

# Framework Agreement for Digitization Robots

The following Framework Agreement has been reached between the National Library of Sweden (201200-1710), acting as a proxy for Gothenburg University Library, Lund University Libraries, Stockholm University Library, Uppsala University Library, Umeå University Library, and Treventus Mechatronics GmbH (Siebenbrunnengasse 17/2, 1050 Vienna, Austria, with organization number FN 274686a). The National Library of Sweden and the participating libraries are hereafter referred to as the Customer and Treventus Mechatronics GmbH is hereafter referred to as the Contractor.

The Customer has the right to place any number of Call-off orders at the Contactor, with reference to this Framework Agreement. The Call-off order is subject to the terms and conditions set forth in this Framework Agreement.

At the placement of a Call-off order, the Contactor will deliver and install digitization robots on the terms and conditions set forth in this Framework Agreement.

## 1. Background

Through a digitalization group within the Swedish library sector, the National Library of Sweden has been tasked with negotiating a framework agreement for digitization robots. The procurement was conducted as a selective procurement in accordance with the Public Procurement Act (2007:1091).

## 2. Contractual period for the Framework Agreement

The Framework Agreement will come into effect after the Contractor has been designated and when the statutory time for appeals has expired. The contractual period of the Framework Agreement runs from 2010-06-01 to 2011-05-30. The National Library of Sweden has the right to extend the contractual period two (2) times, each time by one (1) year. A notice of extension shall be submitted in writing to the Contractor at least three (3) months before the end of the current contractual period.

### 3. General Provisions

#### 3.1. Scope of the Framework Agreement

The Framework Agreement governs the procurement of equipment, software and/or other deliverables (the Contracted Items), as specified in more detail in the Appendices.

The Customer has, based on its purposes and needs, specified its requirements in Appendix 1 (Invitation to tender – framework agreement for digitization robots – through the National Library of Sweden). The Contractor has described its solution, based on the Customer requirement specification, in Appendix 2 (Contractor solution specification). If the Contractor is of the view that there are obvious errors, defects or ambiguities in Appendix 1, the Contractor shall point this out in Appendix 2.

#### 3.2. Appendices to the Framework Agreement

All rows are to be ticked (yes or no)	Yes	No
Appendix 1: Invitation to tender		
Appendix 2: Contractor solution specification		
Appendix 3: Service and Support Agreement		
Appendix 4: Changes to the general contractual wording		
Appendix 5: Changes subsequent to the conclusion of the Agreement		
Other Appendices:		

*Table 1 – Overview of Appendices*

#### 3.3. Interpretation – Ranking

Changes to the general contractual wording are to be set out in Appendix 4, unless the general contractual wording refers such changes to a different Appendix.

The following principles of interpretation shall apply in case of conflict:

1. The general contractual wording shall prevail over the Appendices.
2. Appendix 1 shall prevail over the other Appendices.
3. To the extent that it is clearly and unequivocally specified which Clause or Clauses have been changed, replaced or supplemented, the following principles of precedence shall apply:
  - a) Appendix 2 shall prevail over Appendix 1.
  - b) Appendix 3 shall prevail over Appendix 2.
  - c) Appendix 4 shall prevail over the general contractual wording.
  - d) If the general contractual wording refers to changes to any other Appendix than Appendix 4, such changes shall prevail over the general contractual wording.
  - e) Appendix 5 shall prevail over the other Appendices.

#### 3.4. Changes to the contracted items subsequent to conclusion of the Framework Agreement

If the Customer needs, subsequent to conclusion of the Framework Agreement, to change the requirements applicable to the deliverables, or other stipulations underpinning the Framework Agreement, in such a manner that the nature or scope of the deliverables will differ from the agreed, the Customer may request an amendment agreement.

The Contractor may request, if changes are requested, adjustments to the consideration or progress plans if it demonstrates that it is probable that such adjustments are justified. Any request for adjusted consideration or progress plans must be submitted, at the latest, simultaneously with the Contractor's response to the Customer's request for an amendment agreement.

