(date: September 2022)

**Instructions:**

**- Text/clauses preceded by ‘<OPTIONAL>’ are optional.**

**- E-invoicing: article 14.2 of the ARBIT requires the Counterparty to submit invoices electronically, in line with government policy. If this is impossible, after consulting the relevant ministry official you can delete the version of article 7.3 in this Contract that requires electronic invoices, and include instead the second (optional) version, which allows paper invoices.**

**- If the Counterparty processes Personal Data for the Contracting Authority, a Data Processing Agreement must also be concluded (see Model Data Processing Agreement (ARBIT)). The Data Processing Agreement is listed at the end of this document under the schedules. If no Data Processing Agreement has been concluded, remove it from the schedules list.**

**- If the processing is carried out by an auditor, the Data Processing Agreement must in certain cases be replaced by a schedule entitled ‘Provisions concerning data processing by auditors as part of assurance engagements’. See the instructions and the relevant explanatory notes.**

**NB: Delete these instructions before using the Contract.**

**ARBIT-2022 Model Agile Contract concerning <description of the nature of the deliverable comprised of the Public Service Contract to be performed>**

**The undersigned:**

1. The State of the Netherlands, which has its seat in The Hague, represented by the Minister of/State Secretary for <name of portfolio>,
legally represented in this matter by
<signatory’s name and position>,
hereinafter referred to as ‘the Contracting Authority’,

and

1. <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 Counterparty’,

The Contracting Authority and the Counterparty are referred to below jointly as ‘the Parties’ and individually as ‘Party’.

**Whereas:**

Organisation and objective of the Contracting Authority

a. The Contracting Authority is responsible for <description of the organisation of the Contracting Authority, in so far as relevant to the Contract>;

b. In performing its duties the Contracting Authority needs <description of the Contracting Authority’s procurement need for a Deliverable to be developed in accordance with Agile practices, for which the Contracting Authority is entering into the Contract with the Counterparty>;

Course of the contract award procedure

c. In connection with the recitals at a and b above, the Contracting Authority initiated a procedure to award a Public Service Contract for <description of intended end result> by means of <nature of the contract award procedure>;

d. The Contracting Authority wishes this Deliverable to be achieved by means of collaboration on the basis of Agile (software) development;

e. A tender notice was sent by or on behalf of the Contracting Authority to the Supplement to the Official Journal of the European Union on <date> and has been published under number <S number>;

f. <description of the remainder of the procurement process, depending of the nature of contract award procedure>;

g. The Contracting Authority awarded the contract to the Counterparty on <date>.

**Agree as follows:**

1. **Definitions**

A number of terms in this Contract are written with initial capitals. These terms are defined in the Terms and Conditions and in the Data Processing Agreement. Where written with an initial capital, the following additional terms are defined as follows:

* 1. Agile Software Development: an approach to the development and/or Implementation of Custom Software, as described in the Method and Practices Schedule.
	2. Epic: a number of connected User Stories.
	3. Approval: Written notification to the Counterparty in which the Contracting Authority declares that it has no objection to the Interim Results. Interim Results are Completed for the purpose of Approval. Approval by the Contracting Authority does not entail Acceptance of the Interim Results.
	4. Scrum Development Team: the team that:
	(a) works according to the practices and values of Agile software development in the context of achieving the Deliverable;
	(b) works in a collaborative and in so far as possible self-managing way to achieve the Deliverable;
	(c) consists of the Staff;
	(d) only takes on work at the instructions of, or in agreement with, the Product Owner;
	(e) is responsible for a full understanding of the User Stories and the way in which the User Stories are Implemented during the Sprints;
	(f) is responsible for achieving the Deliverable on the basis of the requirements and wishes of the Contracting Authority;
	(g) is transparent about the progress of the performance of the Public Service Contract during the Sprints and, during or at the end of each Sprint, Completes an Interim Result for the Product Owner, enabling the Product Owner to make any necessary adjustments to future Sprints.
	5. Product Backlog: a work list that ultimately results in an overview of all User Stories which taken together constitute the Deliverable that is to be achieved. The Product Backlog is used as the basis for determining what has top priority in the execution of the Project.
	6. Product Owner: the person who:
	(a) works according to the practices and values of Agile Software Development in the context of achieving the Deliverable;
	(b) represents the Contracting Authority in the Scrum Development Team;
	(c) is responsible for clearly and unambiguously describing the public service contract in terms of Epics and User Stories for the benefit of the Scrum Development Team; and
	(d) is responsible for a sufficient workload at the start of each Sprint.
	7. Project: all activities in the context of the Contract that are aimed at achieving the Deliverable.
	8. Project Document: an action plan in which important parts and aspects of the Project are described, having the content described in article 2.2. The Project Document approved by both Parties will be attached as a Schedule.
	9. Project Start Architecture: IT architecture agreements laid down as safeguards to ensure that the developments and changes that must be realised by the Project are aligned with the Reference Architecture.
	10. Project Plan: part of the tender that is elaborated in the Project Document.
	11. Reporting: the manner in which it has been agreed that the Counterparty will report to the Contracting Authority about the performance of the Services.
	12. Reference Architecture: the underlying IT architecture that needs to be in place in realising the Deliverable in order to safeguard that the Deliverable is properly structured and is, and will remain, maintainable.
	13. Scrum Master: the person who:
	(a) works according to the practices and values of Agile Software Development in the context of achieving the Deliverable;
	(b) facilitates the Product Owner and the Scrum Development Team during the Project;
	(c) coaches the Scrum Development Team, the Product Owner and the relevant personnel of the Contracting Authority and the Counterparty on the principles and practices of Agile Software Development;
	(d) endeavours to raise collaboration within the Scrum Development Team to a higher level;
	(e) endeavours to prevent or eliminate obstacles and/or delays to the Project.
	14. Sprint: each defined period in which the Scrum Development Team will Complete one or more Interim Results on the basis of a sprint objective and User Stories.
	15. Sprint Planning: the shared expectations of the Parties regarding what will be Completed at the end of the Sprint and how the work will be done during a Sprint.
	16. Interim Result: each part of the Deliverable that will be achieved during or at the end of a Sprint in the context of the Public Service Contract.
	17. User Story: a complete description of the requirements and wishes of an Interim Result, including the functional acceptance criteria, described from the perspective of the end user.
1. **Subject of the Contract**
	1. The Parties hereby conclude a Contract under which the Counterparty undertakes, in consideration of the Fee referred to in article 6, to achieve the Deliverable described in the Specifications and the Project Document, which basically consists of:

	- performance of the Agile Public Service Contract / the Public Service Contracts:
	<Explanatory note: Describe the (substance of) the intended end situation of the Agile development (or further development) of the products, services, functionalities and/or IT systems that is to be achieved by performance of the Contract.>

in order to enable the Contracting Authority to make the Agreed Use thereof.

* 1. For the performance of the Contract, the Parties will, by no later than <date> and on the basis of the Specifications and the Project Plan, adopt a Project Document approved by both Parties. The Project Document describes:
	(a) further details of the Deliverable in so far as is necessary;
	(b) more details of the collaboration in so far as is necessary;
	(c) the Project Start Architecture;
	(d) the Reference Architecture;
	(e) general agreements on the capacity, seniority and skills of the Product Owner, Scrum Master and Scrum Development Team;
	(f) the consultation and escalation arrangements;
	(g) fees and invoicing in accordance with article 6 (and <***OPTIONAL***> SCHEDULEX),and;
	(h) the manner in which Reporting takes place.
	2. The following documents together constitute the Contract. In the event of mutual inconsistencies, a higher ranked document takes precedence over a lower ranked document:
	1) this document;
	2) the Data Processing Agreement (Data Processing Agreement Schedule) (if applicable);

3) the Terms and Conditions (Terms and Conditions Schedule);

4) the Project Document (Project Document Schedule);

5) the Specifications (Specifications Schedule);
6) the other Schedules;
7) the tender of <date>, reference (<reference>), submitted by the Counterparty to the Contracting Authority.

