**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 8.3 in this Contract that requires electronic invoices, and include instead the second (optional) version, which allows paper invoices.**

**- If the Contract involves the processing of personal data, a Data Processing Agreement (see Model Data Processing Agreement (ARBIT-2022)) should also be concluded at the same time. The Data Processing Agreement is listed at the end of this document under 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 above and the relevant explanatory notes.**

**Please note, with regard to the Assessment of Employment Status (Deregulation) Act (DBA): if this model contract is used to hire a self-employed person without employees, an assessment must be carried out beforehand as to whether the contractual relationship that the parties are entering into qualifies as employment. If so, the Contracting Authority must withhold salaries tax and social insurance contributions from the salary of the self-employed person without employees and remit these to the Tax Administration, as it does for staff employed on the basis of a permanent or temporary appointment. For more information, see the explanatory notes on the Model Contract.**

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

(Date: September 2023)

# ARBIT-2022 Model Contract concerning<description of the nature of the Deliverable>

**The undersigned:**

1. The State of the Netherlands, which has its seat in The Hague, represented by the Minister of/State Secretary for <portfolio>,

legally represented in this matter by

<signatory’s name and position>,

hereinafter referred to as ‘the Contracting Authority’,

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 Counterparty’,

the Contracting Authority and the Counterparty hereinafter referred to jointly as ‘the Parties’ and separately as ‘the Party’

**Whereas:**

*Organisation and procurement needs 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 needs in 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 contract for <description of Deliverable> by means of <nature of the procedure>;

d. a tender notice was sent by or on behalf of the Contracting Authority to the Supplement to the Official Journal of the European Union (hereinafter referred to as the Official Journal) on <date> and has been published under number <S number>;

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

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

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**Agree as follows:**

# Definitions

A number of terms in this Contract are written with initial capitals. These terms are defined in the Terms and Conditions and the Data Processing Agreement.

# 2. Subject of the Contract

The Parties hereby conclude a Contract under which the Counterparty undertakes, in consideration of the Fee referred to in article 7, to provide the Deliverable as described in the Specifications, which basically consists of:

- delivery of the Product(s):

|  |  |  |
| --- | --- | --- |
| **Serial number** | **Subject** | **Number** |
| A1 | *<Products>* | *<…>* |
| A2 | <…> | *<…>* |

- performance of the Public Service Contract(s):

|  |  |  |
| --- | --- | --- |
| **Serial number** | **Subject** | **Number** |
| B1 | *<consultancy services, Implementation, Installation, support, development of Custom Software, Secondment, Maintenance, cloud services (comprising, at a minimum, Licences and Maintenance), other Public Service Contracts>*  | *<…>* |
| B2 | *<…>* | *<…>* |

- granting of one or more Licences:

|  |  |  |
| --- | --- | --- |
| **Serial number** | **Subject** | **Number** |
| C1 | *<‘Unrestricted Licence to ……………’ or if agreed otherwise: ‘Notwithstanding the provisions of article 43.2 (d), the scope of the Licence is restricted to …’ (for example the organisation or parts of the organisation entitled to the Licence, number of users, locations, transactions, systems, etc.)>* | *<…>* |
| C2 | <…> | <…> |

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

2.2 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 Data Processing Agreement (Data Processing Agreement Schedule) (if applicable);

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

4) the Specifications (Specifications Schedule);

5) the other Schedules;

6) the tender of <date>, reference (<reference>), submitted by the Counterparty to the Contracting Authority.

***<OPTIONAL>*** There is an interrelationship as referred to in article 30.5 of the General Government Terms and Conditions for IT Contracts (ARBIT-2022) between this Contract and <title and reference of contract>.

# 3. Contacts and reporting

3.1 The persons who liaise on behalf of the parties in relation to the performance of the Contract are listed in the Contacts Schedule.

3.2 The Counterparty will report <period> on how the Contract is being performed. This report will at least comprise:

 <subject of the report>.

# 4. Entry into force and term of the Contract

4.1 The Contract enters into force once it has been signed by both Parties.

**OR**

4.1 The Contract enters into force on <date>.

4.2 <***OPTIONAL*** in the case of fixed-term Contracts> The Contract has a term of <term> and will end on <date>.

