

# Framework Agreement

Regarding Consultancy Services for the Danish Energy Partnership Programme (DEPP), Phase II with Mexico, China, South Africa and Viet Nam.

**between**

Danish Energy Agency  
Amaliegade 44  
DK-1256 Copenhagen K

(hereinafter referred to as the Customer)

**and**

[...]  
[...]  
[...]

[CVR-no./company registration no. if the Supplier does not have a CVR no.] [...]

(hereinafter referred to as the Supplier)

(individually referred to as the “Party” and collectively as the “Parties”)

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## 1. BACKGROUND AND PURPOSE

This Framework Agreement has been concluded between the Parties after advertising a prior invitation to tender in the EU Official Journal, see notice of invitation to tender, EUT No. 2017/S 184-377171 of 22/09/2017

The Framework Agreement regulates the cooperation between the Supplier and Customer in relation to the provision of consultancy services for the Danish Energy Partnership Programme (DEPP), Phase II with Mexico, China, South Africa and Viet Nam.

## 2. DEFINITIONS AND GENERAL

### 2.1 Definitions

Working day means Monday to Friday excluding public holidays in Denmark, Christmas Eve, New Year's Eve and Constitution Day.

Day means calendar day.

Framework Agreement means this Framework Agreement and appendices along with all subsequent amendments.

Quality Assurance means all the planned and systematic activities to be carried out under the Agreement by the Consultant to assure that the output as defined in Appendix 1 (Terms of Reference) is achieved at the stipulated quality level.

### 2.2 General

Any notices stipulated for in the Framework Agreement to the relevant Party by use of the contact details set out below.

The Customer: [name, address, telephone number, e-mail address]

The Supplier: [name, address, telephone number, e-mail address]

Where stipulated that a notice is to be given in writing the notice can be given via e-mail, delivery of a written notice or ordinary mail.

The Framework Agreement consists of the following documents:

1. The Framework Agreement [NB: If the Framework Agreement is amended during the tender phase such amendments will be incorporated in the Framework Agreement before the Framework Agreement is entered into.]
2. Appendix 1, Terms of Reference for provision of technical assistance services to the DEA Energy Partnership Programme Phase II
3. Appendix 2a, Key Personnel
4. Appendix 2b, Key Personnel's competence
5. Appendix 3a, Resource Base
6. Appendix 3b, Resource Base competence
7. Appendix 3c, Resource Base List
8. Appendix 4, Price Schedule

9. Appendix 5, Social Responsibility
10. Appendix 6, Declaration of Support (if applicable)

In case of discrepancy between the above-mentioned documents, the documents apply in priority to each other in the order stated in the preceding paragraph in this section 2.2.

### **3. SUPPLIER'S SERVICES**

#### **3.1 The contents and scope of the task – main tasks**

The Supplier shall provide the services that are stated in the Framework Agreement.

The Supplier must carry out the tasks described in the Framework Agreement as well as any tasks that are a natural part of it.

The tasks covered by this framework agreement are outlined in Appendix 1 “General Terms of Reference”, in particular in Section 9 of these.

The Supplier must provide the assistance that is necessary and naturally connected to these tasks.

All assignments will be initiated on the basis of specific Terms of Reference which describe the individual task, the specific set up etc.

If, during the Framework Agreement, any doubt arises as to the scope of the task, the Supplier shall immediately notify the Customer in writing thereof, in order to obtain the Customer's clarification.

The services provided by the Supplier must be in accordance with current legislation and relevant technical and/or professional standards and guidelines.

All material regardless of format which the Supplier as part of this Framework Agreement prepares to the Customer must be adequately Quality Assured using ISO 9000 standard or similar before being sent or otherwise communicated to the Customer.

#### **3.2 Procuring Technical Assistance**

Short-term experts will be contracted based on demand for technical assistance within the context of the annual work programme for each component. The specific Terms of Reference for each intervention will be developed by the implementation group, and will describe in detail the expertise required, the nature of the project, the expected timelines for deployment, duration of the project, location, expected outputs, reporting, logistical support if necessary and a budget.

Once the specific Terms of Reference for an activity have been approved by the Implementation Group, the Supplier must submit a brief proposal and, for each key position, either the CV of a relevant key technical consultant from the pool of Key Technical Consultants or at least 3 CVs from the Supplier's larger network. The proposal must state which daily rate (i.e. junior or senior consultant rate cf. Appendix 4) will apply for each CV-holder during the assignment in question.