* 1. <***OPTIONAL***> There is an interrelationship as referred to in article 30.5 of the General Government Terms and Conditions for IT Contracts (ARBIT) between this Contract and <title and reference of contract>.
1. **Sprints**
	1. <***OPTIONAL***> The Project is to be implemented by means of <number> Sprints.

**OR**

<***OPTIONAL***> The intended number of Sprints is to be laid down in the Project Document.

* 1. At the start of each Sprint the intended Interim Results of the Sprint will be determined on the basis of User Stories.
	2. Each Sprint comprises testing the results of the work done. The Counterparty is responsible for helping to ensure that testing takes place in a professional manner. If it is or must be clear to the Counterparty that testing is not taking place in a professional manner, the Counterparty will issue the Contracting Authority with a timely warning.
	3. At the end of each Sprint:
	(a) it will be assessed which subjects are to be addressed during the next Sprint;
	(b) it will be assessed whether there is scope for improving working procedures;
	(c) it will be determined whether the Interim Result can be Approved;
	(d) it will be determined how the time spent relates to the Fee or the remaining portion of the Fee;
	(e) it will be determined whether adjustments need to be made to the Project.
	4. After the last Sprint, Completion will take place <within x days> and the Contracting Authority will declare whether the Deliverable is to be accepted.
	5. <***OPTIONAL***> If the Contracting Authority Approves the Interim Result or Accepts the Deliverable despite the existence of one or more Defects, the Contracting Authority will withhold an amount of <amount> from the Fee until the Defects have been repaired.
	6. In making the declaration under article 3.5, the Contracting Authority will take into account:
	(a) the tests carried out during the Sprints;
	(b) interim Approval during the Sprints; and
	(c) adjustments made to the Project during the Project.
1. **Contacts and reporting**
	1. The persons who liaise on behalf of the parties in relation to the performance of the Contract are listed in the Contacts Schedule.
	2. The Counterparty will report <period> on how the Contract is being performed. The report will include at a minimum:
	(a) progress in the performance of the Public Service Contract;
	(b) changes to the Project that result in a longer period of collaboration being required;
	(c) whether and, if so, how, the Fee should be adjusted in the opinion of the Counterparty;
	(d) agreed deviations from the Project Start Architecture, the Reference Architecture and/or functionality as previously envisaged as part of the Deliverable; and
	(e) <enter>
2. **Entry into force and term of the Contract**
	1. <***OPTIONAL***> The Contract enters into force once it has been signed by both Parties and ends upon the Public Service Contract having been performed, unless termination takes place on the other grounds as referred to in article 30 of the ARBIT-2022.
	2. <***OPTIONAL***> The Contract enters into force once it has been signed by both Parties and ends on <date>. The Contract can be renewed on the same terms and conditions for a period of <enter period>, provided that the Contracting Authority gives the Counterparty written notice of this no later than <enter weeks/months> before the expiry of the initial term.
3. **Fee**
	1. <***OPTIONAL***> (if no maximum Fee has been set) The Parties agree the following Fee based on hourly rates: <……>

**OR**

<***OPTIONAL***> (if a maximum Fee has been set): The Parties agree the following Fee: <amount>

* 1. <***OPTIONAL***> If no maximum Fee has been set, after <date> the hourly rates may be adjusted once a year on <date> by a percentage not exceeding the price index published by Statistics Netherlands for hourly rates of pay including special remuneration established under collective labour agreements in the category M-N business services sector (2010 = 100).
	2. <***OPTIONAL***> If, upon Completion, the Deliverable is rejected by the Contracting Authority, an amount of <amount> will be deducted from the Fee for every day that the identified Defects are not repaired, up to a maximum of <amount>.
1. **Invoicing, indebtedness and payment**
	1. The Fee is owed from:

|  |  |  |
| --- | --- | --- |
| Serial number | Subject | Time of indebtedness |
| B1 | Approval of Interim Result(s)  | <date or number of days after Approval> |
| B1 | Acceptance of the Deliverable | <date or number of days after Acceptance> |

* 1. An invoice should contain the following information:
	- date of invoice
	- amount of the Fee
	- VAT owed
	- contract number
	- commitment number
	<***OPTIONAL>*** <other invoice requirements> sprint number(s).
	2. The Counterparty must submit invoices electronically in the manner prescribed in the Specifications.