4.3 <***OPTIONAL*** in the case of fixed-term Contracts> The Contracting Authority may renew the Contract on the same terms and conditions for a period of <period>. If the Contracting Authority wishes to exercise this right, it will give written notice of this to the Counterparty no later than <number> months before the end of the term referred to in article 4.2.

4.4 *<****OPTIONAL*** in the case of open-ended Contracts other than Public Service Contracts> The Contracting Authority may terminate the Contract by giving notice. If it wishes to exercise this right, it will give <number> month’s/months’ notice of termination to the Counterparty.

# 5. Delivery and Completion

*In the case of Products*

5.1 The Counterparty will arrange for the Delivery of the Products on the date and at the place referred to in the following table. The specified dates are Vital Deadlines.

| **Serial number** | **Subject** | **Delivery address** | **Delivery date** |
| --- | --- | --- | --- |
| A1 | *<Products>* | <*address*> | *<date or X days after demand in accordance with Delivery-on-Demand Procedure Schedule>* |
| A2 | <…> | <…> | <…> |

*In the case of Public Service Contracts or the granting of Licences*

5.2 The Counterparty will arrange for Completion in the manner, on the date and at the place referred to in the following table. The specified dates are Vital Deadlines.

|  |  |  |  |
| --- | --- | --- | --- |
| **Serial number** | **Subject** | **Manner of Completion** | **Address and date** |
| B1 | *<Consultancy Services>* | *<…>* | *<address, date>* |
| B2 | *<Development of Custom Software>* | *<provision of copies of the Object and Source Code>* | *<address, date>* |
| B3 | *<Secondment>* | *<provision of Staff as evidenced by monthly submission of timesheets retrospectively>* | *<address, date>* |
| B4 | *<Support>* | *<…>* | *<address, date>* |
| B7 | <*Other Public Service Contracts>* | *<provision of copies>* | *<address, date>* |
| C1 | <*Licences (to Standard Software)>* | *<provision of copies>* | *<address, date>* |
|  |  |  |  |

 *In the case of Maintenance and cloud services*

5.3 Service provision begins on the date indicated in the table below.

| **Serial number** | **Subject** | **Start date** |
| --- | --- | --- |
| B5 | <*Maintenance>* | *<date on which the maintenance obligation begins>* |
| B6 | <*Cloud services>* | *<date on which access to the cloud service begins>* |

5.4 <***OPTIONAL*** in the case of Standard Software with a right to the Source Code>

In those cases in which the Counterparty has undertaken to make the Source Code available to the Contracting Authority, the latter will on request be immediately supplied with a copy of the most recent version of the Source Code.

# 6. Acceptance

6.1 Acceptance of the Deliverable takes place as follows:

| **Serial number** | **Subject** | **Acceptance** | **Deadline for communication of Acceptance or non-Acceptance** |
| --- | --- | --- | --- |
| A1 | *<Products>* | *<manner of Acceptance whether or not after performance of Acceptance Procedure (see Acceptance Procedure Schedule)>* | *<30 days after Delivery (11.1 ARBIT)> <****OPTIONAL*** *a different term as referred to in article 11.4 ARBIT>* |
| B1 | *<Consultancy Services>* | *<manner of Acceptance whether or not after performance of Acceptance Procedure (see Acceptance Procedure Schedule)>* | *<30 days after Completion (11.1 ARBIT)> <****OPTIONAL*** *a different term as referred to in article 11.4 ARBIT>* |
| B2 | *<Development of Custom Software>* | *<manner of Acceptance whether or not after performance of Acceptance Procedure (see Acceptance Procedure Schedule)>* | *<30 days after Completion (11.1 ARBIT)> <****OPTIONAL*** *a different term as referred to in article 11.4 ARBIT>* |
| B3 | *<Secondment>* | *<Approval of the timesheets submitted in accordance with the model included in the Model Timesheets Schedule (article 5.2)>* | *<30 days after receipt of the timesheet>* |
| B4 | *<Support>* | *<…>* | *<…>* |
| B5 | *<Maintenance>* | *<In accordance with the provisions of the Service Level Agreement Schedule>* | *<In accordance with the provisions of the Service Level Agreement Schedule>* |
| B6 | *<cloud services (comprising, at a minimum, Licences and Maintenance)>* | *<In accordance with the provisions of the Service Level Agreement Schedule>* | *<In accordance with the provisions of the Service Level Agreement Schedule>* |
| B7 | *<Other Public Service Contracts>* | *<…>* | *<30 days after Completion (11.1 ARBIT)> <****OPTIONAL*** *a different term as referred to in article 11.4 ARBIT>* |
| C1 | *<Licences (to Standard Software)>* | *<manner of Acceptance whether or not after performance of Acceptance Procedure (see Acceptance Procedure Schedule)>* | *<30 days after Completion (11.1 ARBIT)> <****OPTIONAL*** *a different term as referred to in article 11.4 ARBIT>* |