In case the consultants proposed are not covered by the rates in Appendix 4, Price Schedule, a specific daily rate for the proposed consultants must be stated.

If the Implementation Group is not satisfied with the stated price for the consultants offered, the Implementation Group may request the Supplier to start a new process of finding 3 suitable consultants, presenting their CV's and daily rates to the Implementation Group for approval.

The Implementation Group is never obliged to accept a suggested consultant if the Implementation Group either does not believe that the consultant has the appropriate skills or if the consultant's price is too expensive.

However, the Supplier has the right to return to the consultant and, in so far as possible, renegotiate the price.

The proposal must be submitted no later than three working days after it has been requested from the Customer.

If it is not possible to provide three relevant candidates for the task, the Supplier must inform the Implementation Group of this. If so, the Supplier and the Implementation Group must agree whether one or two CVs will suffice.

If the candidate for the assignment is a key technical consultant from the pool, no alternative CV is required unless expressly requested by the Implementation Group or the Danish Energy Agency.

Upon identification of the candidates or project team the Supplier must deploy the consultants no later than the 11<sup>th</sup> working day after a letter or e-mail of approval is received by the Supplier.

The procedures used by the Supplier for identifying candidates for assignments must be transparent and based on pre-defined criteria that include professional qualifications and experience. Civil servants from the Danish public administration, Energinet.dk or the public administration from other countries may not be recruited as experts.

#### **4. LANGUAGE**

The language of the Framework Agreement and all communication about this between the Supplier and the Customer shall be English or Danish.

#### **5. PLACE OF DELIVERY**

Deliveries under the Framework Agreement must be delivered as defined in the terms of reference for the specific task.

## **6. SUPPLIER'S STAFFING**

### **6.1 General**

Throughout the duration of the Framework Agreement, the Supplier must maintain sufficient staff capacity and knowledge to perform the tasks. The Supplier must ensure that the necessary resources will be provided at all times for the fulfillment of the Framework Agreement.

The Supplier must make the CV-holders mentioned in Appendix 2a available as and when required to perform the tasks. The assigned persons' tasks and participation in the fulfillment of the Framework Agreement must correspond to the description in Appendix 2a og 2b.

If the Supplier does not solve tasks with adequate quality and in compliance with agreed deadlines, the Supplier must adjust the staffing of the task. See also section 13.23.

### **6.2 Replacement of Consultants**

For the continuity and the quality of work the Supplier must, in so far as possible, avoid the replacement of person(s) assigned to a task. Consultants assigned by the Supplier may be changed only with the Customer's approval. The Supplier must, upon the Customer's request, replace an assigned person if the Customer's request is reasonably justified.

When replacing an assigned person, the new individual must have at least the same qualifications as the replaced one. This must be demonstrated through the replacement's CV which must comply with the requirements in Appendix 1 and the answers provided by the Supplier as per Appendix 2a and 2b (or Appendix 3a and 3b) if the CV holder is not a Key Technical Consultant) The replacement must not incur costs for the Customer and may not lead to delays in the fulfillment of the Framework Agreement.

## **7. COOPERATION AND THE CUSTOMER'S INVOLVEMENT**

### **7.1 Cooperation**

The contact persons specified in section 2.2. are responsible for the ongoing dialogue throughout the contract period.

## **8. IMPARTIALITY**

The Supplier must ensure that neither the Supplier nor its liable and participating employees and external consultants provide or have provided consultancy to clients in connection with tasks that could lead to doubts as to the Supplier's impartiality.

Similarly, the Supplier is obliged to ensure that the proprietary interests and similar interests of the Supplier and its employees and external consultants in the companies and firms should not lead to doubts as to the Supplier's impartiality.

The Supplier must immediately notify the Customer if circumstances arise that may bring about doubt regarding the Supplier's independence and impartiality.

## **9. REGULATORY REQUIREMENTS, LABOUR CLAUSE AND CSR**

### **9.1 General**

The Supplier guarantees that the Supplier's services meet all relevant regulatory requirements, that exist at the time of the signing of the Framework Agreement and later, including the Personal Data Act. See also section 9.2.

The Supplier must provide services in accordance with the requirements for the labour clause and CSR stated in Appendix 5.

