

**DRAFT
CONTRACT
REGARDING
AN A2+ BOOK CRADLE SCANNER
INCLUDING AN ONSITE SERVICE LEVEL AGREEMENT
FOR 2 YEARS
FOR
ROYAL DANISH LIBRARY**

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Draft Contract



1. Parties to the Contract

This Contract is made between the following parties:

Royal Danish Library
Søren Kierkegaards Plads 1
DK-1221 Copenhagen K
CBR: 28 98 88 42

(hereinafter referred to as the “Customer”)

and

[State the Firm Name of the Supplier]

[State the Address]

[State the Postal Code and Town]

[State the Supplier's CBR-no.]

(hereinafter referred to as the “Supplier”)

2. Contractual framework

The contractual framework consists of the following documents:

- The Contract (this document)
- Appendix 1 – The Supplier's Completed Requirement Specification and Bid List
- Appendix 2 – Onsite Service Level Agreement for 2 years offered by the Supplier

In the event of any discrepancy between the Contract and the annexes, the Contract will prevail. In the event of any discrepancy between the annexes, an annex with a lower number will prevail over an annex with a higher number.

Any adjustments, additions or changes to the deliverables agreed between the parties after the conclusion of the Contract will prevail over the other documents forming part of the contractual framework.

The standard terms and conditions of the Supplier do not form part of the contractual framework.

3. Scope of the Contract

3.1 Scope

The Contract covers delivery of one A2+ Book Cradle Scanner to the Customer including an Onsite Service Level Agreement for 2 years.

The product is described in more detail in Appendix 1.

3.2 Options

The Contract further includes the following Option:

A PC (with minimum OS Windows 10), which are compatible with the A2+ Book Cradle Scanner; cf. Appendix 1 – Requirement Specification and Bid List, section 5.2.

3.3 Changes to the scope of the Contract

To the extent it does not contravene applicable procurement rules, the Customer may demand changes to the scope of the Contract.

Any demands for changes by the Customer must be made in writing. If requested by the Customer, the Supplier must subsequently prepare a draft-amending annex, in which any demands for modifications of the Contract with respect to price, time or security, because of the change are described.

Amendments to the Contract will not become effective until the parties have signed a written addendum to the Contract. The Supplier is not entitled to additional payment, unless a written addendum to the Contract to that effect has been entered into.

4. Term of the Contract

The Contract commences when signed by both parties and remains in effect for a period of 24 months from the date of commencement due to the fact, that Royal Danish Library needs an Onsite Service Level Agreement for 2 years.

5. Terms of delivery

5.1 Delivery date

Delivery must be made as soon as possible after both parties have signed the Contract.

5.2 Place of delivery

The A2+ Book Cradle Scanner must be delivered to Royal Danish Library at the following address:

Royal Danish Library
Digitization Department
Lergravsvej 65A
DK-2300 Copenhagen S

5.3 Returns

If the Customer has made an error when placing an order, the order may be returned within **30 days** of delivery, provided the items and the packaging are intact. The Customer must pay the costs of return delivery. The Supplier must provide the Customer with a credit note for the full amount as soon as possible thereafter.

In the event of the Supplier's faulty delivery or damage in transit including if, the packaging has been broken, the Supplier must replace the product or credit the full amount at the Customer's request. The Supplier must pay any costs associated therewith. Reference is also made to the provisions on breach set out in the Contract.

6. Quality

The scanner covered by the Contract must comply with any directives, statutes, executive orders, other regulatory requirements and industry standards applicable at the time of signing the Contract and throughout the term of the Contract, to the effect that the scanner may lawfully be marketed, sold and used in Denmark.

The products must conform to Appendix 1 - Requirement Specifications and Bid List and be in accordance with the Supplier's tender throughout the term of the Contract.

At the request of the Customer, the Supplier must provide information that is further detailed on and documentation of the products covered by the Contract and submit product data sheets, if available. To the extent product data sheets are changed, the Supplier must immediately, and at its own instance, forward such sheets to the Customer.

