

# Consultancy Contract

[FIXED PRICE]

**between**

Danish Agency for Science and Higher Education

Bredgade 40

DK-1260 Copenhagen K

EAN No.: 5798000416635

(hereinafter referred to as the Customer)

**and**

[...]

[...]

[...]

(CVR No. [...])

(hereinafter referred to as the Consultant)

on assistance for ...

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## **Appendices**

- Appendix 1 : Description of Customer tasks.
- Appendix 2 : Description of Consultant solution
- Appendix 3 : Schedule and plan of activities
- Appendix 4 : Fee

## **1. BACKGROUND AND PURPOSE**

*[Brief description of the background for and the purpose of the relevant contract, cf. Clause 3 of the instructions]*

## **2. DEFINITIONS**

Working day: Monday to Friday, apart from national holidays, Christmas Eve, New Year's Eve and Constitution Day.

The Contract: This Contract and appendices with subsequent amendments and additions.

The task: The services to be delivered by the Consultant under the Contract.

## **3. THE TASK**

### **3.1 Requirements in respect of the Consultant's services**

The Consultant shall be obliged to deliver the services stated in this Contract with appendices.

Before signing this Contract, the Consultant shall prepare a description of the solution (Appendix 2) in which the Consultant describes in detail how the task shall be performed and how the requirements in the Customer's description of the task (Appendix 1) shall be met. The Consultant's description of the solution (Appendix 2) shall not imply that requirements stated in the Customer's description of the task (Appendix 1) shall not be met.

In the event that the Consultant as part of the performance of the Contract must prepare written material, including notes, reports and publications, such written material shall be edited and proofread before delivery to the Customer.

### **3.2 Scope of the task**

The Consultant shall perform all tasks described in this Contract with appendices and all tasks that form a natural part hereof as interpreted in accordance with the general rules of Danish legislation.

In the event of doubt as to the scope of the task in the contract period, the Consultant shall be obliged to immediately inform the Customer thereof in writing.

## **4. SCHEDULE AND TERM**

The task shall begin on [...] and end on [...].

When performing the task, the Consultant shall meet the time limits stated in Appendix 3 (schedule and plan of activities).

## **5. COOPERATION AND CUSTOMER PARTICIPATION**

### **5.1 Cooperation**

The Consultant shall as required and to a reasonable extent cooperate with the Customer. The Consultant shall as part of such cooperation on the Customer's request participate in meetings with the Customer on how to plan and perform the task.

### **5.2 Customer participation**

The Customer shall only be obliged to participate in performing the task to the extent that such participation is specifically stipulated in the Contract or Appendix 1.

However, the Customer shall be available, to a reasonable extent, to answer the Consultant's questions in relation to performing the task.

## **6. THE CONSULTANT'S EMPLOYEES**

### **6.1 General**

The Consultant shall make the employees stated in Appendix 2 available to perform the task.

The Consultant shall be obliged throughout the period until the end of the task to maintain the capacity and knowledge required to perform the task, including in the form of qualified employees.

### **6.2 Replacement of employees**

Out of consideration for the continuity and quality of the work, any replacement of employees must not affect the Consultant's performance of the task, and any replacement of employees must not involve additional costs for the Customer.

The Consultant's replacement of core employees, responsible employees and project managers shall be subject to the Customer's written consent.

The Consultant shall inform the Customer of any contemplated replacement of employees attached to the task and state any reasons for such replacement.

Upon the Customer's request, the Consultant shall replace a key employee if the Customer's request is reasonably justified.

## **7. COMPETENCE**

Out of consideration for the independence, credibility and reliability of the performance of the task, the Consultant shall be obliged to ensure that neither the Consultant nor the Customer's responsible and participating employees provide or have provided advice to clients in connection with tasks that may raise doubt as to the Consultant's competence.

The Consultant shall be obliged to inform the Customer of all tasks that may occasion such doubt.

## **8. FEE AND TERMS OF PAYMENT**

### **8.1 Fee in general**

The Consultant's fee is stated in Appendix 4.

The fee is stated in DKK and shall include all duties applicable at the time of the signing of the Contract other than VAT. In the event of changes to applicable Danish duties, the share of the fee not yet paid shall be adjusted for the financial net consequence of such changes, ensuring that the position of the Consultant and the Customer shall be unchanged.

All types of expenses and costs, including any costs for travelling, hotel accommodation, secretarial assistance, translation and office expenses incurred in connection with the performance of the task shall be included in the rates stated in Appendix 4.

### **8.2 Calculation of fee**

As stated in Appendix 4, the Consultant shall be entitled to a fixed fee. The fee shall be invoiced in accordance with the payment plan stated in Appendix 4 based on milestones in the schedule and plan of activities, cf. Appendix 3.