### **9.2 Privacy**

If the Supplier's performance of tasks under the Framework Agreement entails the processing of personally identifiable information, the Supplier is always obliged to ensure that the applicable Danish privacy laws are complied with, especially the Personal Data Act (Law No. 429 of 31 May 2000 with later amendments) and Executive Order on Security (Executive Order 528/2000 with later amendments).

To the extent that the Supplier's execution of tasks under the Framework Agreement entails that the Supplier processes personally identifiable information, the Supplier acts as data processor solely on instructions from the Customer as data controller and the rules under Section 41, subsections 3-5 of the Personal Data Act also apply for the processing of personal data by the Supplier. The Supplier may not process personal data for purposes other than those set by the Customer, just as the Supplier may not process personal data due to instructions from anyone other than the Customer.

The Supplier must take the appropriate technical and organisational security measures to protect data against accidental or unlawful destruction, loss or alteration and against unauthorised disclosure, abuse or processing in violation of the Personal Data Act and the Executive Order on Security. This also applies if the processing of personal data by the Supplier occurs at home offices.

If the Supplier is established in another EU member state, the provisions on security as determined in the legislation in the EU member state where the Supplier is established also apply to the Supplier. If the Supplier is established in another EU member state, the Supplier must therefore comply with both the Danish security requirements under the Personal Data Protection Act and the security requirements of the Supplier's homeland.

The Supplier must at the Customer's request provide the Customer with sufficient information to enable the Customer to comply with its obligations as data controller according to the privacy law, including obligations to the data subject (such as the right to access) and the obligations to ensure that the Supplier has taken the mentioned technical and organisational security measures. The Supplier must in this regard arrange an independent third party to submit a statement of assurance once a year to the Customer on the security conditions of the personal data at the Supplier.

The Supplier is obliged to participate in any discussions with the Data Protection Agency and incorporate any recommendations and/or orders, etc. from the agency on the processing of

personal data in regard to the performance of the Supplier's tasks under the Framework Agreement.

In the event of a security breach, the Supplier must without undue delay notify the Customer of this.

### **9.3 CSR**

The Supplier must adhere to Appendix 5 of the Framework Agreement.

The Supplier, its employees, subcontractors and other collaborators in relation to the fulfillment of this Framework Agreement, must also comply with the following provisions regarding the partner institutions' anti-corruption agreements:

No offer, payment, consideration or benefit of any kind, which could be regarded as an illegal or corrupt practice, shall be made, promised, sought or accepted - neither directly nor indirectly - as an inducement or reward in relation to activities funded under this agreement, incl. tendering, award, or execution of contracts. Any such practice will be grounds for the immediate cancellation of this agreement or parts of it, and for such additional action, civil and/or criminal, as may be appropriate. At the discretion of the Danish Government, a further consequence of any such practice can be the definite exclusion from any projects funded by the Government of Denmark.

## **10. REMUNERATION**

### **10.1 General**

For the performance of the services under the Framework Agreement, the Supplier is entitled to remuneration. The currency of the Framework Agreement is Danish Kroner (DKK) and all fees and rates in Appendix 4 are listed in Danish Kroner.

The fees and rates in Appendix 4 are exclusive of VAT ("moms") and including all applicable duties and taxes. If the applicable Danish taxes and duties are changed, the prices shall be adjusted in accordance with the net change in these so that it does not affect the Supplier.

Apart from the above, the Supplier's rates are fixed during the contract period.

The remuneration includes all applicable taxes except for VAT. The daily rates should include all costs except travel and accommodation/per diem.

### **10.2 Subsistence allowance and travel costs**

Reimbursement of Suppliers expenses related to execution of assignments as per specific TORs shall only take place against documentation from a third party. Only expenses defined as below shall be reimbursed:

Subsistence allowance paid on a per diem basis.

Per diems cover accommodation, meals, transportation within the place of mission (intra-city travel) and sundry expenses. It cannot exceed the official WHO/UN per diem rate for "first 60 days" published on the WHO web site. The rate published for each month of January shall apply for subsistence allowance throughout the year in question.

