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| Design and build contract |

Regarding upgrade of podiums and back drop elevator to electrical drives

# The Parties

Between

The Royal Danish Theatre

August Bournonvilles Passage 2-8

DK-1017 København K

- represented by Søren Nylin

(*in the following referred to as the “****Client”***)

and

[Company]

[Address]

[Postal code and city]

CVR no. (business reg. no.): […]

– represented by the project manager [name]

(*in the following referred to as the* ***"Design and Build Contractor”***)

it is hereby agreed that the Design and Build Contractor undertakes to perform the following works

Upgrade of podiums and back drop elevators to electrical drives. For further description of the works and services contained in the present contract reference is made to the Employer’s Requirements (Appendix 1-3).

The Design and Build Contract shall be performed at Sankt Annæ Pl. 36, 1250 Copenhagen, Denmark.

The following persons have been designated pursuant to clause 62(3) of ABT 18 *(General Conditions for Design and Build Contracts)*:

* The Client’s project manager: [name]
* The Client’s management representative: [name]
* The Design and Build Contractor’s project manager: [name]
* The Design and Build Contractor’s management representative: [name]

# Definitions

Contract: This design and build contract.

Project: the entirety of the services to be delivered and the works to be carried out under the Contract.

# The contractual basis

In the event of discrepancy between the documents, the documents shall apply in the following order of priority:

1. The Design and Build Contract.
2. Letters exchanged, minutes of meetings and other written material containing changes/additions to or clarifications of the contract documents and which are before the date of the tender.
3. ABT 18.
4. The Client’s tender documents.
5. The Design and Build Contractor’s tender, including Appendix 4-5.

To the extent that the Design and Build Contractor’s tender offers more than required in the tender documents in terms of scope and/or quality, the Design and Build Contractor shall be bound by such offer irrespective of the above order of priority.

# Organisation

## The Client

The Client is represented by project manager Søren Nylin.

The Design and Build Contractor is represented by [The Design and Build Contractor’s project manager] who is authorised to carry out all operations with binding effect on behalf of the Design and Build Contractor concerning the Contract.

In addition, the Client has attached the following consultants to the Project:

As client consultant:

Theatreplan Limited

31 Colonnade

London WC1N 1JA, United Kingdom

Tel.: +44 20 7841 0445

E-mail: dave@theatreplan.co.uk

CVR no. (business reg. no.): 10379921

- represented by Dave Ludlam

Unless otherwise informed, the client consultant acts as the Client’s direct representative to the extent that the Client’s interests are not handled by other consultants or are indisputably handled by the Client itself.

## The Design and Build Contractor

The Design and Build Contractor has attached the following technical consultants to the Project:

[Name, addresse]

Tel.: […]

Fax: […]

E-mail: […]

CVR no. (business reg. no.): […]

- represented by [Name]

with the following sub-consultants:

[…]

Key personnel appointed are:

* Lead mechanical designer: [name and company]
* Lead electrical designer: [name and company]
* Lead control system engineer: [name and company]
* Site mechanical installation manager: [name and company]
* Site electrical installation manager: [name and company]
* Project manager: [name and company]

# Scope

## General

For a detailed description of the Project reference is made to the following documents:

* Appendix 1:Employer’s Requirements (Specific)
* Appendix 2:Employer’s Requirements (General)
* Appendix 3:Employer’s Requirements (Technical)

## Options

*[The following section is to be adjusted before signing the contract]*

The Employer’s Requirements contains various optional services.

Before entering into the Contract, the Client has opted for the following additional services:

# The design and build contract sum

The price of the design and build contract incl. the opted options, cf. section 5.2, is fixed at DKK [amount] excluding VAT.

*Say, Danish Kroner* […]*.*

# Terms of payment

The Design and Build Contractor shall be entitled to receive full payment of the contract sum, cf. clause 6, upon the Client’s written confirmation of completion of handover, cf. clause 9

The Design and Build Contractor shall be entitled to receive prepayment of up to 50 % of the contract sum, cf. clause 6. However, such prepayment shall only be made against an on-demand bank guarantee being issued in favor of the Client in an amount corresponding to the full amount of the prepayment. The on-demand bank guarantee shall be issued by a bank acceptable to the Client and on terms acceptable to the Client. The on-demand bank guarantee shall be valid until the Client’s written confirmation of completion of handover.

