

Contract Draft

Digitisation of VHS-tapes



**DET KGL.
BIBLIOTEK**

Royal Danish Library

DIGITAL CULTURAL HERITAGE

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Content

0. Definitions.....	3
1. The Parties	4
2. Contact persons	4
3. The contract.....	5
4. The term of the contract.....	5
5. Background	5
6. The Scope of the Assignment	5
7. Time schedule 2019.....	6
8. Requirements Specification	6
9. Payment	6
10. Invoicing	7
11. Amendment of the contract	7
12. Subsuppliers.....	7
13. Assignment of rights.....	7
14. Confidentiality	8
15. Marketing	8
16. Penalties for Late Delivery of files	8
17. Deficiencies	8
18. Communication between Parties	8
19. Modification of the Contract	8
20. Termination of Contract	9
21. Insurance	9
22. Force majeure.....	9
23. Rights	10
24. Confidentiality	10
25. Disputes, Applicable Law and Jurisdiction	10
26. Compensation	10
27. ILO-Convention 94.....	11
28. Signatures (To be completed in final Contract).....	11

0. Definitions

In this document, the following terms are defined:

Contract	The legal agreement between RDL and the Service Provider to supply services in the Contract and RFP, including modifications and attachments
Collection of Items	The event, where the original information carriers (VHS-tapes) supplied by RDL, are picked up at RDL by the Service Provider
Deliverables	The digital files (including metadata files and md5 checksum files) produced from original media in accordance with and conforming to specifications agreed upon in the Contract and RFP
Deliverables' File Formats	The required file formats of the Deliverables
Delivery of Files	The event where all Deliverables are received by RDL
Item	The original information carrier (VHS-tape) supplied by RDL from which a digital copy is produced by the Service Provider
Partial Delivery	The event where a subset of the Deliverables are received by RDL
Preservation File	The Preservation File, which is a result of the initial digital capture/transfer
Tender Conditions	The description, prepared by RDL, of the required services to be supplied by the Service Provider
Return of Items	The event where some or all original information carriers (VHS-tapes) supplied by RDL, are returned to RDL by the Service Provider
RDL	Royal Danish Library
Service Provider	The company awarded the Contract to supply services as specified in the Contract and Tender Conditions
Test Sample Delivery	The event where the Deliverables serving as test sample is received by RDL
Work Day	Monday to Friday except for Danish state holidays, the Danish Constitution Day, Christmas day, New Year's day and the following weeks: week 42 and week 52

1. The Parties

Between

The Royal Library
Victor Albecks Vej 1
DK-8000 Aarhus C

hereinafter referred to as RDL

and

Name:
Address:
Postcode:
Country:

hereinafter referred to as the Supplier

as of today's date the following agreement has been established concerning the Digitisation of VHS-tapes.

2. Contact persons

Primary contact person (project manager) at the Service Provider:

➤ Name:
Email:
Phone:

Secondary contact person (if the primary contact person cannot be reached) at the Service Provider:

➤ Name:
Email:
Phone:

Primary contact person (project manager) at RDL:

➤ Name: Niels Bønding
Email: nieb@kb.dk
Phone: +45 5129 8990

Secondary contact person (if the primary contact person cannot be reached) at RDL:

➤ Name: Ditte Laursen
Email: dila@kb.dk
Phone: +45 9132 4465

3. The contract

3.1. The contract consists of this document with the following Contract Annexes:

- Contract Annex 1 - Specification of Requirements, completed with suppliers comments.
- Contract Annex 1.1 - metadata-spec-technical
- Contract Annex 1.2 - video-example-metadata-vhs
- Contract Annex 2 - Pricing form

4. The term of the contract

4.1. This contract concerning digitisation of VHS-tapes, and will enter into force when signed.

4.2. The contract will be in effect for 2019 only. All deliverables must be delivered to and approved by RDL in 2019.

5. Background

Royal Danish Library has physical collections with an extensive amount of video recordings. Parts of these will be digitised in-house whereas some media digitisation must be outsourced. RDL has examined its collections and selected a number of Items as candidates for digitisation in 2019. Only Items with unique, preservation-worthy Danish cultural heritage have been chosen for digitisation.