### International travel.

Covers onward and return travel between the permanent residence of the consultants and the base of operation in partner countries other than Denmark (i.e. Beijing, Mexico City, Johannesburg and Hanoi). Journeys from the airport or public transport station closest to the place of permanent residence to the final place of assignment are regarded as international travel. The section of the journey before and after the international journey (e.g. taxi from place of permanent residence to the airport), including that between the town of arrival and its airport are covered by the per diem. All travels to be reimbursed shall be made by the most appropriate means of transport and the most direct, practicable route, and shall be on what corresponds to economy class using existing discount schemes.

International travels shall not exceed 10,000 DKK per travel.

### Local travel.

Covers travels related to in-country mission away from the base of operation in the country of the assignment. Local travels to be reimbursed shall be made by the most appropriate means of transport and the most direct, practicable route, and shall be on what corresponds to economy class using existing discount schemes.

## **10.3 Other costs**

Other costs related to execution of assignments may be reimbursed, where justified.

The Supplier is not entitled to remuneration other than what is stated in this Framework Agreement.

Any reimbursable expenses not being in DKK shall be converted to DKK by the Supplier using the current daily exchange rate.

## **11. INVOICING AND PAYMENT TERMS**

Invoicing must be in accordance with current regulations on electronic settlement with public authorities.

### **11.1 Quarterly Invoices**

As soon as practicable and not later than 30 days after the end of each calendar quarter during the period of the Services, the Consultant shall submit to the Contracting Authority in one copy, an invoice for the fees for the Services rendered and the reimbursable expenses actually incurred by the Consultant during the preceding quarter.

Invoices shall bear the Contracting Authority's reference, be numbered sequentially and dated, and submitted in accordance with instructions of the Contracting Authority.

The remuneration is due for payment 30 days after the Supplier has sent a satisfactory invoice.

## **12. GUARANTEES**

The Supplier guarantees that the Supplier in the performance of its services meets all the requirements under the Framework Agreement as well as requirements of good practice within the industry, and that the services will be performed at a professional and qualified level that the Customer with justification can expect under the Framework Agreement.

The Supplier guarantees to maintain throughout the contract period the necessary capacity and knowledge in the performance of the task, including qualified staff.

The Supplier furthermore guarantees for its impartiality in accordance with section 8 of the Framework Agreement.

The Supplier guarantees that current legislation for employees, including legislation on residence permits, proof of employment and tax, are adhered to for all employees engaged in executing the Framework Agreement. The Supplier guarantees furthermore that all services covered by the Framework Agreement also fulfill all relevant statutory requirements and regulations, including rules on work environments that exist at the time of the signing of the Framework Agreement and later, see section 9.

The Supplier guarantees that the Supplier in fulfillment of the Framework Agreement does not infringe on third party rights, including property rights or intellectual property rights, see section 18.

The Supplier guarantees that it will handle all received material and information on the task with absolute discretion. The Supplier is obliged to comply with the safety procedures etc., which are developed and/or agreed between the Parties in connection with the solution of the task.

## **13. BREACH OF THE FRAMEWORK AGREEMENT**

### **13.1 General**

If there are no other provisions in this Framework Agreement, Danish law on remedies are applicable in connection with the breach of Framework Agreement by a Party, including rules on proportionate reduction.

### **13.2 Delay**

There is a delay if the Supplier exceeds the deadlines in section 3.2. Likewise, there is a delay if the Supplier exceeds the deadline agreed between the Customer and the Supplier in regard to a specific task, see section 3.2. and Appendix 1.

If the Supplier anticipates that there is a risk of delay, the Supplier must immediately notify the Customer of this and its reasons as well as the anticipated time delay.

When delays occur, or a delay is expected, the Supplier must immediately take effective steps to overcome the delay or – if that is not possible – to limit it.

If the Supplier's work is delayed as a result of inadequate involvement by the Customer, the Supplier is obliged to immediately notify the Customer of this. If the Customer is not notified immediately, the Supplier forfeits the right to object on grounds of delays caused by this condition.

In the event of a delay that is material to the Customer, the Customer is entitled to cancel the affected assignment.

### **13.3 Deficiencies of the Supplier's services**

A deficiency exists if the Supplier's performance of the task under the Framework Agreement does not meet the requirements stated in the Framework Agreement, or does not otherwise correspond to what the Customer may reasonably expect.

In the event of deficiencies, the Supplier must take necessary steps to remedy the deficiencies as soon as possible.

The Customer may require that there must be a proportionate reduction in the total remuneration that the Supplier is entitled to under this Framework Agreement, if the Supplier does not make the effort to remedy the deficiencies as soon as possible.