7. Prices and price adjustments

7.1 Price

The prices of the products covered by the Contract are stated in Appendix 1.

Prices are exclusive of VAT, including any form of fees, taxes and duties, insurance expenses, service, support and packaging, etc., unless otherwise provided in the price list and/or the specifications of requirements.

7.2 Price adjustments

Prices remain fixed for the term. Adjustments may, however, be made in accordance with clause 7.3.

7.3 Taxes and duties

The parties may at any time demand that prices be adjusted to reflect the net financial consequences of changes to taxes and duties, which become known after the date when the Contract was concluded and which are imposed or removed from products covered by the Contract.

7.4 Bonus payable to the Customer and the Customer's employees

Revenue from this Contract must not form the basis of any payment of bonus, discounts or other form of compensation to the Customer or the Customer's employees.

8. Invoicing

The Supplier may request payment when delivery has been made, and the deliverable is free from defects.

Invoicing must be effected according to the rules on electronic invoicing of public authorities applicable from time to time.

Invoices must be sent electronically to the person who placed the order, please use the EAN number: **5798 000795297**.

The invoice must state:

- Date of issuance (invoice date);
- Invoice number (number to identify the invoice);
- Company registration number of the Supplier (CBR-no./SE-no.);
- Supplier's name and address and the Customer's name and address;
- Name of the person placing the order;
- Contract or order number (if available);
- An informative description of the products supplied – each product must be described on a separate line on the invoice;
- Quantity and unit of the products supplied;
- Price per unit excluding VAT;
- VAT rate and VAT amount;
- Delivery address;
- Final payment date.

The Customer may reject invoices which are not received electronically or which lack any of the above information, or if invoicing does not comply with the Danish Act on Public Payments etc.

9. Payment terms

The invoiced amount falls due for payment **30 days** after electronic submission of a proper invoice, see clause 8.

If the final payment date is not a banking day, the payment date is deferred to the next banking day.

In the event of late payment, the Supplier is entitled to charge interest under the provisions of the Danish Interest Act.

10. Collaboration

The parties will jointly ensure that the Contract is implemented at the Customer.

Each of the parties will appoint employees to be in charge of the day-to-day contact in relation to the Contract.

The Supplier's employees in charge of the day-to-day contact must keep the Customer's employees in charge of the day-to-day contact up to date on the progress of the supply/supplies covered by the Contract.

The parties are under an obligation to notify one another in the event of dissatisfaction with the other party's performance, work or quality in relation to the supply/supplies.

At the initiative of either party, a joint evaluation of the collaboration between the Supplier and the Customer must be performed.

11. Support and service

An Onsite Service Level Agreement has been agreed upon between the parties; cf. Appendix 2.

12. Subcontractor

The Supplier has assigned the following subcontractor to the Contract; cf. Appendix 1, section 5:

- [State the Firm Name and CBR-no. of Subcontractor 1], if any, which are given in section 5 of Appendix 1]

The Supplier must not without prior written consent of the Customer assign the performance of the Contract or any part thereof to subcontractor, replace a subcontractor or change the distribution of roles between the Supplier and the subcontractor.

If a subcontractor are used, the Supplier guarantees and is liable for the subcontractor's supplies in the same way as for its own supplies and services.

A subcontractor are not entitled to raise any form of claim against the Customer under this Contract, including claims for payment or damages.

13. Quality assurance

At the request of the Customer, the Supplier must provide information on complaints and recalls, if any, as well as the nature thereof, derived patterns and trends and the Supplier's remedial and preventive measures.

Such information is not limited to supplies to the Customer; any complaints from other customers may be anonymized.

14. Personal data

14.1 The Supplier's processing of personal data

If the Supplier processes personal data as part of the performance of the Contract, the Supplier is required to ensure compliance with Danish data protection legislation applicable from time to time in respect of the Supplier's processing of data, and in particular the General Data Protection Regulation¹ and the Danish Data Protection Act².