6.2 <***OPTIONAL***> If the Contracting Authority accepts the Deliverable despite the presence of one or more Defects, it will withhold an amount of <amount> from the Fee until the Defects have been repaired.

# 7. Fee

7.1 The Parties agree the following Fee:

| **Serial number** | **Subject** | **Price** | **Price incl. VAT** |
| --- | --- | --- | --- |
| A1 | The Fee for the Product to be delivered is: | *<fixed total price or price per Product>* | *<fixed total price or fee per Product>* |
| B1 | The Fee for the consultancy work is: | *<fixed total price or other fee criterion>* | *<fixed total price or other fee criterion>* |
| B2 | The Fee for the development of Custom Software is: | *<fixed total price or other fee criterion>* | *<fixed total price or other fee criterion>* |
| B3 | The Fee for the Secondment is: | *<hourly rate or other fee criterion >* | *<hourly rate or other fee criterion >* |
| B4 | The Fee for the support is: | *<fixed total price or other fee criterion>* | *<fixed total price or other fee criterion>* |
| B5 | The Fee for the Maintenance is: | *<fixed total price or other fee criterion>* | *<fixed total price or other fee criterion>* |
| B6 | The Fee for the cloud services is: | *<fixed total price or other fee criterion>* | *<fixed total price or other fee criterion>* |
| B7 | The Fee for <other Public Service Contracts> is: | *<fixed total price or other fee criterion>* | *<fixed total price or other fee criterion>* |
| C1 | The Fee for the Licence is: | *<fixed total price or other fee criterion>* | *<fixed total price or other fee criterion>* |
|  | **Total Fee** | *<Enter Fee>* |  |

7.2 *<****OPTIONAL****>* After <date> the Fee 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 business services sector. The figure for the previous month <month> will be used, with the figure for (<month, year>) being set at 100%.

7.3 <***OPTIONAL*** in the case of a Maintenance Contract> If the Deliverable does not meet the Service Levels owing to a failure imputable to the Counterparty, the Fee will be subject to a discount in accordance with the following table:

|  |  |  |
| --- | --- | --- |
| **Service Levels** | **Criterion** | **Discount** |
| *<service level1>* | *<criterion>* | *<discount>* |
| *<service level2>* | *<criterion>* | *<discount>* |

7.4 <***OPTIONAL***> If Completion or Delivery of the Deliverable does not take place on the agreed date owing to a failure imputable to the Counterparty, an amount of <amount> will be deducted from the Fee for every day that the delay in Completion or Delivery continues, up to a maximum of <amount>.

7.5 <***OPTIONAL***> If, upon Completion or Delivery, 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>.

# 8. Invoicing, indebtedness and payment

8.1 The Fee as referred to in article 7 is payable from <date or moment or after Acceptance>.

8.2 An invoice should contain the following information:

- date of invoice

- amount of the Fee

- VAT owed

- contract number

- commitment number

*<****OPTIONAL*** *other invoice requirements>*

8.3 The Counterparty must submit invoices electronically in the manner prescribed in the Specifications.

**OR**

8.3 <***OPTIONAL***> Notwithstanding the provisions of article 14.2 of the ARBIT-2022, the Counterparty will send the invoice containing the particulars referred to in article 8.2 to:

<invoicing address>

8.4 <***OPTIONAL*** in the case of a Maintenance / cloud services Contract> Notwithstanding the first sentence of article 11.1 of the ARBIT-2022, the Contracting Authority will pay for the Maintenance / cloud services [period] in advance in accordance with the provisions of article 8.1. The provisions of article 16 of the ARBIT-2022 do not apply.