Changes to the Framework Agreement are to be made in writing, and are to be signed by authorised representatives of each party. The Contractor shall keep a continuously updated record of changes to the Framework Agreement. Such record shall form Appendix 5.

## 4. Delivery of the contracted items

### 4.1. Specification of the deliverables due from, and the duties of, the Contactor

#### 4.1.1. Equipment and software

Equipment and software to be delivered under this Framework Agreement are specified in Appendices 1 and 2, and shall otherwise feature such functions, characteristics and quality as follow from the Contractor's specifications, descriptions or promotional materials pertaining to such products.

The Contractor is responsible for ensuring that the performance of the Contractor is in conformity with the requirements and specifications stipulated in the Framework Agreement, including the Appendices hereto, and for ensuring that the deliverables fit together in an integrated manner.

If it is necessary to customise standard software to meet the requirements of the Customer in relation to the deliverables, cf. Appendix 1, this will be specified in Appendix 2.

If it is necessary to upgrade the technical platform of the Customer in order for the deliverables due from the Contractor to work as agreed, this is to be specified in Appendix 2. If such upgrading does not form part of this Framework Agreement, and the Customer is itself to arrange the upgrading pursuant to Clause 4.2.2, the Customer may require the Contractor to pay any additional costs incurred by the Customer if the Contractor has failed to specify, in Appendix 2, that upgrading of the technical platform of the Customer is necessary.

#### 4.1.2. Time and place of performance by the Contractor

Equipment and software in conformity with this Framework Agreement shall be delivered and installed at the times set out in Appendix 1. Equipment and software shall be delivered to the address specified in this Framework Agreement.

Delivery will not have taken place until assembly and installation has actually been completed. If a specific approval test has been agreed pursuant to Clause 4.2.2, delivery shall not be deemed to have taken place until the approval test has been completed and approved by the Customer.

### **4.1.3. Duration and scope of warranty**

Unless otherwise agreed in Appendix 1 and 2, the warranty period shall be two (2) years for both equipment and software, as from the date on which deployment is deemed to have taken place pursuant to Clause 3.8.3. in Appendix 1.

The Contractor shall, during the warranty period, rectify errors and defects, replace defect parts of equipment and rectify errors in software governed by this Framework Agreement, at no additional cost, conditional upon normal, careful use on the part of the Customer. The warranty is conditional upon the Customer having invoked errors by the expiry of the warranty period at the latest.

The Contractor may itself choose whether the rectification of errors is to be effected by way of repair, redelivery or supplementary delivery. Rectifications are to be effected without undue delay. If the Contractor chooses to rectify errors during the warranty period by delivering a new version of the software, the Contractor shall not be entitled to any consideration in respect of the new version, even if it contains improvements. The Contractor may only rectify errors by way of the delivery of a new version if the Customer is able to utilise such new version on the Customer's existing technical platform.

## **4.2. The duties of the Customer**

### **4.2.1. Contributions**

The Customer shall help to facilitate the Contractor's performance of its duties under this Framework Agreement.

If deliverables under this Framework Agreement are to be used together with equipment and/or software that are already installed on the premises of the Customer, the Customer shall itself arrange for the upgrading of equipment and/or software and other preparations that are necessary to enable these to work together with what is to be delivered under this Framework Agreement, unless otherwise stipulated in Appendix 1. The Contractor shall specify in Appendix 2 whether such upgrading is necessary, cf. Clause 4.1.1.

### **4.2.2. Duty to check**

The Customer shall check the quality of the items delivered, in compliance with the general provisions applicable under the law on the sale of goods.

If it is a prerequisite on the part of the Customer that a special approval test be conducted, such test is to be described in Appendix 1.