In case the Client has made a prepayment to the Design and Build Contractor, such prepayment shall be deducted from the Client’s payment upon the Client’s written confirmation of completion of handover.

Invoices shall be submitted to the Client by electronic means.

All invoices must specify the contract number and/or project name and clearly state to what the amount applies. All invoices shall also include the name of the business in question.

For reimbursement of disbursements, if any, original invoices shall be submitted to the Client.

The time of payment is 30 calendar days after receipt of a satisfactory invoice.

# The Design and Build Contractor’s deliverables

## General

For a detailed description of deliverables under this Contract reference is made to Appendices 1-3.

In this connection, the Contract covers all technical advice and assistance necessary for the performance of the project, including any structural engineering work, plumbing engineering work and electrical engineering work. All technical advice and assistance shall take place in accordance with the description of the deliverables set out in Appendices 1-3.

The Contract includes all work necessary for the performance of the Project. The Design and Build Contractor shall provide all equipment, tools, materials etc. necessary for the performance of the Project.

The Design and Build Contractor shall assist the Client in all matters pertaining to the Project, including in relation to all other parties involved in the process, including contracting parties and public authorities.

With respect to the requirements for the Design and Build Contractor's deliverables under this Contract, reference is made in general to the following contract documents:

* Appendix 1:Employer’s Requirements (Specific)
* Appendix 2:Employer’s Requirements (General)
* Appendix 3:Employer’s Requirements (Technical)

## Meetings

The Design and Build Contractor and the Design and Build Contractor's technical consultants shall participate in all meetings that are relevant to the performance of the Project, including Client meetings, meetings with other consultants, meetings in user groups, etc., and steering group meetings.

Weekly meetings are expected to be conducted from the signing of this Contract until the Project has been fully completed.

The Design and Build Contractor shall provide secretariat services comprising, *inter alia*, drafting of agendas, convening of meetings and drafting of minutes of meetings directly following meetings with the Client, the client consultant, public authorities, other consultants and other operators, unless otherwise agreed in connection with the specific meeting.

During the meetings, the Design and Build Contractor shall assist with comprehensive written assessments and recommendations regarding the Project, including any changes that may arise during the Project.

Physical meetings are expected to be held at The Royal Danish Playhouse or at other locations of the Royal Danish Theatre, depending on the specific needs. If preferred by the Client or if the circumstances do not permit meetings being held physically, virtual meetings may be held instead.

# Time schedule

The work shall be carried out in accordance with the agreed programme, cf. Appendix 5.

The works are considered handed over to the Client when the handover meeting has been held. If material defects are identified at the meeting, including matters that prevent the works from being put into use to a material extent, the works are not considered handed over to the Client until the material defect are remedied.

The matters listed in Appendix 1, section 5.5, are considered particularly essential for handover to take place.

# Delay

## Handover

The handover deadline is July 31, 2022 (the time of handover).

Compensation claims for loss due to non-compliance with the handover deadline may be claimed against the Design and Build Contractor in accordance with the general rules of Danish law.

# Force Majeure

A party cannot be held responsible for delays caused by:

* public enforcement notices or prohibitions which are not due to the circumstances of that party,
* State or Country order to stop working (e.g. due to the covid-19),
* Acts of God, strikes, war or warlike conditions preventing the party to meet its obligations

The Design and Build Contractor must notify the Client immediately after the Design and Build Contractor becomes aware that a delay caused by the above will occur.

# Defects

The Design and Build Contractor shall provide a one-year warranty on the complete installation after handover, cf. Appendix 2, section 1.11.

The Client’s claims against the contractor for defects must be submitted no later than two years after handover of the works. After expiry of this period of time, the client is not entitled to file any claims against the contractor. Consequently, the number of years stated in ABT 18, clause 47 (1) and clause 53 (1) shall be changed to two years (instead of five).

