

DRAFT Contract - Remote management and support for private cloud Naturalis

The undersigned:

1. Foundation Naturalis Biodiversity Center, which has its registered office and principal place of business at Darwinweg 2, 2333 CR Leiden, legally represented in this matter by XX, General Manager, hereinafter referred to as 'Naturalis',

and

2. <full name and legal form of the Contractor>, which has its registered office in <place>, legally represented in this matter by <signatory's name and position>, hereinafter referred to as the 'Contractor',

Naturalis and Contractor are hereinafter referred to jointly as 'the Parties' and separately as 'the Party'

WHEREAS:

- Naturalis is seeking one Contractor for remote management and support for the private cloud of Naturalis;
- On TenderNed, Naturalis initiated a European tendering procedure with number [...], in order to choose a Contractor that fulfils the requirements and preferences of Naturalis with regard to remote management and support for its private cloud;
- The requirements and preferences are described in Naturalis' Invitation to Tender and the appendices dated [...];
- On TenderNed, the Contractor submitted a tender to Naturalis in response;
- The Contractor has been informed of Naturalis' objectives with regard to this Contract;
- This Contract reflects the framework of conditions agreed between Naturalis and the Contractor;

AGREE AS FOLLOWS:

1. Subject of the Contract

1.1 The Parties hereby conclude a Contract under which the Contractor undertakes, in consideration of the Fee referred to in article 7, to provide the following Services in accordance with the requirements set out in the Invitation to Tender and its Appendices:

#	Service
1.	Onboarding
2.	Migration
3.	Remote management and support OpenStack
4.	Remote management and support Ceph

5.	<i>Option: Remote management and support Kubernetes</i>
6.	Consultancy Services

1.2 The following documents are an integral part of this Contract. In the event of mutual inconsistencies, a higher ranked document takes precedence over a lower ranked document:

1. this document;
2. the General Purchasing Conditions Naturalis;
3. the Memorandum of Information <date>
4. the Invitation to Tender <date> and its Appendices;
5. the other Appendices;
6. the Bid of <date>, reference (<reference>), submitted by the Contractor to Naturalis.

1.3 The Contractor has informed itself adequately about Naturalis' objectives with regard to this Contract, as well as about the relevant Naturalis organisation and the business processes. Naturalis has provided the Contractor with sufficient correct information in this regard and will - if required - provide further information to the Contractor, insofar as Naturalis has this information at its disposal.

1.4 The Contractor guarantees that all information it has provided within the context of the European tendering procedure is correct and that it sufficiently complies and will continue to comply with the requirements as stated in the Invitation to Tender and its Appendices.

1.5 The Parties will inform each other about developments at their organisations that are or could be relevant to the performance of this Contract and the possible issuing of other contracts.

1.6 Agreeing to this Contract results in the Contractor entering into an obligation of result with regard to the requirements specified in the Invitation to Tender and its Appendices and additional specifications as laid down in this Contract.

2. Entry into force and duration of the Contract

2.1 This Contract enters into force on <date>.

2.2 This Contract has an initial term of 2 (two) years and will end on <date>.

2.3 Naturalis has the right to extend the Contract on the same terms and conditions 3 (three) times for a period of maximum 24 months per extension. The maximum contract duration including the optional extensions is 8 (eight) years. If Naturalis wishes to exercise this right, it will give written notice of this to the Contractor no later than 3 (three) months before the end of the then current term.

3. Services

3.1 The Contractor undertakes to perform, within the agreed periods, the Services as described in article 1.1 of this Contract and the SLA (Appendix XX).

3.2 As soon as the Contractor is aware or can reasonably be expected to be aware that a deadline will not be met, it will immediately inform Naturalis of this in writing, stating the cause of the delay as well as the measures it proposes to prevent or rectify the delay or imminent delay. This does not compromise Naturalis' right to demand timely service provision.

3.3 If the Contractor does not provide the service within the agreed period in the manner determined in this Contract, then the Contractor is in default de jure.

4. Acceptance

4.1 Acceptance of the Services takes place as follows:

#	Service	Acceptance
1.	Onboarding	on the basis of the Requirements and the Bid, in writing, and within 30 days after completion
2.	Migration	on the basis of the Requirements and the Bid, in writing, and within 30 days after completion
3.	Management OpenStack	on the basis of the Service Level Agreement
4.	Management Ceph	on the basis of the Service Level Agreement
5.	<i>Management Kubernetes</i>	<i>on the basis of the Service Level Agreement</i>
6.	Consultancy Services	on the basis of the further agreements on the relevant consultancy services agreed between the parties, in writing, and within 30 days after completion

5. Fee

5.1 The Parties agree the following Fee:

#	Service	Fee excl. VAT	Fee incl. VAT
1.	Onboarding	<fixed price>	
2.	Migration	<fixed price>	
3.	Management OpenStack	<based on tiered pricing per node>	

4.	Management Ceph	<based on tiered pricing per node>	
5.	<i>Management Kubernetes</i>	<i><based on tiered pricing per node></i>	
6.	Consultancy Services	<hourly rate>	

5.2 After 31 December 2026 the Fee may be adjusted once a year on 1 October by a percentage not exceeding the price index published by Statistics Netherlands for 'Cao wages, contractual wage costs and working hours'. The figure for the previous month June will be used, with the figure for June 2026 being set at 100%.

