

Contract Draft

## Digitisation of Various Audio-visual Formats

DAT Tapes, MiniDiscs, 78rpm Discs, 1 Inch Tapes, U-matic Tapes  
and VCR Tapes



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## 1. Definitions

In this document, the following terms are defined:

<b>Contract</b>	The legal agreement between RDL and the Service Provider to supply services in the Contract and RFP, including modifications and attachments
<b>Collection of Items</b>	The event, where all of the original information carriers (tape, disc, etc.) supplied by RDL, are picked up at RDL by the Service Provider
<b>Deliverables</b>	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
<b>Deliverables' File Formats</b>	The required file formats of the Deliverables
<b>Delivery of Files</b>	The event where all Deliverables are received by RDL
<b>Item</b>	The original information carrier (tape, disc, etc.) supplied by RDL from which a digital copy is produced by the Service Provider
<b>Partial Delivery</b>	The event where a subset of the Deliverables are received by RDL
<b>Preservation File</b>	The Preservation File, which is a result of the initial digital capture/transfer
<b>Request for Proposal (RFP)</b>	The description, prepared by RDL, of the required services to be supplied by the Service Provider
<b>Return of Items</b>	The event where all original information carriers (tape, disc, etc.) supplied by RDL, are returned to RDL by the Service Provider
<b>Service Provider</b>	The company awarded the Contract to supply services as specified in the Contract and RFP
<b>Test Sample Delivery</b>	The event where the Deliverables serving as test sample is received by RDL
<b>Work Day</b>	Monday to Friday except for Danish state holidays, the Danish Constitution Day, Christmas day, New Year's day and the following weeks: week 39 and week 52

## 2. Background (See RFP)

[Text from above-mentioned section in the RFP will be inserted here in the final Contract]

## 3. The Scope of the Assignment (See RFP)

[Text from above-mentioned section in the RFP will be inserted here in the final Contract]

## 4. Timeframe (See RFP)

[Text from above-mentioned section in the RFP will be inserted here in the final Contract]

## 5. Requirements Specification (See RFP)

[Text from above-mentioned section in the RFP will be inserted here in the final Contract]

## 6. Payment

### 6.1. Prices (See RFP)

[Text from above-mentioned section in the RFP will be inserted here in the final Contract]

### 6.2. Penalties for Late Delivery of files

If RDL does not receive the Deliverables related to the digitisation of one or more formats before 01 December 2017 the remuneration of the Service Provider, in relation to these formats, will be reduced by 10%.

If RDL does not receive the Deliverables related to the digitisation of one or more formats before 20 December 2017, 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.

### 6.3. Invoicing Schedule

The Service Provider will not issue an invoice until RDL has approved the Delivery of Files. If the Delivery of Files is not delayed, the Service Provider will invoice all costs before 15 December 2016. 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.

### 6.4. Information on the Invoice

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

## 7. Deficiencies

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.

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 on which the Partial Delivery is deemed defective and within what period, the Service Provider shall remedy the deficiencies.

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.

## 8. Communication between Parties

Communication as referred to under this Contract shall be in writing, including by email and sent to the list (see section 20. Project Team) of project managers.

## 9. Provisions

Unless the Proposal contains an express provision to the contrary, Service Providers by submitting a Proposal are deemed to have accepted each of the provisions of the Contract exactly as drafted (including any Schedules). If the Service Provider does not accept a Contract provision exactly as drafted, the Service Provider must expressly indicate in its Proposal that it does not accept the Contract provision and provide the Service Provider's final position on the provision i.e. the wording that the Service Provider requires in order to enter into a contract. Alternative wording should be considered carefully since alternative wording not meeting the fundamental intent of the provision may result in rejection of the Proposal.

## 10. Modification of the Contract

Any additions or modifications to the Contract may only be 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.

## 11. Termination of Contract

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.

If the Service Provider is in a force majeure situation, see section 13 (Insurance), 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.

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.

Termination of Contract does not release the Service Provider's obligations in regards to previously delivered Partial Deliveries under the Contract.

## 12. ILO-Convention 94

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.

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.

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.

## 13. Insurance

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.

RDL's Items shall be covered by insurance as described in section 4.6. (Logistics, Safety, Handling, and Storage). If this insurance does not have the required coverage, the Service Provider shall take out appropriate additional insurance as part of the Delivery.

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.

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

## 14. Force majeure

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).

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.

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.

## 15. 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.

## 16. Confidentiality

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.

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.

## 17. Marketing

The Service Provider must not use RDL in its marketing, including the Service Provider's website, reference lists, etc. without prior written consent from RDL.

## 18. Disputes, Applicable Law and Jurisdiction

Disputes give no right to stop work.

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

If the dispute cannot be settled amicably, then it shall be settled by arbitration. The arbitration will be conducted within the jurisdiction of the Arbitration Institute in Copenhagen, under the arbitration procedure adopted rules. Applicable law and language is Danish.

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.

## 19. Compensation

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

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.

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

## 20. Project Team

### 20.1. Project Team at the Service Provider [To be completed in final Contract]

The project team consist of:

- Name:
- Role:
- Email:

Phone:

- Name:  
Role:  
Email:  
Phone:

- ...

## 20.2. Contact Persons at the Service Provider [To be completed in final Contract]

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:

## 20.3. Contact Persons at RDL

Primary contact person (project manager) at RDL:

- Name: Stefani Recht  
Email: sre@kb.dk  
Phone: +45 8946 2314

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

- Name: Bjørn Korsgaard Harbøll  
Email: bkh@kb.dk  
Phone: +45 8946 2069

## 21. Signatures (To be completed in final Contract)

Date:  
[Service Provider]:

Date:  
Royal Danish Library:

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## 22. List of Appendices

Appendix A: Pricing Form

Appendix B: RFP

Appendix C: Proposal from Service Provider (To be attached in final Contract)