The Supplier and its employees are required to process personal data in a manner that ensures appropriate security and confidentiality of the personal data, as well as the prevention of unauthorized access to or use of personal data to which the Supplier gains access in connection with the performance of the Contract. Furthermore, the Supplier must ensure that persons authorized to process personal data in connection with the performance of this Contract have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality, see clause 15.

The Supplier is not entitled to independently process personal data disclosed as part of the performance of the Contract for its own purposes or to disclose data to any third party, unless otherwise expressly provided under EU law or national law.

15. Confidentiality

The Customer is subject to the rules of administrative law, including section 27 of the Danish Public Administration Act on confidentiality. In connection with supplies to a public authority, the Supplier must observe a similar duty of confidentiality; see section 152a of the Danish Criminal Code. The Supplier must inform employees engaged in supplies under the Contract thereof.

Furthermore, the Customer is subject to the rules on open administration, including rules on access to documents. Depending on the circumstances, the Customer is entitled and obliged to grant access to documents to the extent prescribed by law.

16. Disclosure

The Supplier will be entitled to state the name of the Customer on a list of references once delivery has been made. Except for the foregoing, any marketing by the Supplier of the supply is subject to the Customer's consent.

¹ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

² Act no. 502 of 23 May 2018 on supplementary provisions to the regulation on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (the Danish Data Protection Act).

17. Warranty

The Supplier guarantees that the supplies, including any support and service, in each respect will meet all requirements under the Contract.

The warranty period for each supply expires on the date of expiry of the period for giving notice of non-conformity.

If, however, the Supplier has undertaken warranty commitments in the period after the period for giving notice of non-conformity, such warranty commitments will apply until the date of expiry specified by the Supplier.

If, after the date of delivery, the Supplier has remedied any defects in equipment or supplied any spare parts, a separate warranty period applies to such supplies corresponding to the period for giving notice of non-conformity calculated from the date of remedial action or delivery.

18. Termination

18.1 Termination of the Contract

The Contract is non-terminable by either party.

18.2 Termination pursuant to an order or a judgment

If a court of law or the Complaints Board for Public Procurement:

- cancels the Customer's decision to award this Contract to the Supplier;
- declares this Contract null and void;
- considers an amendment to this Contract to constitute a change of fundamental elements which would have necessitated a new contract notice; or
- otherwise orders the Customer to terminate this Contract in whole or in part,

this Contract may be terminated by the Customer in whole or in part at **30 days'** notice to the first day of any month. Regardless of the date of termination, the Supplier is not entitled to claim damages because of termination.

19. Separate agreement

The parties agree that clause 18.2 of the Contract constitutes a separate agreement between the parties and will remain in force regardless of whether the Contract is declared null and void.

20. Continued validity

Any provisions of the Contract, which in the nature of things will continue after the Contract has terminated, regardless of the reason for termination, including, but not limited to, provisions on warranty, product liability and confidentiality, will remain in force after the termination of the Contract.

21. Breach

In the event of actual or anticipated breach, either party is required to notify the other party in writing of the breach, the reason for breach and the date when the breach is expected to be remedied.

A party can terminate the Contract with immediate effect in writing, if the other party is in a material breach thereof.

If a party significantly or repeatedly breached its obligations under the Contract where such breach isolated does not constitute a material breach, the other party may terminate the Contract in writing.

The following matters will always be deemed to be material breach entitling the Customer to terminate the Contract with immediate effect by written notification to the Supplier:

- Matters falling within the scope of section 185, para. 1, point 2 and 3 of the Danish Public Procurement Act;
- The Supplier initiates reconstruction negotiations or the financial situation of the Supplier is generally significantly impaired, thereby jeopardising the proper performance of the Contract;
- The Supplier enters into bankruptcy, provided the estate does not, based on a written enquiry from the Customer, declare that the estate will affirm the Contract;
- The Supplier discontinues the business activities to which the Contract relates, or other circumstances occur, thereby jeopardising the performance of the Contract;
- Non-compliance with provisions on quality, see clause 6;
- Non-compliance with the duty of confidentiality, see clause 15;
- Non-compliance with the provision on collaboration, see clause 10;
- Non-compliance with the provision on personal data, see clause 14.