5.3 The fees referred to in this Contract are all-in.

6. Invoicing and payment

6.1 The Fee as referred to in article 5 may be invoiced in accordance with the following schedule:

#	Service	Invoicing
1.	Onboarding	Monthly in arrears based on actual hours worked up to a maximum of 80% of the fixed price. The residual 20% may be invoiced after acceptance.
2.	Migration	Monthly in arrears based on actual hours worked up to a maximum of 80% of the fixed price. The residual 20% may be invoiced after acceptance.
3.	Management OpenStack	Monthly in advance after acceptance of Onboarding (1)
4.	Management Ceph	Monthly in advance after acceptance of Onboarding (1)
5.	<i>Management Kubernetes</i>	<i>Monthly in advance after acceptance of Onboarding (1)</i>
6.	Consultancy Services	t.b.d. in further agreements

6.2 The Contractor specifies all his invoices clearly so that all costs can be attributed correctly.

6.3 In order to obtain payment, the Contractor must submit the invoices to Naturalis in the manner indicated by Naturalis, with reference to the date of the Contract and the name and code of the project.

6.4 Naturalis will pay the amounts owed on the basis of the Contract, if approved, to the Contractor within thirty (30) days after receipt of the invoice.

6.5 If Naturalis does not pay one or more invoices on the grounds of suspected incorrect content of the invoice or invoices in question - provided that the suspected incorrect content referred to is made known to the Contractor in writing soon after discovery - or does not pay on the grounds of unsoundness of the services invoiced, this does not give the Contractor the right to suspend or terminate its services.

6.6 The Contractor may suspend compliance with the obligations under the Contract for the failure by Naturalis to comply with its payment obligations after it has sent Naturalis a detailed notification in writing of this failure and Naturalis still does not comply with its obligations within 20 calendar days of receiving this notice. The Contractor may only dissolve this Contract on the said ground if Naturalis fails to pay the invoice within 20 calendar days of receiving a notification of the failure.

7. Non-attributable shortcoming

7.1 If, as a result of a shortcoming that cannot be attributed to it, one of the parties cannot comply with or fails to comply with its obligations under this Contract for more than 30 working days, the other party has the right to dissolve the Contract partially or in full by registered letter with immediate effect, without this giving rise to any right to damages.

7.2 A non-attributable shortcoming is not in any case understood to mean: a lack of personnel, strikes, ill personnel, one or more attributable shortcomings on the part of third parties engaged by the Contractor and/or liquidity and/or solvency problems on the part of the Contractor.

8. Liability

8.1 If one of the parties fails to comply with one or more of the obligations under this Contract, the other party will declare it to be in default in this connection, unless compliance with the obligations in question will continue to be impossible, in which case the negligent party is immediately in default. Each party's aggregate liability under this Contract, including any further agreements, in any contract year, whether based on contract, tort (including negligence) or otherwise, will not exceed €1,000,000.

8.2 The notice of default will be given in writing, whereby the negligent party will be given a reasonable period in which to fulfil the obligations. The end of this period is a strict deadline.

8.3 The party that attributably fails to comply with its obligation or obligations under this Contract is liable to the other party for compensation for any direct damages or loss suffered or to be suffered by the other party. Neither party is liable for indirect damage.

8.4 Direct damage is understood to mean:

- damage to property of the Parties;
- costs of necessary modifications and/or changes, carried out in order to reduce or repair the damage;

- the costs of emergency measures and/or the deployment of third parties;
- reasonable costs that could be expected to prevent or limit direct damage as a result of the event from which liability arose;
- reasonable costs incurred to establish the cause of the damage, the liability, the direct damage and the recovery method.

8.5 The limitations to liability included in this article do not apply:

- in the case of intentional or gross negligence on the part of the Parties and or their personnel and/or,
- in the case of statutory strict liability, such as product liability, for example.

8.6 In view of the nature of the services to be delivered, the contractor shall not be liable for:

- the content of any information and/or communication disseminated via the equipment and/or services or for any information or content on the Internet;
- the content of the information and communication, in whatever form, transmitted by Naturalis via the network;
- damage to or loss of Naturalis' data or its database or loss of technology, except when such damage or loss is the direct result of gross negligence or willful misconduct by the Contractor;
- damage to or loss or destruction of co-location equipment.