# Intellectual property rights

The Client shall acquire a royalty-free, non-exclusive and irrevocable right of use of any project material from the Design and Build Contractor protected by intellectual property rights, including copyrights, patent rights, trademark rights, design rights, utility model rights and rights under the Danish Marketing Practices Act.

Project material may be, for example, descriptions, construction drawings, technical drawings, digital building models and any documentation, including operation and maintenance documentation, but generally comprises any material received by the Client from the Design and Build Contractor.

The overall purpose of the Client’s right of use is to ensure the Client’s independence of the Design and Build Contractor. The Client’s right of use shall be unlimited in time, territory and quantity. In qualitative terms, the right of use shall include any use in connection with the Project and the completed constructions, installations etc. The Client may for example use the project material during the execution of the Project and in connection with maintenance and further development and extension of the completed buildings/construction.

In addition, the Client is entitled to carry out changes to the project material, for example in connection with maintenance and further development of the completed constructions, installations etc. The Design and Build Contractor is not responsible for any changes made by the Client.

The Client is entitled to allow third parties assisting the Client in connection with the Project and the completed construction to use the project material and carry out changes in the same way as the Client. Other third parties are also entitled to use the project material in the same way as the Client, including in connection with submission of tender for the Client’s procurement of deliverables in relation to the completed Project.

The Client and third parties are subject to a duty of confidentiality in relation to the project material in accordance with general rules. However, the duty of confidentiality shall not in any way limit the right of use under this clause.

The Design and Build Contractor warrants that any third party rights to the project material have been cleared so that the Client acquires a right of use of the project material as stated in this clause. The Design and Build Contractor shall indemnify the Client for any claim that may arise due to third party rights not having been sufficiently cleared.

The right of use under this clause shall accrue as the project material comes into the Client’s possession, including when the Client has received the project material digitally. At the end of the Design and Build Contract, the Client shall retain the right of use, unless the Design and Build Contract ends due to the Design and Build Contractor’s justified termination for cause.

# Security

The Design and Build Contractor shall provide security to the Client as stated in clause 9 of ABT 18, which is fixed at DKK [*15 % of the Contract value*].

*Say, Danish Kroner […].*

# Liability

The Design and Build Contractor is liable in accordance with ABT 18.

This shall apply irrespective of whether such circumstances are attributable to the Design and Build Contractor or the Design and Build Contractor’s subcontractors.

# Insurance

## The insurance of the Design and Build Contractor

A copy of the Design and Build Contractor’s general liability and product liability insurance policy is attached to the Contract as Appendix 6.

The Design and Build Contractor must take out usual professional and product liability insurance, cf. clause 11, subclause 3, of ABT 18.

## The Client’s insurance

The Client is self-insured and has taken out no insurance.

# Labour clause

## Use of labour

The Design and Build Contractor shall ensure that workers employed by the Design and Build Contractor and the Design and Build Contractor’s subcontractors/subsuppliers who contribute to the performance of the contract in Denmark are secured pay, including special allowances, hours of work and other labour conditions which are not less favourable than those established for work of the same character under a collective agreement entered into by the most representative organisations of workers and employers in Denmark in the trade or industry concerned in force throughout the territory of Denmark.

As a standard of reference, a collective agreement shall be used that is representative of what applies in general in Denmark in the relevant industry.

The Design and Build Contractor shall ensure that the Design and Build Contractor's employees and the employees of the Design and Build Contractor’s subcontractors/subsuppliers are informed of applicable labour conditions. The Client may demand proof of the employees having been properly informed.

The Client is entitled at any time to request relevant proof that the conditions of pay and work comply with this obligation. Upon written notice, the Design and Build Contractor shall provide relevant documentation from both its own workers and those of any subcontractors/subsuppliers.

The documentation shall be received by the Client not later than five working days after receipt of the written notice.

Relevant documentation may be, for example, pay-slips, payroll accounts, residence permits, and contracts of employment or certificates of employment.