Errors shall be classified into the following categories:

Level	Category	Description
<b>A</b>	Critical error	- Error that results in the stoppage of the system, the loss of data, or in other functions that are of critical importance to the Customer not being delivered or not working as agreed. - The documentation being incomplete or misleading, and this resulting in the Customer being unable to use the system or material parts thereof.
<b>B</b>	Serious error	- Error that results in functions of importance to the Customer not working as described in the Framework Agreement, and which it is time- consuming or costly to avoid. -The documentation being incomplete or misleading, and this resulting in the Customer being unable to use functions that are of importance to the Customer.
<b>C</b>	Less serious error	- Error that results in individual functions not working as intended, but which can be avoided with relative ease by the Customer. - The documentation being incomplete, imprecise or easily misunderstood.

The Customer may not refuse to approve the Contracted Items if the errors identified are immaterial in relation to the Customer's use. A- and B-errors are deemed to be individually material. C-errors are deemed to be immaterial, unless several C-errors imply, in aggregate, that approval would be clearly unreasonable.

### 4.3. Responsibility for subcontractors and third parties

If the Contractor appoints a subcontractor or the Customer appoints a third party to perform work occasioned by this Framework Agreement, the relevant party shall remain fully responsible for the performance of such work in the same manner as if said party was performing the work itself.

#### 4.4. Confidentiality obligation

Information that comes into the possession of the parties in connection with the Framework Agreement and the implementation of the Framework Agreement is to be kept confidential, and shall not be disclosed to any third party without the consent of the other party.

The Customer is a public body and the confidentiality obligation under this provision shall not be wider than the obligation imposed by the Swedish Secrecy Act (Sw Sekretesslagen).

The confidentiality obligation pursuant to this provision shall not prevent the disclosure of information if such disclosure is required pursuant to statutes or regulations, including any disclosure or right of access pursuant to the Swedish Secrecy Act. The other party shall, if possible, be notified prior to the disclosure of such information.

The confidentiality obligation shall not prevent the information from being used when there is no legitimate interest in keeping it confidential, for example when it is in the public domain or is accessible to the public elsewhere.

The parties shall take all necessary precautions to prevent unauthorised persons from gaining access to, or knowledge of, confidential information.

The confidentiality obligation shall apply to the employees, subcontractors and other third parties who act on behalf of the parties in connection with the implementation of the Framework Agreement. The parties may only transmit confidential information to such subcontractors and third parties to the extent necessary for the implementation of the Framework Agreement, provided that they are subjected to a confidentiality obligation corresponding to that stipulated in this Clause 4.4.

The confidentiality obligation shall not prevent the parties from utilising experience and expertise developed in connection with the implementation of the Framework Agreement.

The confidentiality obligation shall continue to apply after the expiry of the Framework Agreement. Employees or others who resign from their positions with one of the parties shall also be subjected to a confidentiality obligation in respect of matters mentioned above following their resignation. The confidentiality obligation shall lapse five (5) years after the delivery date, unless otherwise stipulated by law or regulation.

## 4.5. External legal requirements

The Customer shall be responsible for specifying, in Appendix 1, any relevant legal requirements that are applicable to the Contracted Items.

The Contractor shall in Appendix 2 describe how the Contractor's solution takes these requirements into account.

Each party is responsible for the follow-up of its own duties pursuant to external legal requirements.

Each party shall, as a general rule, pay the costs of complying with legal requirements applicable to the party and its activities. In the events of amendments to the legal requirements or government requirements relating to the activities of the Customer that occasion a need for changes to the Contracted Items subsequent to the conclusion of the Framework Agreement, the Customer shall cover the costs associated with such changes and any additional work, cf. Clause 3.4.

## 5. Consideration and payment terms

### 5.1. Consideration

All prices and the detailed terms governing the consideration to be paid by the Customer for the deliverables provided by the Contractor are set out in Appendix 2.

Disbursements shall only be reimbursed to the extent agreed.

Unless otherwise specified in Appendix 2, all prices are quoted exclusive of Value Added Tax, but inclusive of customs duties and any other indirect taxes. All prices are quoted in Swedish kronor.