The above items are not exhaustive.

Furthermore, the general rules of Danish law on breach apply, including the general rules on delayed delivery and non-delivery. If, as a result of delay, the Customer cancels an order in whole or in part, the Customer is entitled to make substitute purchases for the Supplier's account. Any additional costs in relation to substitute purchases may be offset against any claim from the Supplier.

The Supplier's products will always be deemed to be defective if the product does not comply with this Contract and its annexes, or if the product is not what the Customer could reasonably expect.

At the Customer's request, the Supplier must as soon as possible remedy any defects of which notice has been given. If remedial action is not possible, or if the Supplier has made repeated unsuccessful attempts to remedy a defect, the Customer may instead claim a proportionate reduction of the payment to the Supplier. The proportionate reduction will be fixed taking into consideration the scope and the nature of the defect but will not exceed the payment for the supply.

21.1 Breach due to the Supplier being affected by the EU's sanctions against Russia

If the Supplier and/or any of its subcontractors will become subject to the prohibition in Article 5k of Council Regulation 2022/576 (EU), which amends the Council Regulation No. 833/2014 (EU) concerning restrictive measures in view of Russia's actions destabilizing the situation in Ukraine, this will be deemed as breach entitling the Customer to terminate the contract with immediate effect.

The Supplier is required to notify the Customer about any matters, which will or potentially can lead to the Supplier or any of its subcontractors being subject to the prohibition in Article 5k.

22. Force majeure

Neither party will be deemed liable to the other party under this Contract if the liability arises out of matters beyond the party's control and which the party ought not have considered, when signing this Contract or avoided or overcome after the signing of this Contract.

The party wishing to claim force majeure must submit written notification thereof without undue delay; however, no later than **five working days** after the force majeure event occurred.

If a force majeure situation persists for more than **30 working days**, or if the force majeure situation is of a nature or duration rendering the final performance of the Contract impossible, the other party may terminate this Contract without notice. Neither party may raise any claim against the other party in that respect.

23. Liability in damages and insurance

The parties are liable in damages in accordance with the general rules of Danish law.

However, the parties are not entitled to claim damages for business interruption, loss of profit or other indirect loss.

The Supplier must indemnify the Customer for any third-party claim, including legal costs, which may be raised against the Customer on the grounds of errors or defects in the supply, product damage or the Supplier's non-contractual wrongful acts.

Throughout the term of the Contract, the Supplier must maintain professional and product liability insurance.

The scope of cover of the Supplier's insurances must be commensurate with the scope of the Contract and industry standards.

Furthermore, the Supplier must have taken out any other compulsory insurance, including industrial injuries insurance covering the employees.

The Customer may at any time request documentation of the insurances being maintained.

24. Assignment

Subject to compliance with the procurement rules applicable from time to time, the Customer may assign its rights and obligations under this Contract in whole or in part to another public authority if the responsibility for services comprised by the Contract is transferred in whole or in part to that authority.

The Supplier is not entitled to assign its rights or obligations under this Contract in completely or in part to any third party, unless the Customer has consented thereto in writing.

25. Governing law and venue

Danish law governs this Contract.

In the event of a dispute between the parties in connection with this Contract, the parties must in a positive, cooperative and responsible spirit endeavour to initiate negotiations for the purpose of settling the dispute. If necessary, the negotiations will be escalated to the highest level in the parties' organizations.

Appendix 2

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If the parties are unable to reach a solution through negotiation within 30 days of the initial contact, either party may institute legal proceedings before the courts of law.

The venue is the Customer's home court.

26. Signatures

For the Customer:

Date

Tonny Skovgaard Jensen
Deputy Director, Cultural Heritage
Royal Danish Library

For the Supplier:

Date

Name of signatory
Title of signatory
Firm of signatory

Draft Contract