At the Client’s request, the Design and Build Contractor shall furthermore provide proof that the Design and Build Contractor is registered in relevant registers, such as the Directory of Foreign Service Providers (*in Danish: Registret for Udenlandske Tjenesteydere (RUT)*) and the E-income register.

The Client is entitled to request the individual employees to provide documentation of their employment or employment conditions. The Design and Build Contractor shall ensure that its employees have proper certificates of employment, and the Design and Build Contractor shall ensure that the employees are obliged to provide such documentation at the Client’s request.

Depending on the circumstances, the documentation may cause the Client to forward the documentation to other authorities, such as tax authorities, the Danish Working Environment Authority and/or the police.

Any breach of the labour clause shall be deemed to be a material breach of the Contract. After service of the above notice concerning documentation, the Client may terminate the Contract for cause in writing and with immediate effect.

If the Design and Build Contractor, despite service of notice, breaches the labour clause, including fails to submit relevant documentation, the Client may instead demand a penalty of DKK 5.000 for each working day or part of a working day until the matter has been rectified and documentation thereof has been received. The Client is entitled to set off the penalties against any payments to the Design and Build Contractor.

# Use of subcontractors/subconsultants

[The Design and Build Contractor is obliged to have [the relevant services related to the minimum requirement regarding technical and professional ability] carried out by [the entity upon which the tenderer has relied its professional experience on].] [*Only relevant if tenderer in its tender submission has relied on other company’s capacity to fulfil the minimum requirements for suitability.]*

Before commencement of the work, or not later than five working days after these details are known, the Design and Build Contractor shall inform the name, contact details and legal representative of the subcontractors/subconsultants that the Design and Build Contractor intends to use for the performance of the Contract.

The Design and Build Contractor may not enter into any agreement with subcontractors/subconsultants that at the time of conclusion of the agreement would have been subject to any of the grounds for exclusion that apply to the tender procedure for this Design and Build Contract, for example because the subcontractor/subconsultant concerned has participated in anti-competitive practices within the last two years, see sections 135-137 of the Danish Public Procurement Act and section III.2.1 of the Contract Notice [(no.)].

If the Design and Build Contractor enters into any agreements with subcontractors/subconsultants after conclusion of the Contract, or replaces subcontractors/subconsultants after conclusion of the Contract, the Design and Build Contractor shall obtain documentation from the subcontractor/subconsultant to ensure that the subcontractor/subconsultant is not subject to any of the grounds for exclusion that apply to the tender procedure, see above. The documentation shall be obtained before conclusion of contracts with subcontractors/subconsultants. The documentation shall correspond to the documentation set out in section 159(2) of the Danish Public Procurement Act. For Danish subcontractors/subconsultants the documentation could be, for example, a service certificate. Upon written notice, the Design and Build Contractor shall submit documentation to the Client.

The Design and Build Contractor is entitled to request in writing the Client’s opinion on specific subcontractors/subconsultants. The Client shall respond to such request not later than five working days after receipt of the written request.

If the Client discovers that the Design and Build Contractor has entered into an agreement with a subcontractor/subconsultant that would have been excluded from submitting tender, the Client may demand that the subcontractor/subconsultant be replaced if the Design and Build Contractor knew or should have known that the subcontractor/subconsultant in question would have been excluded from submitting tender. In this case, the Client shall serve written notice on the Design and Build Contractor, specifying a time-limit of max. 10 working days to remedy the matter. The Design and Build Contractor shall bear all costs in this connection, as well as the consequences in terms of time.

## Replacement of subcontractors/subconsultants

If the Design and Build Contractor wishes to use other subcontractors/subconsultants than those included in the Design and Build Contractor's tender, any binding agreement with such subcontractors/subconsultants shall be subject to the Client's prior approval of the subcontractors/subconsultants in question. Such approval shall not be withheld unless objectively justified.