**OR**

<***OPTIONAL***> Notwithstanding the provisions of article 14.2 of the ARBIT, the Counterparty will send the invoice containing the particulars referred to in article 7.2 to: <Invoicing address>.

* 1. <***OPTIONAL*** If an amount is paid as an advance to the Counterparty and security is required in exchange> The Contracting Authority will pay to the Counterparty prior to Acceptance an advance of <amount>. This concerns the amounts referred to under serial number(s) <serial number(s)> in the table in article 7.1.
	2. <***OPTIONAL***> The Counterparty will provide security for this amount by means of a bank guarantee (Bank Guarantee Schedule).
1. **General and special terms and conditions**
	1. Any general and special terms and conditions of the Counterparty or of third parties used by the Counterparty in performing the contractual obligations in relation to the Deliverable do not apply.
	2. A copy of the Terms and Conditions is appended to the Contract.
2. **Other provisions**

9.1 The duty of secrecy laid down in article 17 of the ARBIT-2022 does not extend to information about (the progress of) the Public Service Contract that the Contracting Authority needs to supply for the Central Government ICT Dashboard.

9.2 <***OPTIONAL***> Articles 22.1, 22.2 and 22.4 of the ARBIT-2022 do not apply. The Counterparty may replace persons charged with performing the Contract. The Contracting Authority may not refuse the replacements.

9.3 <***OPTIONAL***> The Parties agree, as the occasion arises, to exclude application of the deemed employment relationship of homeworkers or persons treated as such as referred to in articles 2b and 2c of the Salaries Tax Implementation Decree 1965 and articles 1 and 5 of the Working Relationship (Designation as Employment) Decree (Decree of 24 December 1986, Bulletin of Acts and Decrees 1986, no. 655).

9.4*<****OPTIONAL****>*The Counterparty will [erase or return] the data within [number] [days/weeks] after the end of the Contract, or earlier as agreed, failing which the Counterparty will be owe penalty of €[amount] per day, up to a maximum of €[amount]. Payment of the penalty does not affect the Counterparty’s obligation under this paragraph and its liability for compensating any loss caused by the breach.

9.5 *<****OPTIONAL****>* The data will be returned in the format and manner stipulated by the Contracting Authority.

**OR**

* 1. *<****OPTIONAL****>* The data will be returned as follows: [file format] [manner in which it is to be returned, specifying security measures] [address].

*<****OPTIONAL****>* Upon (early) termination of the Contract, the provisions of the Exit Arrangements Schedule apply in addition to article 32 of the ARBIT-2022.

* 1. <***OPTIONAL*** *in the case of the delivery of an AI system that poses a high risk to individuals’ health and safety or fundamental rights>*If the Deliverable consists in part of the delivery of an AI system that poses a high risk to individuals’ health and safety or fundamental rights, the provisions of the AI Schedule [to be agreed] apply in regard to it.

*<****OPTIONAL****>*The term ‘in writing’ in articles 3, 12.3 and 31 of the ARBIT-2022 also includes electronic communication[.] *<****OPTIONAL****>* provided that the communication fulfils the following requirements:[……].

* 1. <***OPTIONAL*** ….>.

Done on <date> and signed in duplicate by:

|  |  |
| --- | --- |
| FOR THE CONTRACTING AUTHORITY  | FOR THE COUNTERPARTY |
| Name: <name> | Name: <name> |
|  |  |
|  |  |
| Signature: | Signature: |
| Date:  | Date:  |

# Schedule: Dutch Scrum Guide on [method and practices](https://www.scrumguides.org/docs/scrumguide/v2017/2017-Scrum-Guide-Dutch.pdf)

# Schedule: Specifications

# Schedule: Contacts

# Schedule: Terms and Conditions

# Schedule: Project Document

# Schedule: Service Level Agreement (SLA)

# Schedule: Bank Guarantee

# Schedule: Acceptance Procedure

# Schedule: Model Timesheets

# Schedule: Data Processing Agreement (ARBIT)

# Schedule: Exit Arrangements

# Schedule: Artificial Intelligence (AI)