with the provisions regarding personal data, cf. section 13.

The above situations are not exhaustive.

Furthermore, the general rules of Danish law on breach of contract apply, including the general rules on delayed or failed delivery. Should the customer choose to terminate the contract for cause, wholly or in part, as a result of delay, the customer is entitled to procure services covered by the contract from third parties (compensatory purchase) at the supplier's expense. Any additional costs relating to compensatory purchases may be offset any claim against the supplier.

Any failure of the service to fulfil this contract and its associated annexes, or if the service is not as the customer may rightly expect, will in any event constitute a defect in the supplier's service.

The supplier is obliged, at the customer's request, to remedy identified defects as soon as possible. If it is not possible to remedy the defect or the supplier has tried in vain and repeatedly to remedy a defect, the customer may instead choose to demand a proportionate reduction in payment to the supplier. The proportionate reduction is determined by the extent and nature of the defect, but cannot exceed the payment for the delivery.

## **23 FORCE MAJEURE**

Under this contract, a party is not liable to the other party insofar as the matter is due to circumstances beyond the control of the party and which the party should not have foreseen at the time of the conclusion of this contract, nor could have avoided or overcome after the conclusion of the contract.

The party, who wishes to invoke this force majeure provision, shall notify the other party without undue delay, but no later than 5 working days after the force majeure event has occurred.

If a force majeure situation lasts for more than 40 working days or if the force majeure situation is of such a nature or duration that fulfilment of the contract is considered impossible, the other party is



entitled to terminate this contract without notice. None of the parties is liable towards the other party for termination due to force majeure.

## **24 LIABILITY AND INSURANCE**

The parties are liable for damages under the general rules of Danish law.

However, the parties are not liable for operating losses, loss of profits or other indirect losses and each party's total liability under this contract is limited to the contract. These limitations of liability do not apply if liability is caused by acts or omissions of gross negligence or willful misconduct.

For the entire duration of the contract, the supplier shall maintain a liability insurance covering any damages that employees may cause in connection with the performance of this contract and be insured against erroneous advice if the contract comprises an advisory task.

The scope of coverage of the supplier's insurance shall correspond to the contract scope and the industry standard.

The supplier shall also have taken out any other statutory insurance, including occupational injury insurance for the employees.

The customer can at any time request documentation of insurance coverage.

## **25 TRANSFER**

The customer has the right to transfer its rights and obligations under this contract, wholly or in part, to another public authority.

The supplier may not transfer its rights or obligations under this contract, wholly or in part, to a third party without the written consent of the customer.

## **26 APPLICABLE LAW AND JURISDICTION**

This contract is subject to Danish law.

In the event of disagreement between the parties in connection with this contract, the parties shall, with a positive, cooperative, and responsible attitude seek to initiate negotiations aimed at resolving the dispute. If necessary, negotiations shall be escalated to the highest level in the organizations of the parties.

If the parties are unable to reach a settlement by negotiation within 30 days of the first inquiry, on the request of a party, the dispute shall be attempted resolved by mediation led by a mediator appointed by the parties. If the parties have not reached an agreement on the choice of mediator within 10 working days after one of them has requested mediation, any of the parties may apply to the Danish Mediation Institute to appoint a mediator. Mediation shall be conducted in accordance with the rules for handling cases at the Danish Mediation Institute.

Mediation is initiated by one of the parties submitting a written request for mediation to the other party, copying in the Danish Mediation Institute. The mediator shall be appointed within 8 working days after



the Danish Mediation Institute has received a request for mediation. At a minimum, the parties are obliged to attend the first meeting called by the mediator. However, each of the parties is entitled to initiate legal proceedings if postponement thereof may lead to forfeiture, for example due to obsolescence.

If, after attempting mediation, the parties are unable to find a solution, each party may at its discretion, initiate litigation. The place of jurisdiction is the customer's domicile.

## 27 SIGNATURES

### On behalf of the customer

Date

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Signature

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Title and name of signatory

### On behalf of the supplier

Date

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Signature

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Title and name of signatory