### **13.4 Termination**

The Customer may immediately terminate the Framework Agreement in whole or in part if there is a substantial breach of Framework Agreement.

The following examples, but not limited to, are always considered as substantial breach of Framework Agreement that entitles the Customer to terminate the Framework Agreement:

- 1) If the Supplier within a period of 6 months more than 3 times is guilty of a delay as described in section 13.2
- 2) If the Supplier does not fulfill the guarantees under section 12, and the Supplier has not remedied the deficiencies within a reasonable time after receiving a written notice hereof.
- 3) Breach of section 9.3
- 4) If the breach of the Framework Agreement that individually does not constitute a substantial breach of the Framework Agreement is overall significant for the Customer.
- 5) The Supplier's bankruptcy.
- 6) The Supplier is in the process of debt restructuring.
- 7) Opening negotiations on arrangements by the Supplier or significantly deteriorated economic conditions in general that brings the proper fulfillment of the Framework Agreement in jeopardy.
- 8) The Supplier ceases to conduct business relating to the Framework Agreement, or occurrence of any other events that bring the Framework Agreement's proper fulfillment in grave jeopardy.
- 9) The Supplier during the Framework Agreement is covered by one of the exclusion grounds listed in section 13.4.1.

In the event of a termination of the Framework Agreement by the Customer, the Supplier must reimburse the remuneration already received with a deduction of remuneration for services that are approved by the Customer, and with a deduction to the extent the Customer decides to fully

or partially take over the completed work at that point with the aim of completing the task, possibly with the assistance from a third party, see section 23.

#### **13.4.1 Exclusion grounds**

The following exclusion grounds are applicable throughout the term of the Framework Agreement:

- 1) Participation in a criminal organisation, as defined in Article 2 of Council Framework Decision 2008/841/JHA
- 2) Corruption, as defined in Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union and Article 2(1) of Council Framework Decision 2003/568/JHA as well as corruption as defined in the national law of the Contracting Authority or the economic operator
- 3) Fraud within the meaning of Article 1 of the Convention on the protection of the European Communities' financial interests
- 4) Terrorist offences or offences linked to terrorist activities, as defined in Articles 1 and 3 of Council Framework Decision 2002/475/JHA respectively, or inciting or aiding or abetting or attempting to commit an offence, as referred to in Article 4 of that Framework Decision
- 5) Money laundering or terrorist financing, as defined in Article 1 of Directive 2005/60/EC of the European Parliament and of the Council
- 6) Child labour and other forms of trafficking in human beings as defined in Article 2 of Directive 2011/36/EU of the European Parliament and of the Council
- 7) Breach of the economic operator's obligations relating to the payment of taxes or social security contributions, where this has been established by a judicial or administrative decision having final and binding effect in accordance with the legal provisions of the country in which it is established or with those of the Member State of the Contracting Authority
- 8) Where a conflict of interest within the meaning of Article 24 cannot be effectively remedied by other less intrusive measures
- 9) Where a distortion of competition from the prior involvement of the economic **operators** in the preparation of the procurement procedure, as referred to in Article 41, cannot be remedied by other, less intrusive measures
- 10) Where the economic operator has been guilty of serious misrepresentation in supplying the information required for the verification of the absence of grounds for exclusion or the fulfilment of the selection criteria, has withheld such information or is not able to submit the supporting documents required pursuant to Article 59
- 11) The applicant or the tenderer has been declared bankrupt or is the subject of insolvency or winding-up proceedings, where its assets are being administered by a liquidator or by the court, where it is in an arrangement with creditors, where its business activities are suspended or it is in any analogous situation arising from a similar procedure under national legislation in the country where the applicant or the tenderer is based.

#### **14. SUPPLIER'S LIABILITY**

With the exceptions set out below, the Supplier is liable to the Customer in accordance with Danish law.

The Supplier's potential liability to the Customer is limited to DKK 31 million.

The limitation of the Supplier's liability in the preceding sentence does not apply if the loss may be attributed to gross negligence or willful conduct of the Supplier nor does it apply if the loss is attributable to the Supplier's breach of section 18.1.

The Supplier is responsible for the safety and security of its employees, sub-contracting consultants, including national employees etc., also if the assignment involves missions in an area of conflict or an area with high security risks.