6. The Scope of the Assignment

In case of any discrepancies between the Contract (including the Tender Conditions) and the Service Provider's proposal, the terms of the Contract and will take precedence.

Selected Items for Digitisation:

Priority	Format & Type	Content & Age	Number of Items	App. Minutes per Item	App. Hours in Total
1	VHS, "Zulu"	Broadcast, 2000-2005	4631	200	15420
2	VHS, "Charlie"	Broadcast, 2004-2005	546	200	1820

RDL reserves the right to reduce or increase the number of Items by maximum 10 % while retaining the unit price.

The condition of the items is unknown, since they have not been handled (except for labelling) since acquisition. All Items are currently stored under dry and cool conditions (around 38%RH and 17°C), but some of the Items might show signs of deterioration.

There are no reliable time codes and run times on the Items or their covers, so technical and human observation is needed during digitisation of the Items.

The Items and/or covers of the Items are labelled with a bar code.

7. Time schedule 2019

Event	Date	Initiator
Contract (s) signed	Expected 26 September 2019	RDL and Service Provider
Collection of test Items	Expected 1 - 4 October 2019 (Exact date to be determined by Service Provider. The Collection of Items must take place on a Work Day)	Service Provider
Deadline for Delivery of First Test Sample	Expected 9 October 2019	Service Provider
QC of Test Sample(s)	Expected 9-10 October 2019	RDL
Response to First Test Sample	Expected 11 October 2019	RDL
First collection of Production Items (alternatively collection of items for second test sample)	Expected 14-16 October 2019 (Exact date to be determined by Service Provider. The Collection of Items must take place on a Work Day)	Service Provider
If necessary: Deadline for Delivery of Second Test Sample	Expected 15 October 2019	Service Provider
If necessary: QC of Second Test Sample	Expected 15-16 October 2019	RDL
If necessary: Response to Second Test Sample	Expected 17 October 2019	RDL
If necessary: First collection of Production Items	Expected 21-23 October	Service Provider
Next steps (loop if necessary):		
Delivery of batch of deliverables	To be planned	Service Provider
Test of batch of deliverables	To be planned	RDL
Either: OK. Service Provider can return the items and send an invoice, Or: Not OK. Service Provider must make new delivery in accordance with specifications.	To be planned	RDL

8. Requirements Specification

The requirement specifications are described in Contract Annex 1 - Specification of Requirements.

9. Payment

Prices

The Service Provider will deliver in accordance with the prices stated in Contract Annex 2 - Pricing form.

These prices and the delivery date will not be changed if RDL provides up to 10% more Items.

Prices do not include any VAT. No VAT will be charged.

RDL must approve any additional services that induce a deviation from the base price in advance in writing.

10. Invoicing

10.1 The prices, as they are mentioned in 9.1. are agreed as a fixed price of Euro, including all possible costs, including the cost of meetings and transport, etc. excluding VAT.

10.2 RDL settles the individual tasks with the supplier, when these have been completed and approved by RDL.

10.3 The Service Provider will not issue an invoice until RDL has approved the Delivery of Files.

10.4 If the Delivery of Files is delayed, the Service Provider will invoice all costs as soon as possible after RDL has approved the Delivery of Files.

However, if RDL has not notified the Service Provider on approval/rejection of the Delivery of Files after 10 Work Days after the Delivery of Files, deliveries may be considered as validated, and the Service Provider may issue an invoice.

