# 

**Instructions:**

**- Please note, with regard to the Assessment of Employment Status (Deregulation) Act (DBA): if this model agreement 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 framework agreement.**

**- For the purposes of article 4.4 of this Agreement:**

**In its judgments of 19 December 2018, C-216/17 (*Autorità Garante della Concorrenza e del Mercato – Antitrust en Coopservice*) and 17 June 2021, C-23/20 (*Simonsen & Weel*), the Court of Justice of the European Union ruled that if the maximum value or quantity stated in the tender documents has been reached, the framework agreement no longer has any effect. This means that no new Call-off Contracts may then be placed, unless one of the grounds for exception in sections 2.163a to 2.163g of the Public Procurement Act can be invoked.**

**This paragraph is included in case the term of the Framework Agreement referred to in article 4 has not yet expired but 1) the maximum value or quantity has been reached, or 2) the maximum value or quantity may be exceeded by entering into a new Call-off Contract. In both cases, the Contracting Authority may terminate the Framework Agreement unilaterally in writing. This does not entitle the Counterparty to compensation.**

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

(Date: September 2022)

# ARBIT-2022 Model Framework Agreement 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 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 Framework Agreement>;

b. in performing its duties the Contracting Authority needs <description of the Contracting Authority’s procurement needs in entering into the Framework Agreement 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 on <date> to <number> tenderers including the Counterparty;

g. on the basis of this Framework Agreement the Contracting Authority may once again invite the Counterparty to participate in competitive selection for the award of a Call-Off Contract;

h. <description of the competition>

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**Agree as follows:**

# 1 Terms

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

* 1. Call-off Contract: the agreements made under the Framework Agreement between the Contracting Authority and the Counterparty.

1.2. Framework Agreement: the agreements on the basis of which the Contracting Authority is entitled to invite the Counterparty to participate in competitive selection and to conclude Call-off Contracts with it.

# Subject of the Framework Agreement

2.1. The Parties hereby conclude a Framework Agreement on the basis of which the Contracting Authority is entitled to invite the Counterparty to participate in competitive selection by means of a further call for competition. On the basis of the further tender issued by the Counterparty, the Contracting Authority may conclude Call-off Contracts with the Counterparty.

2.2. Call-off Contracts are concluded on the basis of the Model Call-off Contract contained in the Schedule (Model Call-off Contract under the ARBIT-2022 Framework Agreement Schedule).

2.3. The following documents together constitute the Framework Agreement. 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 Financial Agreements File (Financial Agreements File 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.

2.4. ***<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 Framework Agreement 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 Framework Agreement are listed in the Contacts Schedule.

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

<subject of the report>.

# 4. Entry into force and term of the Framework Agreement

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

4.2. *<****OPTIONAL*** *in the case of Framework Agreements that end through lapse of time>* The Framework Agreement has a term of <term> and will end on <date>.

4.3. *<****OPTIONAL*** *in the case of renewal options reserved in the contract award procedure>* The Contracting Authority may renew the Framework Agreement 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. In addition to the provisions of article 30 of the ARBIT-2022, the Contracting Authority may terminate the Framework Agreement in writing with immediate effect if the maximum quantity and/or value referred to in the tender documents has been reached or may be exceeded by the next contract award. The Contracting Authority does not have to indemnify the Counterparty in any way for the consequences of the termination of the Framework Agreement.

# 5. Mini-competition

5.1. The Contracting Authority may once again invite the Counterparty to participate in competitive selection by means of a further call for competition.

5.2. The Counterparty will submit a further tender to the Contracting Authority at the address specified in the Contacts Schedule within <number> days of the date of the further call for competition. The term specified for this purpose is a Vital Deadline.

5.3. If the further tender is not received by the Contracting Authority within the period referred to in article 5.2 or it does not meet the requirements set for this purpose, the Counterparty will be deemed not to have submitted the further tender.

5.4. The Contracting Authority may impose a fine of <amount> on the Counterparty for each occasion that the Counterparty fails to submit a further tender in response to a request from the Contracting Authority to this effect.

5.5. ***<OPTIONAL>*** The fine referred to in article 5.4 does not apply if the Counterparty has made a reasoned request for exemption from submitting a further tender in a particular case and the Contracting Authority has granted this request. The Contracting Authority will not refuse a request for exemption on unreasonable grounds.

5.6. The Contracting Authority will evaluate the further tender on the basis of the criteria recorded in the Specifications and will inform the Counterparty of the outcome with due dispatch. A rejection of the further tender will be <explained/accompanied by the relevant reasons>.

5.7. ***<OPTIONAL>*** If the value of the contract specified in the further call for competition exceeds the applicable threshold for the award of contracts, the Contracting Authority will not award the contract until a period of 20 days after dispatch of the outcome of the evaluation referred to in article 5.6 has elapsed.

5.8. If the Counterparty repeatedly fails to submit a further tender, the Contracting Authority may cancel the Framework Agreement.

5.9. ***<OPTIONAL>*** If none of the Counterparties called upon by the Contracting Authority to participate in competitive selection submits a further tender in response to a request to this effect from the Contracting Authority, the Contracting Authority may award the contract to a third party.

# 6. Prices and rates

6.1. ***<OPTIONAL>*** The maximum price that may be tendered by the Counterparty to the Contracting Authority in response to a further call for competition as referred to in article 5 is recorded in the Financial Agreements File (Financial Agreements File Schedule).

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

# 7. Invoicing and payment

7.1. An invoice should contain the following information:

- date of invoice

- amount of the Fee

- VAT owed

- contract number

- commitment number

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

# 8. General and special terms and conditions

8.1. 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, unless expressly provided otherwise in the Call-off Contract.

8.2. 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 not restrict the Agreed Use in any way.

8.3. A copy of the Terms and Conditions is appended to the Framework Agreement.

# 9. 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 implementing the Framework Agreement. 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:*** ***include in Framework Agreement or Call-Off Contract if applicable****>* The Counterparty will [erase or return] the data within [number] [days/weeks] after the end of the Framework Agreement, 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.

9.5.   *<****OPTIONAL:******include in Framework Agreement or Call-Off Contract if applicable***> The data will be returned in the format and manner stipulated by the Contracting Authority.

**OR**

9.5.   *<****OPTIONAL:******include in Framework Agreement or Call-Off Contract if applicable***> The data will be returned as follows: [file format], [means of return, including security measures] to [address].

9.6. *<****OPTIONAL:*** ***include in Framework Agreement or Call-Off Contract if applicable****>*Upon (early) termination of the Framework Agreement, the provisions of the Exit Arrangements Schedule apply in addition to article 32 of the ARBIT-2022.

9.7. *<****OPTIONAL: include in Framework Agreement or Call-Off Contract if applicable,*** *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.

9.8. *<****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:[……].

9.9. <***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: Model Call-off Contract under the ARBIT-2022 Framework Agreement

<insert Model Call-off Contract>

**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 Framework Agreement is concerned.

Counterparty

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

# Schedule: Terms and Conditions

<Insert Terms and Conditions>

# Schedule: Financial Agreements File

<Insert Financial Agreements File>

**Schedule: Exit Arrangements**

**Schedule: Artificial Intelligence (AI)**