Any replacement of subcontractors/subconsultants approved by the Client in connection with conclusion of this Contract shall be subject to the same conditions as stated below regarding replacement of key personnel, see clause 17, and subject to documentation that the new subcontractor/subconsultant in question has at least the same expertise and qualifications as those of the original subcontractor/subconsultant.

# Replacement of key personnel

The Project is to be performed by the personnel stated in the tender. The key personnel, cf. clause 4.2, shall be available for the task to the extent necessary and at least as indicated in the Design and Build Contractor's tender. If, however, the Client, based on justifiable grounds, is of the opinion that the cooperation between the Design and Build Contractor and the Client is not effective, the Client shall be entitled to demand that the key employee in question be replaced and that a new key employee be appointed. A new key employee shall at least have the same expertise and qualifications as those of the originally appointed key employee. Proof thereof shall be provided at the Client’s request. The Client is entitled to reject a new key employee, if the person in question does not have the same expertise and qualifications as those of the originally appointed key employee.

Any key employees set out in the tender at the time of conclusion of the Contract may otherwise only be replaced if the persons concerned change jobs or are otherwise unable to fulfil their role at the Design and Build Contractor. Any new key employee shall at least have the same expertise and qualifications as those of the original key employee. Proof thereof shall be provided at the Client’s request. The Client is entitled to reject a new person if the person in question does not have the same expertise and qualifications as those of the originally appointed person.

# Confidentiality and inquiries from the press etc.

Any contact with the press and the general public regarding the Project shall be handled by the Client. The Design and Build Contractor and the Design and Build Contractor’s subcontractors may therefore not communicate with the press or the general public about matters relating to the Project without the Client’s prior consent. The Design and Build Contractor thus undertakes to forward all inquiries from the press to the Client’s project manager. Any participation in news reports or responses to inquiries from reporters shall be subject to prior agreement and coordination with the Client’s project manager.

The Design and Build Contractor represents the Client in relation to the other parties of the Project and is subject to a duty of confidentiality about all matters relating to the Client’s activities of which the Design and Build Contractor may acquire knowledge. The duty of confidentiality shall also apply to the Design and Build Contractor’s personnel, subcontractors attached to the Project, etc.

The duty of confidentiality shall apply without limitation in time.

# Personal data

The Design and Build Contractor shall ensure that the Design and Build Contractor and the Design and Build Contractor’s subcontractors/subconsultants handle personal data received in connection with the Project in accordance with the law on processing of personal data. The Design and Build Contractor and its subcontractors/subconsultants shall furthermore handle data received in connection with the Project in a safe manner so that the data are not disclosed to any unauthorised parties or distorted.

In addition, the Design and Build Contractor shall ensure that, in connection with disclosure of personal data to the Client, including in particular in relation to documentation disclosed in accordance with clause 14, the consent of the data subjects has been obtained for disclosure of the personal data in question to the extent that this may be required pursuant to applicable data protection law, or that there is another legal basis for the processing.

# Duration and Termination of the contract

The Contract becomes effective from signing of the contract. The Project is carried out according to the programme, cf. section 8 and Appendix 5.

The Client may terminate the Contract under any of the following circumstances:

1. If the Contract is nullified by the Danish Complaints Board for Public Procurement.
2. If the decision to award the Contract to the Design and Build Contractor is declared without effect by the Danish Complaints Board for Public Procurement.
3. If the Design and Build Contractor at the time of award of the contract was subject to or later becomes subject to any of the compulsory grounds for exclusion set out in sections 135 and 136 of the Danish Public Procurement Act, or the exclusion ground stated in the Danish Public Procurement Act, section 137(1), para 2.

# Appendices

Appendix 1: Employer’s Requirements (Specific)

Appendix 2: Employer’s Requirements (General)

Appendix 3: Employer’s Requirements (Technical)

Appendix 4: Pricing Schedule

Appendix 5: Response to Tender Submissions A1-A8

Appendix 6: Insurance policy

Appendix 7: General conditions for design and build contracts (ABT 18)

# Signatures

Date Date

For and behalf of the Client For and on behalf of the Design and Build Contractor

Signature Stamp and signature