8.5 <***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.

<***OPTIONAL***> The Counterparty will provide security for this amount by means of a bank guarantee (Bank Guarantee Schedule).

# 9. General and special terms and conditions

9.1 Any general and special terms and conditions of the Counterparty or of third parties used by the Counterparty in providing the Deliverable do not apply.

9.2 <***OPTIONAL*** where licences to standard software are acquired> Notwithstanding article 9.1 and without prejudice to the provisions of article 2.2, the licence conditions of the Counterparty or of third parties used by the Counterparty in providing the Deliverable also apply if and in so far as:

- their applicability is not excluded in the Specifications;

- (a) the Counterparty 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 Counterparty can demonstrate that the rights of the Contracting Authority under the Contract will not be reduced or that the Contracting Authority’s obligations under the Contract will not become unreasonably onerous as a result thereof.

9.3 The acceptance of standard or special terms required for the use of the Deliverable such as shrink-wrap and click-wrap licences is not binding on the Contracting Authority. The Counterparty guarantees to the Contracting Authority that such acceptance will notrestrict the Agreed Use in any way.

9.4 A copy of the Terms and Conditions is appended to the Contract.

# 10. Other provisions

10.1 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.

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

10.3 *<****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).

10.4 <***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 owe a 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 or its liability for compensating any loss caused by the breach.

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

**OR**

10.5 <***OPTIONAL***> The data will be returned as follows: [file format], [means of return, including security measures] to [address].

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

10.7 <***OPTIONAL*** in connection with the supply of an AI system that poses a high risk to individuals’ health and safety or fundamental rights> If the Deliverable consists in part 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.

10.8 *<****OPTIONAL****>*In articles 3, 12.3 and 31 of the ARBIT-2022, ‘in writing’ includes electronic communication[.] *<****OPTIONAL****>*providing the communication satisfies the following requirements:[……].

10.9 <***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: Data Processing Agreement (if applicable)**

<insert Data Processing Agreement>

**Schedule: Specifications**

<insert Specifications>

**Schedule: Contacts**

*Contracting Authority*

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

*Counterparty*

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

**Schedule: Terms and Conditions**

<Insert Terms and Conditions>

**Schedule: Service Level Agreement (SLA)**

The SLA forms part of the Maintenance Contract and defines the agreed service level.
To ensure that the SLA is in keeping with the Terms and Conditions, the main service levels for the Deliverable must be included in the Contract. Important service levels are in any event those for which a discount may be deducted from the Fee in accordance with article 7.3. Finally, the following terms from article 68 of the ARBIT-2022 should be used in the SLA:

Availability: the period during which the Deliverable is free of Defects.

Corrective Maintenance: the tracing and resolution by the Counterparty of Faults reported by the Contracting Authority or Faults that have otherwise become known to the Counterparty.

Repair Time: the period, expressed in Service Hours, between the moment when a Fault is reported to the Counterparty and the moment it is resolved.

Innovative Maintenance: the provision by the Counterparty to the Contracting Authority of New Versions or newly developed parts of Products and/or new Documentation.

Preventive Maintenance: measures taken by the Counterparty to prevent Faults and related forms of service.

Response Time: the time within which the Counterparty (or Staff of the Counterparty) must adequately respond to a report by the Contracting Authority of a Fault and other requests of the Contracting Authority for service.

Service Levels: requirements included in the Contract in respect of Maintenance and other agreed forms of service.

Service Hours: hours that fall within the agreed service period.

Fault: a technical problem that occurs when using the Deliverable

**Schedule: Acceptance Procedure**

# Schedule: Model Timesheets

# Schedule: Delivery-on-Demand Procedure

# Schedule: Exit Arrangements

# Schedule: Artificial Intelligence (AI)