10.5 The Service Provider must include the following information on the invoice:

The VAT-number of the Service Provider

The full name and address of the Service Provider

A unique invoice number

An invoice date

A payment deadline: To be paid within 30 days

Description of the purchase and price

Currency: €

The payment details of the Service Provider: BIC/SWIFT and IBAN-number

11. Amendment of the contract

11.1. Additions or amendments to the contract are made by written agreements between the parties.

11.2. Amendments or additions are numbered consecutively, signed by both parties and attached to the contract.

12. Subsuppliers

12.1. Without KB's prior written consent, the Supplier may not use subsuppliers for the Task. In the same way, without KB's prior written consent the Supplier may not replace subsuppliers that have already been accepted.

12.2. The Supplier will be liable for its subsuppliers in the same way as for its own affairs.

13. Assignment of rights

13.1. KB will be entitled to assign its rights and obligations under this contract to another public institution when the tasks so far undertaken by KB are transferred to this other institution.

13.2. Without KB's written consent, the Supplier may not assign its rights and obligations under this contract to any third party. However, KB may not refuse such consent without objective grounds.

14. Confidentiality

14.1. The Supplier and its personnel must observe an unconditional duty of secrecy concerning any information with regard to KB or other parties' circumstances disclosed to them in connection with the fulfilment of this contract. The Supplier will impose the same obligation on all sub-suppliers and other parties that assist the Supplier.

14.2. The duty of secrecy does not concern publicly available information, as well as information disclosed to KB by a third party which legally holds such information, and which is not subject to any confidentiality obligation.

15. Marketing

The Supplier may not use KB in its marketing, including on the Supplier's website, in reference lists, etc. without KB's prior written consent.

16. Penalties for Late Delivery of files

16.1. If RDL does not receive the Deliverables related to the digitisation of one or more formats before the agreed date, the remuneration of the Service Provider, in relation to these formats, will be reduced by 10%.

16.2. If RDL does not receive the Deliverables related to the digitisation of one or more formats before the new agreed date, the remuneration of the Service Provider, in relation to these formats will be reduced by 20%, and RDL reserves the right to withdraw from the Contract.

17. Deficiencies

17.1. Deficiency of delivery occurs, if a delivery does not satisfy this Contract's specified requirements, or if the delivery does not correspond to RDL's reasonable expectations.

17.2. RDL must submit a written complaint to the Service Provider within a reasonable time after RDL has found that a Partial Delivery is deficient. The notification shall contain a description of the points in which the Partial Delivery is deemed defective and in which period, the Service Provider shall remedy the deficiencies.

17.3. If the Service Provider's attempts at remedying the deficiencies take more than 10 Work Days, or three consecutive attempts are deemed unsuccessful, RDL is entitled to a proportionate financial reduction in compensation for the affected Partial Delivery. If the deficiency is also likely to occur in other Partial Deliveries, RDL is entitled to terminate the Contract completely or in part, of their choice.

Except as stated above, Danish law applies on issues of remedies and defects.

18. Communication between Parties

Communication as referred to under this Contract shall be in writing, including by email and sent to the list of project managers.

19. Modification of the Contract

Any additions or modifications to the Contract is made by written agreement between the two parties. Modifications or additions should be numbered sequentially and signed by both parties, and attached to the Contract.

20. Termination of Contract

20.1. Besides what is provided in the Contract, both parties are entitled to terminate the Contract completely or in part in case the other party is in material breach of its obligations under the Contract.

Upon termination, the Service Provider shall immediately return RDL's Items in the Service Provider's possession.

Termination of Contract does not mean that the withdrawing party is eligible for compensation.

20.2. If the Service Provider is in a force majeure situation, see section 22, which prevents the Service Provider from fulfilling its obligations under the Contract, RDL is entitled to terminate the Contract completely or in part, if the force majeure lasts more than 30 Days.

20.3. To the extent that bankruptcy rules do not preclude, RDL may terminate the Contract if the Service Provider becomes bankrupt, suspends its payments, opens negotiations for other contractual relationships, or the Service Provider's property is in financial jeopardy to the extent that it can be ascertained that the Service Provider cannot successfully fulfil the Contract. The same applies if the Service Provider dissolves its business referred to in this Contract, or if any other occurrences endanger the successful completion and fulfilment of this Contract.