9. Modification and dissolution

9.1 This Contract may only be changed or added to in a document signed jointly by both Naturalis and the Contractor.

9.2 Without prejudice to the options provided for in the Dutch Civil Code for dissolution in the event of a shortcoming with regard to compliance with the obligations of one Party, the other Party is authorised to dissolve this Contract both in and out of court by means of a registered letter without any warning or notice of default being required, if:

- either Party applies for a suspension or a provisional suspension of payment or is granted a suspension or a provisional suspension of payment;
- either Party files for bankruptcy or is declared to be in a state of bankruptcy or one Party's company is wound up;
- either Party discontinues its current business or a significant part of the Party's capital is seized.

9.3 Mutual obligations, which by their nature are intended to continue even after the dissolution or termination of this Contract, continue to exist after this dissolution.

9.4 If this Contract is dissolved by or at the request of Naturalis or is not extended at the request of Naturalis, then Naturalis is - without prejudice to its other rights - authorised to demand submission of information, documents or materials which the Contractor has developed in the context of the services performed, and/or which the Contractor is retaining for Naturalis.

10. Confidentiality, security and security measures

10.1 The Contractor undertakes sufficient measures to ensure confidentiality with regard to all information that the Contractor, or persons which it deploys for the performance of the Contract, takes cognisance of during activities for Naturalis.

10.2 The Contractor guarantees that its personnel and the persons that it deploys for the performance of the Contract, are subject to the arrangements established by Naturalis and made known to the Contractor, including for storage facilities, which are intended to provide the highest level of security

10.3 With regard to information that is referred to as confidential by Naturalis that in any form whatsoever - is in the custody of the Contractor or is given to it to keep, the Contractor additionally undertakes:

- to create the necessary guarantees for safekeeping;
- not to use the information for any other purpose than the purpose agreed;
- not to keep the information longer than is strictly necessary for the agreed services and, immediately following completion of the services, to either make the information available again to Naturalis or, once permission to this end has been granted by Naturalis, to destroy it;
- to provide, at the request of Naturalis, a specification of the persons involved in the agreed services and to replace them immediately if Naturalis has good reason to consider this necessary;
- to have the persons involved in the agreed services sign a written confidentiality statement immediately at the request of Naturalis and to give this declaration to Naturalis for inspection;
- to cooperate with the performance of supervision by or on behalf of Naturalis.

11. Other conditions

11.1 Any general and special terms and conditions of the Contractor or of third parties used by the Contractor in providing the Services do not apply.

11.2 Notwithstanding article 11.1 and without prejudice to the provisions of article 1.2, the licence conditions of the Contractor or of third parties used by the Contractor in providing the Services also apply if and in so far as:

- their applicability is not excluded in the Requirements;
- the Contractor (a) has expressly stipulated that they should apply, (b) a copy of the relevant licence conditions has been attached to the Tender, and (c) such licence conditions form an explicit part thereof; and
- the Agreed Use is not thereby excluded or restricted; and
- the Contractor can demonstrate that the rights of Naturalis under the Contract will not be reduced or that Naturalis' obligations under the Contract will not become unreasonably onerous as a result thereof.

11.3 Notices given by one party to the other pursuant to this Contract will be given in writing.

11.4 Oral notifications, commitments or agreements do not have any legal force unless they are confirmed in writing within five (5) working days.

11.5 The failure of one of the parties to demand compliance with a provision by the deadline referred to in the Contract does not affect the right to nonetheless require compliance, unless the party in question expressly agrees to non-compliance in writing.

11.6 The Parties are not authorised to transfer this Contract to third parties without the explicit prior written consent of the other party.

12. Disputes and applicable law

12.1 All disputes with regard to the formation, interpretation or performance of the Contract as well as any other disputes in this matter or in connection with this Contract, will be submitted to the competent court of The Hague.

12.2 The parties can agree that a dispute, as referred to in paragraph 16.1, is subject to arbitration according to an arbitration agreement to be drafted or that a binding opinion is requested for the said dispute.

12.3 The Dutch law is applicable to this Contract.

Done on <date> and signed in duplicate by:

FOR NATURALIS

FOR THE CONTRACTOR

Name: <name>

Name: <name>

Date:

Date:

Signature:

Signature:

Appendices

1. Statement of Requirements
2. Price sheet
3. Service Level Agreement
4. General Purchasing Conditions Naturalis
5. Contacts

Appendix 4 - Contacts

Naturalis

The <position>, currently <name>, is authorised to bind Naturalis in so far as the performance of the Contract is concerned.

Contractor

The <position>, currently <name>, is authorised to bind the Contractor in so far as the performance of the Contract is concerned.