### 5.2. Invoicing date and payment terms

Consideration payable in respect of equipment and software is to be invoiced when deployment is deemed to have taken place pursuant to Clause 4.1.2. Training and other deliverables are to be invoiced when such deliverables have been delivered.

Periodic consideration accrued prior to the date of delivery pursuant to Clause 4.1.2 shall be invoiced simultaneously with the consideration in respect of

equipment and software as stipulated in the above paragraph. Any periodic consideration subsequently accrued shall be invoiced in arrears on a monthly basis.

Payment shall be made within sixty (60) calendar days of the invoice date. The invoices of the Contractor shall be specified and documented so that the Customer can easily check whether the invoice conforms to the agreed consideration. All invoices related to hours recorded on an ongoing basis shall be accompanied by a detailed specification of the hours accrued. Disbursements are to be specified separately.

Any other payment terms may be agreed in Appendix 2.

### 5.3. Late payment interest

If the Customer fails to pay at the agreed time, the Contractor shall be entitled to claim interest on any overdue amount, pursuant to the Swedish Act relating to Interest on Overdue Payments, etc. (the Late Payment Interest Act, Sw Räntelagen).

### 5.4. Payment default

If overdue consideration, with the addition of late payment interest, has not been paid within thirty (30) calendar days of the due date, the Contractor may send a written notice to the Customer, stating that the Agreement will be terminated for breach, unless settlement has taken place within sixty (60) calendar days of receipt of such notice.

Termination for breach may not take place if the Customer settles the overdue consideration, with the addition of late payment interest, by the expiry of the time limit.

## 6. Right of ownership and right of disposal

### 6.1. Right of ownership of equipment

Any equipment delivered pursuant to this Framework Agreement shall become the property of the Customer as of the date on which the equipment has been delivered as agreed and the purchase price has been paid.

## 6.2. Right of disposal of software, etc.

### 6.2.1. Limited right of disposal

The Customer is granted a limited right of disposal in respect of the software that forms part of the Contracted Items. The right of disposal comprises the rights that are necessary for the Customer to be able to utilise the Contracted Items as agreed, including a right to make such number of copies of the software as follows from ordinary operational and safety procedures.

The right of disposal shall apply as from the signing of the Framework Agreement, without any time limit or right of termination, unless otherwise agreed in Appendix 4.

The consideration for the right of disposal in respect of the software, including any prerequisites and limitations, for example in relation to the number of users or the place/equipment for the exercise of the right of disposal, is described in Appendix 2.

The Customer shall not be entitled to transfer software or copies of software to third parties without the written consent of the Contractor, unless this take place in connection with operational services provided by an operational service provider.

### 6.2.2. Rights to customisations

The Contractor shall retain the copyright to customisations that are developed specifically for the Customer unless otherwise agreed in a particular case.

The Customer is granted, free of charge, an indefinite and non-exclusive right to utilise the various parts of the software developed or customised specifically for the Customer (expanded right of disposal). The expanded right of disposal comprises a right to use, copy, modify and develop the customisations, either on its own or with the assistance of a third party. The Customer is entitled to confer a corresponding expanded right of disposal on any other public body.

Source code and associated specifications and documentation relating to the customisations are to be handed over to the Customer within ten (10) working days of the delivery date, unless otherwise agreed in a particular case.

### 6.3. Free software

Free software means software that is offered under generally recognised free software licenses.

If free software is to be used in connection with the Contracted Items, the Contractor shall prepare an overview of the relevant free software. The overview is to be included in a designated chapter in Appendix 2, together with a copy of the license terms governing the relevant free software.

The Contractor shall ensure that no free software is being used under license terms that are incompatible with the requirements applicable to the Contracted Items, or incompatible with the license terms governing other software that forms part of the Contracted Items.

The Contractor shall only use free software that does not, based on a sound assessment on the part of the Contractor, infringe third party rights, and that is offered under generally recognised free software licenses.