20.4. Termination of contract does not release the Service Provider in relation to obligations relating to previously completed part deliveries under the Contract.

21. Insurance

21.1. The Service Provider is required to be covered by ordinary and/or statutory insurance, including professional liability insurance, product liability insurance, transport insurance and fire insurance.

21.2. RDL's Items shall be covered by insurance. If this insurance does not have the required coverage, the Service Provider shall take out appropriate additional insurance as part of the Delivery.

21.3. If the Service Provider employs the use of subcontractors, the Service Provider is required to ensure that the subcontractors meet the above-mentioned criteria for insurance coverage, as well.

21.4. RDL may request evidence that all of the above insurance policies are in force.

22. Force majeure

22.1. None of the parties bear any responsibility to the other for unforeseeable circumstances, if at the time the Contract goes into effect, these circumstances could not have been predicted, avoided or overcome, including strike and/or lockout (force majeure).

22.2. In case of force majeure, which prevents the Service Provider's delivery of a Partial Delivery, contractual obligations shall be void for the parties, to the extent and as long as the force majeure lasts. There will be no payment during the period of force majeure.

22.3. The party seeking to invoke force majeure shall notify the other party in writing as soon as force majeure is declared, and upon such notification, provide orientation on the force majeure anticipated scope and duration.

23. Rights

RDL retains at any time property rights of the Items, and all Deliverables and digitisations. The Service Provider must destroy all digital copies of RDL's property within two months after the Delivery of Files under the Contract, and as soon as possible upon request from RDL.

24. Confidentiality

24.1. The Service Provider and its personnel shall maintain absolute confidentiality with respect to the content of Items and Deliverables, and to information relating to Client or others of which they become aware of, in connection with the performance of this Contract. The Service Provider shall require of all subcontractors and others who assist the Service Provider, corresponding liability. The only approved use of a subcontractor in relation to this project is the transportation company.

24.2. This obligation does not include publicly available information or information handed over to the Service Provider from a third party who is in lawful possession thereof and which is not subject to any confidentiality obligation.

25. Disputes, Applicable Law and Jurisdiction

25.1. Disputes give no right to stop work.

25.2. Any dispute, which may arise in connection with the performance of this Contract, shall be amicably settled between the parties.

25.3. If the dispute is not settled amicably, then dispute is settled by arbitration. The arbitration is conducted within the jurisdiction of the Arbitration Institute in Copenhagen, according to the rules applicable to arbitration

25.4. Applicable law and language are Danish.

25.5. The Parties agree that the tribunal shall be composed of three members appointed by the President of the High Court. The President shall fulfil the conditions for being a judge at the Danish courts. Parties may make recommendations for the other two, appointed with due regard to the special expertise that must be considered desirable for judging the dispute brought before the tribunal.

26. Compensation

26.1. The parties are subject to the Danish law of compensation. Neither party is responsible for loss of profits or other indirect losses.

26.2. The Service Provider is, in the course of the Contract, fully liable for damage to or loss of RDL's Items. The value of each Item is at least €250.

26.3. The Service Provider's product liability is according to Danish law.

27. ILO-Convention 94

27.1. RDL is, under ILO Convention 94 on labour clauses in public contracts, committed to ensure that the Service Providers and their subcontractors workers' salaries (including benefits), working hours and other working conditions are no less favourable than those found in the collective agreement, arbitration award, national laws or regulations applicable to the work of the same character in the trade or industry in the district where the work is performed.

27.2. The Service Provider makes a commitment to ensure that employees perform the task with a salary and employment conditions as mentioned above and is obliged to inform the employees about the current working conditions.

27.3. If the Service Provider does not fulfil the criteria, and this leads to a claim for additional wages from employees, RDL can withhold payment to the Service Provider, in order to ensure the staff's terms of employment are met. The employees shall be the prosecutors in the case against the Service Provider under this provision.

28. Signatures (To be completed in final Contract)

Date:
[Service Provider]:

Date:
Royal Danish Library:
