



**Assignment Agreement
concerning
DAMPS**

KB, NATIONAL LIBRARY OF THE NETHERLANDS

May 2019

Having its registered office in The Hague and its principal place of business at
Prins Willem-Alexanderhof 5, 2595 BE.
Registered in the commercial register maintained by the Chamber of Commerce in Utrecht
under Number 27377634.

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AGREEMENT CONCERNING DAMPS

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Agreement CONCERNING DAMPS

THE UNDERSIGNED,

- (1) **KB, NATIONAL LIBRARY OF THE NETHERLANDS**, A NON-DEPARTMENTAL PUBLIC BODY (NDPB), having its registered office in The Hague, and its principal place of business at Prins Willem Alexanderhof 5 in The Hague, hereinafter referred to as the “**Client**”, legally represented in this matter by Mr E.J.B. Knibbeler, General Manager.

and

- (2) [**Name**], [**legal form**], having its registered office and principal place of business at [.....], registered in the commercial register under number [...] (hereinafter referred to as the “**Contractor**”).

[**Nota bene:** if a tender is being submitted by Consortium Partners, then one party or more parties will be added to the list of the undersigned]

Hereinafter jointly referred to as the “**Parties**”;

WHEREAS:

- (A) on the basis of the procurement guide dated [***], with reference [***] KB has requested that interested parties submit a Tender for the supply and maintenance of a Digital Asset Management and Preservation System (DAMPS);
- (B) The Client announced a public European Tendering Procedure on <date>, by publication of the Tender Documents on TenderNed with TenderNed reference <...> in which the Contract is described;
- (C) The Contractor submitted a Tender in that context on <date> and with that Tender (i) has declared that it is in a position and is prepared to perform the Contract from <date>, and (ii) has declared that it is sufficiently familiar with the work and the objective of the Activities to be able to implement these successfully;
- (D) The Contractor submitted the most economically advantageous Tender and as a result the Client has awarded the Contract to the Contractor;

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- (E) On the basis of that awarding, this eBook App & Audiobook App agreement (the “Agreement”) has been concluded by the Parties which records the terms and conditions of the Activities to be performed by the Contractor;
- (F) The General ARBIT Terms (the “Procurement Terms and Conditions”) apply to this Agreement, insofar as there are no variations to these in the documents accompanying this Agreement. The Procurement Terms and Conditions have been included in Annex 1 of this Agreement for the sake of completeness. The General Terms and Conditions of Sale and Supply of the Contractor expressly do not apply to this Contract.
- (G) The Parties hereby wish to enter into the Agreement, hereinafter referred to as the “Agreement”.

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AND DECLARE THAT THEY HAVE AGREED AS FOLLOWS:

1. DEFINITIONS

- 1.1 All terms written with an initial capital letter in this Agreement are defined in the Tendering Guidelines.

2. OBJECT OF THE AGREEMENT

- 2.1 The Contractor will perform the Activities as described in the Contract in the Tendering Guidelines, the Requirements Specification and the Tender submitted by the Contractor. For the sake of completeness, the Tendering Guidelines have been appended to this Agreement as Annex C and the Tender has been appended to this Agreement as Annex G (hereinafter referred to as the “Activities”).
- 2.2 The documents that were shared in the Tendering Procedure are inextricably linked to this Agreement. In the event of any inconsistencies, the documents will have the following ranking (where an earlier mentioned document will prevail over a later mentioned document):
1. This Agreement;
 2. Summary of additional information and changes (latest version has the highest ranking) (Annex B);
 3. The Tendering Guidelines (Annex C) including Annexes (excluding the draft version of the Agreement as it has been replaced by this present Agreement);
 4. The Procurement Terms and Conditions (Annex A);
 5. The Service Level Agreement (SLA) (Annex D);
 6. Annex on Commercial provisions (Annex E);
 7. Agreements and Procedures Dossier (Annex F);
 8. The Tender submitted by the Contractor (Annex G);

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3. TERM OF THE AGREEMENT

- 3.1 The Agreement will be entered into for a period of four (4) years commencing on the date on which it is signed by both parties and the Agreement has three (3) extension options that may be exercised unilaterally by the Client under the same terms and conditions, each for a period of two (2) years. Therefore, the maximum term of this Agreement is ten (10) years.

The Client will notify the Contractor in writing within two (2) months of the expiry of the initial (or the current) term of the Agreement if the Client avails itself of the extension option. If the Client does not exercise the extension option, the Agreement will end by operation of law after expiry of the term that is current at that time.

- 3.2 The Contractor is not entitled to terminate the Agreement in the interim.
- 3.3 When the Agreement ends, for whatever reason and in whatever manner, the provisions of this Agreement and the Procurement Terms and Conditions, that due to their nature are intended to apply between the Parties even after the Agreement has ended, will remain in force, including (but not limited to) the provisions concerning confidentiality, liability, intellectual property, dispute resolution and applicable law.

4. SUBCONTRACTING

- 4.2 The Contractor must perform the Contract itself.
- 4.3 In the event that the Contractor relied upon the professional competence of a third party at the time of submitting the Tender, then the Contractor must use that third party for the performance of the parts of the Contract in which it relied upon the professional competence of that third party. The prior approval of KB is required to replace or cease using this third party, and KB will not refuse to give its approval except where there are reasonable grounds for doing so. When giving its approval, the KB will take into account the suitability requirements and selection requirements as set out in the Descriptive Document.
- 4.4 If the Contractor wishes to use one or more third parties, it is only permitted to do so after obtaining the prior written permission of KB and KB will not refuse to give its permission except where there are reasonable grounds for doing so. When giving its

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approval, KB will take into account the suitability requirements and selection requirements as set out in the Descriptive Document.

- 4.5 KB is entitled to attach conditions to the permission described in the previous clauses, or place a time limit on this permission.

5. COMMUNICATION

- 5.1 Both Parties will appoint a contact person within their organisations who will be the primary person responsible for monitoring and communicating the performance of the Agreement and therefore the compliance with the SoR, the Requirements, and any additional working arrangements under this Agreement. Both Parties will also indicate a replacement contact person.
- 5.2 All of the required notifications should be sent in writing to the contact person referred to in the previous paragraph, to the address stated in this Agreement.
- 5.3 The contact persons will communicate continuously for the purposes of the correct performance of the Agreement and therefore for monitoring the Activities to be performed by the Contractor. In any event, there will be an annual evaluation of the service provided by the Contractor. This annual evaluation review will be scheduled on the initiative of the Contractor. Prior to the consultative meeting, the Contractor or its contact person will provide the Client with the information it requires for the purposes of the meeting. Matters including positive and negative experiences, compliance with the agreements made and the quality of the Activities performed will be discussed during the meeting.
- 5.4 In the event of any anticipated changes to the organisation or staff changes in the organisation of either of the Parties that may impact on the performance of the Activities, this Party should immediately inform the other party as soon as the change is anticipated. In that case, the Parties may make further arrangements concerning the performance of the Activities.

6. PRICE AND RATES

- 6.1 The costs of the Activities to be performed by the Contractor are in line with the Price Sheet completed and submitted by the Contractor during the Tender. For the sake of completeness, that Price Sheet will be appended to the Agreement as part of **Annex 5**. The Prices exclude VAT and include all additional costs. Therefore, additional costs are not eligible for compensation.

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- 6.2 The Contractor has the right to index its prices and rates every two years (24 months) on the basis of the Statistics Netherlands index “CAO-lonen per uur incl. bijzondere beloningen voor de zakelijke dienstverleningen” (Negotiated Wages per hour including special payments for business services). The prices and rates may be indexed for the first time after the initial term of four years has expired. The Contractor will send a written proposal to the Client for this purpose based on the aforementioned Statistics Netherlands index.

7. INVOICING AND PAYMENT

- 7.1 The Contractor will invoice the Activities on a monthly basis in arrears by means of an itemised invoice. Invoices should be sent electronically in PDF format to DIGIFEZ@kb.nl. Invoices should be addressed to:

KB, NATIONAL LIBRARY OF THE NETHERLANDS

Afdeling Crediteuren Administratie [Creditors' Administration Department]

Postbus 90407

2509 LK The Hague

with reference to the contract number: **[contract number]**

- 7.2 The Contractor should specify the cost units on the invoice for internal charging purposes by the Client.

8. ADDITIONS AND CHANGES

- 8.1 Amendments or changes to this Agreement and the Annexes are only valid if they have been agreed in writing and recorded in this Agreement.

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Agreed, drawn up and signed in duplicate,

THUS AGREED BETWEEN:

Date:-.....-.....

KB, National Library of the Netherlands

Dr E.J.B. Knibbeler

General Manager

Date:-.....-.....

Contractor

Name

Position

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ANNEX A. PROCUREMENT TERMS AND CONDITIONS

See separate document.

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ANNEX B. SUMMARY OF ADDITIONAL INFORMATION AND CHANGES

See separate document.

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ANNEX C. TENDERING GUIDELINES

See separate document.

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ANNEX D. SERVICE LEVEL AGREEMENT

See separate document.

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ANNEX E. COMMERCIAL PROVISIONS DOSSIER

See separate document.

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ANNEX F. AGREEMENTS AND PROCEDURES DOSSIER

See separate document.

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ANNEX G. TENDER SUBMITTED BY CONTRACTOR

See separate document.