As regards the parts of the Contracted Items that are based on free software, including customisation and further developments of the free software, the Customer shall be granted the rights that are necessary in order to pass on the results under the relevant free software license, or under a compatible free software license if thus specified in Appendix 1. The rights include access to source code and associated specifications and documentation.

## 7. Breach of contract

### 7.1. Breach of contract on the part of the Contractor

#### 7.1.1. What is deemed to constitute breach of contract

There is a breach of contract on the part of the Contractor if the deliverables do not agree with the agreed functions, requirements or time limits. There is also a breach of contract if the Contractor fails to perform other duties under the Framework Agreement.

Nevertheless, there is no breach of contract if the situation is caused by circumstances related to the Customer or by force majeure.

The Customer shall submit a written complaint without undue delay after the breach of contract has been discovered or ought to have been discovered.

### 7.1.2. Cure

The Contractor shall commence and complete the effort of curing the breach of contract without undue delay, by way of repair, redelivery or supplementary delivery, at no additional cost to the Customer.

### 7.1.3. Infringement of the intellectual property rights of third parties

If the items delivered infringe any copyrights or other intellectual property rights of third parties, the Contractor shall indemnify the Customer, either by obtaining the right in question or by providing the Customer with a right of disposal for an item that is at least the equivalent of the infringing item.

## 7.2. Breach of contract by the Customer

There is breach of contract by the Customer if the Customer fails to perform its duties under the Framework Agreement. The Contractor shall be entitled to late payment interest pursuant to Clause 5.3 in case of payment delay.

Nevertheless, there is no breach of contract if the situation is caused by circumstances on the part of the Contractor, or by force majeure.

The Contractor shall give written notice without undue delay after the breach of contract has been discovered or ought to have been discovered.

## 8. Remedies for breach of contract

### 8.1. Suspended performance

In case of breach of contract on the part of the Contractor, the Customer may withhold payment, although the amount withheld shall not be obviously higher than what is necessary to safeguard the Customer's claim resulting from the breach of contract.

The Contractor shall not suspend any performance as the result of breach of contract on the part of the Customer, unless such breach is material.

### 8.2. Liquidated damages in case of delay

If the agreed date of deployment, or other time limit in respect of liquidated damages in Appendix 1, is not complied with, and this is not caused by force

majeure or circumstances on the part of the Customer, there is a delay on the part of the Contractor that triggers liquidated damages.

The liquidated damages shall accumulate automatically. The liquidated damages amount to 0.15 percent of the total consideration payable for the Contracted Items (the contract price), excluding Value Added Tax, for each calendar day of delay, but limited to a maximum of one hundred (100) calendar days.

Other rates for liquidated damages and other periods for liquidated damages may be agreed in Appendix 4.

The Customer shall not have the right to terminate the Agreement for breach for as long as the liquidated damages continue to accumulate. However, time restriction shall not apply in the case of wilful misconduct or gross negligence on the part of the Contractor or anyone for whom it is responsible.

If only parts of the agreed deliverables are delayed, the Contractor may request a reduction in the liquidated damages proportional to the ability of the Customer to utilise the part of the deliverables that has been delivered.

### 8.3. Price reduction

If the Contractor has not succeeded, despite repeated attempts, in curing a defect, the Customer shall be entitled to a proportional price reduction. The price reduction shall compensate for the reduced value of what has been delivered, and shall be independent of any damages.

### 8.4. Termination for breach

If there is a material breach of contract, the other party may, after giving the defaulting party written notice and a reasonable deadline for remedying the situation, terminate the Agreement for breach with immediate effect.

The Customer may terminate all or part of the Agreement for breach with immediate effect if the deliverables are materially delayed. A material delay exists if delivery has not taken place by the time liquidated damages reach their maximum limit.