Any invoicing in accordance with the payment plan in Appendix 4 shall be subject to the Customer's approval based on the Consultant's documentation showing that the Consultant has duly performed all part tasks or other tasks to be performed under the schedule and plan of activities (Appendix 3). If this is not the case, the payment of the Consultant's fee shall be postponed until such time when the Consultant has documented that the tasks assumed under the schedule and plan of activities have been performed.

The Consultant shall, irrespective of whether a fixed fee has been agreed, prepare a statement showing the Consultant's actual consumption of hours. Such statement shall be submitted to the Customer on the first day of each month.



### **8.3 Terms of payment**

Payment shall fall due 30 days after the Customer has received a satisfactory invoice, cf. Clause 8.2.

In the event of delayed payment, the Consultant shall be entitled to charge interest in accordance with the provisions of the Danish Interest Rate Act (*renteloven*).

## **9. THE CONSULTANT'S GUARANTEES**

The Consultant shall guarantee that the consultancy services provided are in accordance with the requirements stated in Appendices 1 and 2 and all matters and advisory services that the Customer may rightly expect under the Contract.

The Consultant shall furthermore guarantee to maintain the capacity and knowledge required to perform the tasks throughout the period until the end of the task, including in the form of qualified employees.

## **10. DELAY**

### **10.1 General**

A delay shall be deemed to exist, if the Consultant exceeds one of the time limits stated in the schedule and plan of activities (Appendix 3).

If the Consultant anticipates a risk of delay, the Consultant shall immediately inform the Customer thereof and of the background of such delay as well as of the expected duration of completing the task. In the event of a risk of delay, the Consultant shall offer to put in more employees to avoid or overcome such delay, irrespective of whether such action exceeds the limits of the extent of allocated employees.

If the Consultant's work is delayed as a consequence of insufficient participation by the Customer, cf. Clause 5.2, first section, the Consultant shall be obliged to immediately inform the Customer thereof. If failing to immediately inform the

Customer, the Consultant shall forfeit any right to object on the basis of delays caused by such matters.

The rules in Clause 12 on termination and other rights shall apply correspondingly.

## **11. DEFECTS**

The Consultant's services shall be deemed to be defective if they fail to meet the requirements stated in the Contract or appendices thereto, if they fail to live up to generally accepted practices within the relevant business area or if they are not as could be rightly expected by the Customer.

In the event of defects in the Consultant's services, the Customer shall be entitled to demand a remedial action within an appropriate short time limit determined by the Customer or to demand a proportionate reduction in the Consultant's fee.

The Customer may terminate the Contract in the event of material defects that are not remedied by the Consultant within an appropriate short time limit determined by the Customer.

## **12. OTHER BREACH**

For the Customer's other rights in the event of the Consultant's breach, the general rules of Danish legislation shall apply.

However, the following circumstances shall always be deemed to be material breach, entitling the Customer to immediately terminate the Contract:

- If the Consultant exceeds a time limit stated in the schedule and plan of activities (Appendix 3) by more than *[insert number of working days]* working days.

- If the Consultant negotiates for composition or in the event of other significantly reduced financial circumstances that jeopardise the correct performance of the Contract.
  
- If the Consultant terminates the activities comprised by the Contract or any other circumstances arise that seriously jeopardise the correct performance of the Contract.

### **13. THE CONSULTANT'S LIABILITY TO PAY DAMAGES**

The Consultant shall be liable to pay damages to the Customer in accordance with the general rules of Danish legislation. Such liability to pay damages shall not include operating losses, loss of profits or other indirect losses.

### **14. FORCE MAJEURE**

Neither the Consultant nor the Customer shall, under this Contract, be deemed to be liable to the other party if such liability is caused by local wildcat strikes or circumstances beyond the parties' control, which the party should not have considered, nor avoided or overcome when signing the Contract. In the event of delays, force majeure can only be claimed for the number of working days covered by the actual force majeure situation. If a time limit for the Consultant is delayed due to force majeure, any related payments shall be delayed correspondingly.

Force majeure can only be claimed if the relevant party has notified the other party thereof in writing immediately after the beginning of the force majeure situation.

### **15. THE CUSTOMER'S CIRCUMSTANCES**

If the performance of the task is delayed because the Customer fails to participate in the performance of the task as assumed, cf. Clause 5.2, first section, and Appendix 1, any subsequent time limits in Appendix 3 shall be postponed by a number of days corresponding to the delay, but not before the Consultant has submitted a written demand to the Customer to this effect. Payments shall be

postponed correspondingly, but the Consultant shall be entitled to interest at the rate determined in the Danish Interest Rate Act during the period of the delay.

The general rules of Danish legislation shall apply to the Customer's breach of the terms of payment and the Customer's creditor's delay. However, indirect losses, including operating losses and loss of profits shall not be compensated.

## **16. PROFESSIONAL LIABILITY INSURANCE**

The Consultant shall take out professional liability insurance to cover any claims under the Contract. Upon the Customer's request, the Consultant shall always document that such requirement has been complied with.