For the employees assigned to the task, the Supplier has employers' liability as per Danish law

#### **15. INSURANCE**

The Supplier must have valid commercial and liability insurance covering all tasks and services performed under the Framework Agreement for the entire term of the Framework Agreement (see section 22.1). The insurance must enter into force at the latest at the date when the Framework Agreement becomes effective (see section 22.1) and must be in force until and including the Completion date.

The Customer's insurance must have a minimum cover equivalent to the Customer's obligations under section 14.

Any assigned person that under the Framework Agreement performs work for the Customer, regardless of whether the person is employed by the Supplier, a subcontractor or working freelance etc., must be covered by liability insurance. The Supplier must ensure that this coverage is in place at all times.

If requested to do so by the Customer, the Supplier must prove that the requirements for liability insurance are fulfilled.

#### **16. CUSTOMER'S CONDITIONS**

A breach of the Framework Agreement by the Customer is subject to Danish law. Operating loss, loss of profit or other indirect losses are not compensated.

If the Customer defaults on its payment obligations under this Framework Agreement, the Supplier is entitled to interest in accordance with the regulations of the Overdue Payments Interest Act.

The Supplier is also entitled to terminate the Framework Agreement in part to the Customer with effect for future payments if the Supplier has submitted a demand in writing to the Customer that the Customer has in a specified way defaulted on its payment obligations and that failure to pay within 30 days will result in the termination of the Framework Agreement with the Customer, if the Customer does not fulfill its payment obligations by the deadline.

The Customer's liability is maximized in the same way as the Supplier's liability, see section 14.

## **17. FORCE MAJEURE**

Neither the Supplier nor the Customer can under this Framework Agreement be deemed responsible to the other Party to the extent the liability is due to circumstances beyond the control of the Party and which the Party should not at the signing of the Framework Agreement have taken into consideration, nor should have avoided or overcome. Conditions of the Supplier such as this which can be avoided with normal and reasonable preparation is not considered as force majeure, including with regard to internal strikes and illness.

Delay due to force majeure may only be claimed for the number of Work Days while the force majeure situation exists. If a deadline for the Supplier is postponed due to force majeure, the payments related thereto are deferred accordingly without the Supplier's entitlement to interest.

Force majeure may only be invoked if the Party in question has given written notice about this to the other Party within 10 Work Days of the force majeure occurring.

The Party not affected by the force majeure situation is entitled to terminate the Framework Agreement if an agreed deadline is exceeded by 20 Work Days due to the force majeure situation. In the event of such termination, the Supplier is entitled to payment for already provided services before the force majeure situation arose. After that no further claims exist between the Parties under the Framework Agreement.

## **18. RIGHTS**

### **18.1 Customer's right of use**

The Customer is entitled to use, copy, change, publish and distribute any material collected, provided, prepared, developed or assigned to the Customer by the Supplier under the Framework Agreement. The Customer may assign these rights to a third party if the such assignment is necessary in order to perform, arrange or change the tasks or services provided under the Framework Agreement.

The Customer's right of use in this section 18.1 is without any imitation of a temporal, geographic or quantitative nature and is not subject to any remuneration apart from the remuneration payable to the Supplier for the performance of the tasks and services under the Framework Agreement.

In addition to the above, the Customer is entitled to alter, maintain and develop all material prepared by the Supplier under the Framework Agreement.

To the extent that the Customers use of that provided by the Supplier requires specific tools that are not generally available, the Supplier must make the necessary tools available to the Customer without charge, so that the Customer can exercise its right of use in accordance with this section.

If a third party has any rights, including but not limited to intellectual property rights, to whole or one or more parts of the material prepared, supplied or otherwise made available by the Supplier to the Customer under the Framework Agreement, the Supplier shall ensure that such

rights are not infringed and that the Customer acquires all rights of use as specified in this section 18.1.

The Supplier must indemnify the Customer against any and all costs arising from third party claims made alleging infringement of any rights, including but not limited to intellectual property rights, of third parts.

If an infringement of third party rights is reasonably found to exist by the Customer, the Supplier shall at its own expense and choice provide for either changes or replacement of material to provide the Customer or agreement with the relevant third party in order for the Customer to obtain the rights of use specified in this section 18.1.

## **18.2 Customer's material**

The Customer retains property rights in all material made available to the Supplier by the Customer under the Framework Agreement.