### 8.5. Damages

A party may claim damages in respect of any direct loss, including any loss caused by additional work and other direct costs connected to delayed

deployment or operational interruptions, which can be reasonably attributed to delays, defects or other breaches of contract on the part of the defaulting party, unless the defaulting party demonstrates that the defaulting party is not responsible for the breach of contract or the reason for the breach of contract.

Liquidated damages shall be deducted from any other damages in respect of the same delay.

## 8.6. Limitation of damages

No damages may be claimed in respect of indirect loss. Loss of data is classified as indirect loss, unless such loss is caused by data handling that is the responsibility of the Contractor under the Framework Agreement.

Overall damages over the term of the Framework Agreement are limited to an amount corresponding to the contract price, exclusive of Value Added Tax.

The said limitations on damages shall not apply in the case of gross negligence or wilful misconduct on the part of the Contractor or anyone for whom it is responsible.

## 9. Other provisions

### 9.1. Risk associated with equipment and software

The risk of damage to equipment and delivered software copies, etc., due to an accidental occurrence, shall pass from the Contractor to the Customer upon actual deployment, cf. Clause 4.1.2.

If such damage or such loss occurs when the risk lies with the Customer, the Customer shall be entitled to a new delivery if this can be effected without extraordinary inconvenience to the Contractor, and in return for paying the direct costs of the Contractor without any mark- up.

### 9.2. Assignment of rights and obligations

Since the Customer is a public body, the Customer may assign, in full or in part, its rights and obligations under the Framework Agreement to another Swedish public body, which entity shall then be entitled to corresponding terms and conditions.

The Contractor may only assign its rights and obligations under the Framework Agreement with the written consent of the Customer. The same shall apply if the Contractor is merged with another company, de-merged into several companies, or in case of assignment to a subsidiary or another company within the same group. Consent shall not be unreasonably withheld.

The right to consideration under the Framework Agreement may be assigned freely, but shall not release the Contractor from its duties and responsibilities.

### 9.3. Bankruptcy, composition with creditors, etc.

In the event of debt rescheduling proceedings, composition with creditors, bankruptcy, or any other form of creditor intervention, in respect of the business of the Contractor, the Customer shall be entitled to terminate the Framework Agreement for breach with immediate effect.

### 9.4. Duty of care in relation to exports

If any products, including spare parts, software and technology, delivered by the Contractor are subject to requirements for authorisation from the authorities in the country of origin and/or other countries, the Customer is responsible for obtaining such authorisations in the event of export or re-export of such products.

### 9.5. Force majeure

If an extraordinary situation should arise which is outside the control of the parties which makes the performance of the duties under this Framework Agreement impossible, and which under Swedish law must be classified as force majeure, the other party is to be notified of this as soon as possible. The obligations of the affected party shall be suspended for as long as the extraordinary situation prevails. The corresponding obligations of the other party shall be suspended for the same period.

In such an extraordinary situation, the other party may only abandon the Framework Agreement if the situation prevails or is expected to prevail for more than ninety (90) calendar days, and in such case only with fifteen (15) calendar days' notice.

## 10. Disputes

### 10.1. Governing law

This Framework Agreement is governed by and interpreted according to the material laws of Sweden.

### 10.2. Negotiations and mediation

Should a disagreement arise between the parties as to the interpretation or the legal effects of the Framework Agreement, the parties shall first seek to reach agreement through negotiations and/or mediation.

### 10.3. Litigation or arbitration

Any dispute, controversy or claim arising out of or in connection with this Framework Agreement or from agreements resulting therefrom, or the breach, termination or invalidity thereof, shall be exclusively and finally settled by arbitration in accordance with the UNCITRAL arbitration rules. The Arbitration shall be held in Stockholm at the Arbitration Institute of the Stockholm Chamber of Commerce. The Arbitration Tribunal shall be composed of one sole arbitrator which shall be appointed by the Arbitration Institute of the Stockholm Chamber of Commerce. The place of arbitration shall be Stockholm, Sweden. The arbitration proceedings shall be conducted in the English language.

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