## **17. RIGHTS AND DATA PROCESSING**

### **17.1 Rights**

The Customer shall acquire the right of ownership, copyright and any other right to all documents prepared by the Consultant in connection with the performance of the task, including reports and data produced by the Consultant as part of the Contract.

The Customer shall be entitled to make extracts of such documents and data and to publish and disclose these to a third party.

Such rights shall be acquired in line with the performance of the task, provided that the Customer pays a fee to the Consultant in accordance with the provisions in the Contract to this effect.

Any methods and tools applied by the Consultant which have been developed by the Consultant or a third party shall, however, be subject to the copyright of the holder of such right. The Consultant shall guarantee that the Consultant is entitled to use the applied methods and tools.

The Consultant shall be entitled to use any general knowledge acquired in other contexts, including in relation to a third party. However, the Customer's anonymity shall always be ensured unless otherwise agreed in writing in advance.

Material provided by the Customer to the Consultant shall be returned upon the performance of the provisions of the Contract or upon the termination of the task. This shall, however, not apply to questionnaires completed by the staff or records of interviews with the Customer's employees, including questionnaires etc. Such material shall be destroyed by the Consultant upon the termination of the task.

### **17.2. Data processing**

The Consultant is the processor in connection with [...] and works alone following the orders of the Customer, who is the controller. The Customer determines the purposes and means of any processing of personal data.

The Consultant shall take the necessary technical and organisational measures to ensure that the personal data are not accidentally or unlawfully destroyed, lost or impaired and that the data are not unlawfully disclosed, abused or otherwise processed in breach of the Danish Act on Processing of Personal Data.

The Consultant shall respect the rules about security of processing in the Danish Act on Processing of Personal Data, including articles 41, 42 and 53, Order no. 528 of 15 June 2000 on Security Measures for the Processing of Personal Data by Public Authorities as amended, and corresponding Instruction no. 37 of 2 April 2001.

If the task involves the processing of confidential or sensitive data, the Consultant shall respect the enhanced security measures stipulated in chapter 3 of the Danish Order on Security Measures for the Processing of Personal Data by Public Authorities.

At the request of the Customer, the Consultant shall immediately provide full information, such that the Customer can assess and determine that the necessary security measures have been set up and are being obeyed.

The Consultant shall clarify any possible doubt as to the fulfillment of the security measures, including contacting the Customer. The Consultant shall inform the Customer of detected infringement of the security.

Particular notice should be paid to the following:

- The information must not be stored longer than necessary in view of what is necessary for the purposes for which the information is collected, and the information must be deleted [...]
- The information must not be disclosed to a third-party, unless the obligation arises from applicable law or from the instruction of the Customer.
- The Consultant shall ensure that only persons authorised by the Consultant have access to the personal data being processed.
- The Consultant shall ensure that the processing of personal data takes place in accordance with the rules in the Danish Order on Security Measures for the Processing of Personal Data by Public Authorities including processing of data via the Internet or other open or wireless networks.
- The Consultant shall ensure that the processing of personal data outside of The Consultant's premises, including home offices, takes place in accordance with the rules in the Danish Order on Security Measures for the Processing of Personal Data by Public Authorities.
- The transfer of personal data to third countries shall take place in accordance with section 27 in the Danish Act on Processing of Personal Data.

## **18. SECRECY**

The Consultant and the Consultant's staff shall observe total secrecy with regard to information about the Client or other parties of which the Client gets knowledge in connection with the performance of this contract.

The Consultant shall impose a corresponding obligation on all subcontractors and other persons assisting the Consultant in performing the task.

The Consultant shall not disclose public notifications on this Contract or publish any information on the contents of the Contract or the Consultant's task without the Customer's prior written consent. The Consultant shall be entitled to use the

Customer as a simple reference but shall not otherwise be entitled to use the Customer's name for marketing purposes without the Customer's written consent.

## **19. SUBCONTRACTORS**

The Consultant shall not without the Customer's written consent leave the performance of the Contract to subcontractors unless specifically stated in the Contract or appendices thereto. Subcontractors shall be approved by the Customer.

In the event that the performance, by agreement, is left to a subcontractor, the Consultant shall be liable for the subcontractor's meeting of the requirements in the Contract and appendices in the same way as for the Consultant's own circumstances.

The subcontractor cannot raise any types of claims to the Customer under the Contract, neither claims for payment nor claims for damages.

## **20. ASSIGNMENT**

The Customer shall be entitled to assign its rights and obligations under this Contract to another public institution or an institution which is owned by public authorities or materially run by public means.

The Consultant may not without the Customer's written consent assign its rights or obligations under this Contract to a third party or leave the performance of this Contract to subcontractors.

## **21. COMMENCEMENT AND TERMINATION**

This Contract shall commence upon the signing hereof, cf. also Clause 4.

This Contract may be terminated by the Customer giving 30 days' notice in writing. The Consultant shall be entitled to a fee for any work performed, cf. Clause 8.