Subject to the exceptions set out below in this section 18.2, all material and all copies which the Customer has made available to the Supplier under the Framework Agreement must, upon the Customer's request, be returned or deleted immediately upon termination of the Framework Agreement, regardless of the reason for termination. The Customer may require written documentation that the Supplier has complied with this obligation.

The Supplier is, however, entitled to store such material in accordance with applicable, mandatory law. The Supplier is also entitled to keep one copy of such material for documentation purposes.

The Supplier shall not, without prior written consent of the Customer, publish or make public any material prepared by him in carrying out the tasks and services in the Framework Agreement.

## **19. CONFIDENTIALITY**

For the entire term of the Framework Agreement and for 5 years after the termination thereof, the Supplier, its staff and any sub-suppliers as well as their staff shall treat all documents and information, regardless of format, received under or in relation to the Framework Agreement as confidential and may only apply these in relation to the performance of the tasks and services in the Framework Agreement. The Supplier shall ensure the implementation of this in relation to its staff and any sub-suppliers and their staff.

The duty of confidentiality in this section 19 comprises the content of the Framework Agreement.

The duty of confidentiality in this section 19 does not comprise (i) disclosure with prior, written approval from the protected Party, (ii) disclosure required by a public authority according to applicable legislation, (iii) disclosure for the purpose of resolving a dispute between the Parties and (iv) disclosure to a Party's attorneys and auditors.

Upon request of the Customer, the Supplier shall document that the obligations in this section 19 is complied with.

Section 19 remains in force notwithstanding the termination of the Framework Agreement, regardless of the reason for termination.

The Supplier may not use the Customer as a reference without prior written permission of the Customer. However, the Supplier is entitled to include the Customer on a simple reference list.

## **20. SUBCONTRACTORS**

The Supplier is liable for the tasks performed by the subcontractor as if the tasks were delivered by the Supplier itself. The Supplier's use of subcontractors will not limit the Supplier's responsibility in fulfilling the requirements of the Framework Agreement.

## **21. ASSIGNMENT**

The Customer has the right to assign its rights and obligations under this Framework Agreement in whole or in part to another public institution or an institution owned by the government or being significantly operated by public funds.

The Supplier may not without the written consent of the Customer assign its rights and obligations under this Framework Agreement to a third party.

The Supplier pays for any of its own expenses that may be associated with the assignment.

## **22. DURATION AND TERMINATION**

### **22.1 General**

The Framework Agreement shall become effective upon the Day of the Customer's signing of the Framework Agreement and will continue to be effective until *30<sup>th</sup> of June 2020*.

The Customer may order tasks from the Supplier until the termination of the Framework Agreement in accordance with this section 22.1 or with sections 22.2 or 22.3.

The term of the Framework Agreement can be extended up to a contract period for 4 years, provided the Customer gives written notice about this to the Supplier at the latest 2 months before the Framework Agreement would otherwise have expired.

The Framework Agreement is non-terminable for the Supplier but can be terminated by convenience by the Customer with a written notice of 6 months.

### **22.2 Termination upon avoidance**

Under the law on the Danish Board of Appeal for public procurement, etc., the Danish Board of Appeal for public procurement may in certain cases of violation of procurement rules declare a concluded Framework Agreement to be void and order the Contracting Authority to terminate the Framework Agreement within a deadline set by the Board of Appeal.

Based on this, the following provisions are determined on the Customer's ability to terminate the Framework Agreement in such a case.

The Customer is entitled to terminate the Framework Agreement in whole or in part with a notice in accordance with the Danish Board of Appeal for public procurement or court injunctions. The Framework Agreement will terminate completely/partially upon annulment with effect in time as determined by the order.

If there are additional conditions or requirements in the order that is issued, the Customer is entitled to continue these conditions or requirements in the cancellation to the Supplier provided that this is justified by objective reasons and the Supplier must then comply with these.

Any claim for compensation or other forms of reimbursement by the Supplier as a result of the Framework Agreement being declared void, or for ordering the termination, including e.g. for costs of complying additional conditions and requirements that the Customer has pursued in the termination, must initially be settled according to Danish law. However, the Parties have agreed that indirect losses cannot be compensated and that the compensation is maximized in accordance with section 14.

If the Supplier at the time of concluding the Framework Agreement had or should have had knowledge of the actual and/or legal circumstances that causes the Framework Agreement to be declared void, the Supplier may not claim damages or demand any other form of compensation as a result of the Framework Agreement being declared void, or for ordering the termination, including for costs of complying additional conditions and requirements that the Customer has pursued in the termination.

### **22.3 Termination upon annulment**

Under the Public Procurement Act, the Danish Board of Appeal for public procurement or the general courts by final decision or judgement may cancel the award decision after which the Contracting Authority must terminate a Framework Agreement that is concluded on the basis of the decision with adequate notice, unless special circumstances that justify the Framework Agreement's renewal are applicable.

Based on this, the following provisions are determined on the Customer's ability to terminate the Framework Agreement in such a case.

The Customer is entitled to terminate the Framework Agreement in whole or in part with adequate notice. The Framework Agreement will therefore completely cease upon termination.

Any claim for compensation or other forms of reimbursement by the Supplier as a result of the termination of the Framework Agreement due to the annulment of the award decision must initially be settled according to Danish law. However, the Parties have agreed that indirect losses cannot be compensated and that the compensation is maximized in accordance with section 14.

If the Supplier at the time of concluding the Framework Agreement had or should have had knowledge of the actual and/or legal circumstances that cause the annulment of the award decision, the Supplier may not claim damages or demand any other form of compensation as a result of the annulment of the award decision.

### **23. OBLIGATIONS ON TERMINATION**

Upon termination of the Framework Agreement regardless of reason – the Customer is entitled to decide in whole or in part and against a proportional remuneration to assume the completed work until then in the form of written material, data, etc. with the aim of completing the task with the possible assistance of third parties, see section 13.4.

The termination of the Framework Agreement will not affect the validity of the contractual terms (on liability, confidentiality, etc.) that aims to apply even after the termination of the Framework Agreement.

Regarding the termination of the Framework Agreement for whatever reason, the Supplier is obliged to assist the Customer to a reasonable extent in relation to facilitating the basis for a possible implementation of renewed offer of services that the Framework Agreement includes.

Furthermore, the Supplier is obliged to cooperate as necessary with any new supplier as to the transition of the task to the new supplier.

The Supplier will not receive additional remuneration for these tasks.

### **24. CHANGES AND INTERPRETATION**

This Framework Agreement may be amended only by written agreement between the Customer and the Supplier that is attached to the Framework Agreement as an addendum.

Provisions in the tender specifications in the Supplier's offer during correspondence prior to the conclusion of the Framework Agreement or similar that are not repeated in this Framework Agreement may not be invoked subsequently as the basis for interpretation.

Reference to the Framework Agreement or the provision herein also includes the appendices to the Framework Agreement that are relevant to the provision in question.

In case of discrepancies between the Framework Agreement and the Appendices, the Framework Agreement will prevail.

### **25. DISPUTES**

Any dispute arising out of or in connection with the Framework Agreement, including any disputes regarding the existence, validity or termination thereof, shall be settled by arbitration administrated by The Danish Institute of Arbitration (“Voldgiftsinstituttet”) in accordance with the rules of arbitration procedure adopted by The Danish Institute of Arbitration and in force at the time when such proceedings are commenced.

The arbitral tribunal shall be composed of one sole arbitrator.

The place of arbitration shall be Copenhagen.

The language to be used in the arbitral proceedings shall be English or Danish.

This Framework Agreement shall be governed by the substantive law of Denmark.

Before a dispute can be brought before The Danish Institute of Arbitration, each Party shall participate in a settlement negotiation meeting at the request of the other Party if the Party requesting the meeting has given at least six (6) Days' notice in writing. At the meeting, the Parties shall seek to resolve the dispute by negotiation.

However, if the Parties do not wish to hold a settlement negotiation meeting or if the dispute is not resolved within 14 Days of a written request from a Party for a settlement negotiation meeting (as described in the preceding paragraph of this section 25), the dispute shall be brought before the Danish Institute of Arbitration for final and binding resolution in accordance with this section 25.

## **26. SEPARATE AGREEMENT**

The Parties agree that section 22.2 of the Framework Agreement constitutes a separate agreement between the Parties that is applicable regardless of whether the Framework Agreement in general may be declared void.

## **27. SIGNATURES**

The Framework Agreement is signed in two counterparts of which each Party has received one, both of which are considered the original Framework Agreement.

Place:

Date:

For the Customer:

Place:

Date:

For the Supplier: