



## **Explanatory Notes on the Model Public Service Contract (ARVODI 2025)**

### **I Introduction**

#### *General*

These are the Explanatory Notes on the Model Public Service Contract ('Model'). The Model contains a number of standard provisions that apply to all Contracts. It also includes optional elements which can be used if the specific situation so requires. These elements are marked **<OPTIONAL>** and **OR**. When these elements have been selected as appropriate, the other provisions have been completed and the articles have been numbered consecutively, the result is a draft contract. Once it has been signed by the Contracting Authority and the Contractor it becomes the Contract.

In a procurement procedure, the draft contract must be sent to potential tenderers since it contains requirements and conditions that they must take into account when drawing up a tender.

These Explanatory Notes are in the public domain, but are not part of the Contract. The content of these explanatory Notes can help resolve any doubts about the meaning and/or interpretation of the Model. The Explanatory Notes do not affect what has been agreed by the Parties in a specific case.

#### *Use*

It is recommended that the ARVODI be declared applicable to all contracts drawn up on the basis of the Model (even those with a low estimated value). The Model is designed to be used with the ARVODI and any departures from the ARVODI must be included in the Contract. The Model can be completed by filling in the relevant details of a specific contract, including any relevant optional provisions.

The Model is also suitable for research services performed using non-academic methods. A separate Model Research Contract is available for research carried out in accordance with academic standards (that is to say, in accordance with the European Code of Conduct for Research Integrity (ALLEA code of conduct)). If it is not clear which model should be used, it is recommended that the legal department be consulted.

#### *Signature*

It is important that the Contract is signed in a legally valid manner. The minister or state secretary concerned is always authorised to act independently in signing the Contract (on the basis of the Government Accounts Act 2016). If the Contract is signed on behalf of (rather than by) the minister or state secretary concerned, it is important to check that the signatory is authorised for this purpose. The ministry's power of attorney and/or mandate regulations should be consulted in this regard.

The authority of the Contractor's signatory to sign the Contract in a legally valid manner can be checked with reference to an extract from the commercial register (possibly in combination with a power of attorney).

## **II Notes on individual articles**

This section contains explanatory notes only on those articles that may give rise to queries.

### **Article 1 Subject of the Contract**

- 1.1 Here the subject of the Contract should be stated. This can be done briefly by referring to the tender or at greater length by describing the Services to be performed.
- 1.2 The second paragraph of this article states explicitly that the Contract is governed exclusively by the ARVODI. If the Contractor has stated that its tender or quotation is subject to the Contractor's own general terms and conditions, the conclusion of the Contract renders the latter inapplicable.
- 1.3 This paragraph lists the documents that form an integral part of the Contract, in order of precedence. The request for tenders ranks higher than the tender submitted by the Contractor, as the request for tenders contains the Contracting Authority's requirements, which have primacy.

If the Contractor processes personal data for the Contracting Authority, the Parties must conclude a data processing agreement. In certain cases, one data processing agreement that applies to all Call-off Contracts is sufficient. This data processing agreement is then concluded at the level of the Framework Agreement. In other cases, a data processing agreement must be concluded for each Call-off Contract. It is recommended that a privacy expert be involved when choosing between these options.

#### **1.5, 1.6, and 1.7**

Article 1.5, 1.6 and 1.7 are optional and only of importance if the final result has to be delivered in the form of reports. If that is not the case, article 1.1 of the Contract is sufficient to explain the Services to be performed by the Contractor.

### **Article 2 Contract formation, timetable or duration**

Article 2 states when the Contract is formed and what its duration is. No work should be performed before the Parties have signed the Contract. If problems arise in the performance of the Services, there must be clear agreements from which the Parties can derive their rights and obligations.

- 2.3 The ARVODI do not contain a standard penalty clause. If it is crucial that the Services are performed in full before a certain date, a clause can be included in the Contract imposing a penalty for failure to comply with obligations in a timely manner. The size of the penalty is linked to the value of the Contract and is subject to a ceiling.

Although the law assumes that any contractually agreed penalty replaces the obligation to pay compensation, it is possible to make different arrangements in the Contract. Because the threat of a penalty, for the Contractor, is primarily an incentive to fulfil obligations under the Contract and not to fall short in this regard, it was decided in the Model to entitle the Contracting Authority, in addition to the penalty, to performance and compensation.

With the Contracting Authority's consent, the Contractor is entitled to assign (i.e. transfer) its rights to payment to a third party. In that case it can be difficult to set off a penalty against amounts payable by the Contracting Authority. For this reason, the Contract should contain a clause to the effect that the Contracting Authority is entitled to deduct any penalties from payments owed regarding the Contractor's invoices, even if the right to payment of the invoice amount has been transferred to a third party.

### **Article 3 Price and other financial provisions**

This article contains arrangements concerning the price and other financial provisions.

3.1 A choice must be made here between a price based on the amount of time actually worked and a fixed total price.

3.4 A choice can be made between three different versions of this provision on rates.

The first option is to work with fixed rates that do not change during the term of the Contract. This is a good option in the case of short-term contracts.

The second option offers the possibility of adjusting the rate based on a proposal from the Contractor. At the start of the Contract, the Contracting Authority factors in the possibility that the rate may change after a certain period of time. Any such adjustment will be based on the price index published by Statistics Netherlands that is referred to.

The third option is the similar to the second except that a different (more suitable) price index can be selected. It is recommended that expert advice be sought for this purpose. The price index figure can be consulted on the website of Statistics Netherlands, ([www.cbs.nl](https://opendata.cbs.nl/#/CBS/nl/dataset/82838NED/table?dl=6B06E), <https://opendata.cbs.nl/#/CBS/nl/dataset/82838NED/table?dl=6B06E> ).

3.5 There are various options as regards invoicing.

Option 1 is that the Contractor will invoice once the Services have been performed in full. In most cases this option is recommended.

Option 2 is that the Contractor will invoice at regular intervals.

Option 3 is based on fixed instalments and can be used for large contracts.

In certain circumstances it is possible to pay advances. The relevant conditions are set out in article 17 of the ARVODI and its explanatory notes.

Under option 4, it is possible to agree that the Contractor will invoice only once the Contracting Authority has assessed and accepted the Services. An assessment period must be specified, starting from the moment the Services have been performed in full. In this case, statutory interest will only become payable 30 days after the assessment and

acceptance of the Services or after the assessment period has ended (in accordance with article 6:119b, paragraph 2 (c) of the Civil Code).

Option 5 can be used if different arrangements are made regarding invoicing.

- 3.6 Article 15.1 of the ARVODI obliges the Contractor to submit an e-invoice in the manner prescribed in the Contract. The Contractor must in any event include the order reference and the Contractor's digital address (Organisation Identification Number (OIN)) in the e-invoice. More information about submitting e-invoices to central government is available at [www.helpdesk-efactureren.nl/en](http://www.helpdesk-efactureren.nl/en) or in financial instructions specific to the Contracting Authority.

If the Contractor is unable to send an e-invoice, the second option offered by article 3.6 should be completed and included.

- 3.7 The Contractor may only charge VAT once.

- 3.8 No bank guarantee is required if no advance payment is made or if the Contract is being concluded with another public body. In that case, this paragraph (3.8) can be included.

#### **Article 4 Contacts/ <OPTIONAL> Consultation/ <OPTIONAL> Reporting/ <OPTIONAL> Project managers/ <OPTIONAL> Supervisory committee/steering committee**

##### *Contacts*

- 4.1 It is recommended that contacts be designated who have sufficient authority to enter into agreements with the Contractor.  
The assumption is that contacts can bind the Parties in so far as the performance of the Services is concerned (see article 8 of the ARVODI). If this is not the intention, article 4.4 must be included.

##### *Duty to provide information*

- 4.2 Article 7 of the ARVODI imposes a general duty on the Contractor to provide information on the progress of the work. This duty can be set out in more detail in article 4.2.

##### *Supervisory committee or steering committee*

- 4.5 Article 4.5 can be included if there is a need to set up a supervisory committee or a steering committee. It is recommended that the committee's tasks and responsibilities be set out clearly (see also the notes above on contacts). This should preferably be done in a Schedule to the Contract. Any changes in personnel can then be made more easily by amending the Schedule.

#### **Article 5 Intellectual property rights**

Article 23 of the ARVODI provides that copyrights and database rights are assigned to the Contracting Authority. This default position was chosen in the context of the central government policy on fostering greater openness and transparency ('open government'). The results of the Services that lend themselves to this approach can be made available to

society at large in the form of open data. The Contracting Authority can also further develop the results (or have them further developed).

The Copyright Contract (Enhanced Protection) Act provides that, in certain cases, agreements about copyrights must be included in the contract itself. The basic principle laid down in article 23 of the ARVODI is therefore reiterated in article 5.

In certain cases it is not necessary for the Contracting Authority to acquire the copyrights and database rights, while it can be very much in the Contractor's interest to acquire them. In cases of this kind the Parties may agree that the copyrights and database rights are retained by the Contractor and that the Contracting Authority is granted a right of use (also called a licence). The optional provision can be used for this purpose.

If the option of granting a right of use is chosen, it is important that it includes, at a minimum, the right to publish and reproduce. It is therefore recommended that this optional provision be included in full in the Contract.

If the optional provision is used, articles 23.1, 23.4 and 23.5 of the ARVODI do not apply. In article 23.5, the Contractor renounces any personality rights vested in it. It is not customary to ask that personality rights be renounced in the case of a right of use. This optional article therefore assumes that this will not happen. It is recommended that the legal department be contacted if it is important to regulate this in the contract.

**RECOMMENDATION:** For every contract, it is advisable to identify the Party that can best acquire the copyrights and database rights. It should be recognised in this regard that having copyrights and database rights assigned can affect the price charged by the Contractor. If it is not clear how best to proceed, it is recommended that the legal department be consulted.

## **Article 7 <OPTIONAL> Obligation to supply information and audit obligation**

For various reasons, the Contracting Authority may require certainty (or additional certainty) concerning compliance with the Contract and the associated legislation.

The Contractor can provide this certainty on its own initiative in the framework of quality assurance. Quality assurance is an element of quality management systems (cf. ISO 9000) and is designed to give the client confidence that quality requirements are being met.

The Contracting Authority may also take the initiative by making a request for the provision of information or taking the more serious step of requiring an audit. An audit generally costs time and money. It may therefore be expected of the Contracting Authority that an audit will only be required if there is specific cause for this.

That cause may be a statutory obligation, a certain form of supervision, or a special duty of accountability. An audit may for example be necessary in order to comply with:

- remedial action ordered by the Data Protection Authority;
- the obligation to provide information requested by the Houses of the States General on the basis of article 68 of the Constitution.

- 7.1 This paragraph emphasises the importance of quality management and places an obligation on the Contractor to take quality assurance measures in this connection.
- 7.2 It can be in the Contracting Authority's interest for the Contractor to demonstrate that it is fulfilling its obligations under the Contract and will continue to do so. To this end, the Contracting Authority may perform an audit (or have an audit performed), but this costs both Parties time and money, and a less onerous means sometimes suffices. The request to provide information as referred to in paragraph 2 is a less onerous means.
- 7.3 Paragraph 3 permits the Contracting Authority to perform an audit (or have an audit performed) to verify compliance with the Contract and the associated legislation. The Contractor must cooperate with such an audit. An audit of this kind may concern contractual and statutory obligations, such as observance of the GDPR, legislation on working conditions, or information security requirements. An audit costs time and money and may require access to commercially confidential information. It is recommended that the decision to require an audit not be made for trivial reasons and that the Contractor be consulted beforehand about the content and design of the audit.

#### **Article 8 <OPTIONAL> Research material (non-academic research)**

If the Model is used for non-academic research (that is to say, research conducted using non-academic methods) it is advisable to make agreements concerning the material that the Contractor collects in the course of the research.

NB: If academic research is to be conducted (that is to say, research using academic methods), the Model Research Contract must be used.

- 8.1 The research material may be useful to the Contracting Authority. In that case, the Contracting Authority may opt to have title to the research material transferred by including the first option in the Contract. If the Contracting Authority has no interest in the material, the Contractor can remain the owner of it and the second option can be included in the Contract.

Research material means the material used by the researchers while conducting research. Examples are survey forms and interview reports. Templates and software developed by research consultancies at their own expense are not considered to be research material.

#### **Article 9 <OPTIONAL> End of the Contract (exit)**

- 9.1 It may be that the Contracting Authority still needs the Contractor in the context of the end of the Contract. For example, the Contracting Authority may itself have to perform services that it thought it had contracted out or enable a new contractor to perform those services. It is in the interests of both the Contracting Authority and the new contractor that the performance of the services is not impeded as a consequence of inadequate cooperation on the part of the former Contractor. If desired, the exit arrangements can be elaborated in this Contract.

9.2 If the Contract ends 'normally', the Contractor's cooperation is covered by the price to be paid by the Contracting Authority. If the Contract is cancelled due to an imputable failure on the part of the Contractor this cooperation is part of the duty to limit damage and the Contracting Authority does not pay for this.

#### 9.3 and 9.4

If the performance of the Contract involves the processing of data of or for the Contracting Authority, the optional provisions set out in paragraphs 9.3 and 9.4 can be used. These paragraphs do not relate to personal data if specific rules apply to this kind of data under a separate data processing agreement.

Articles 9.3 and 9.4 relate to various categories of data:

- data received from the Contracting Authority
- data generated on the Contracting Authority's instructions
- other data (for example: interview reports drawn up by the Contractor with a view to delivery of a research report).

In article 9.3 it is possible to stipulate how soon after the end of the Contract the data must be returned or erased. If necessary a penalty can be set for non-compliance with this obligation.

In article 9.4 it is possible to stipulate the form (for example: in writing or electronically, stating the file format) and manner (for example: by email, in person or by post) in which data is to be returned. The second option in article 9.4 can be used if the Contracting Authority already knows, when the Contract is entered into, the form and manner in which it wishes data to be returned.

### **Article 10 <OPTIONAL> Other terms and conditions**

#### *Duty of confidentiality*

10.1 A penalty can be set for breach of a duty of confidentiality. This option can be selected if, for example, sensitive information is shared with the Contractor (and its Staff) in the performance of the Contract.

A penalty must have an adequate deterrent effect. But the size of the penalty must also be reasonable. It is recommended that the legal department be consulted when determining the size of the penalty.

#### *Liability*

10.2 The general rule set out in the ARVODI is that liability is limited to a maximum of four times the contract value per event up to a maximum of €3,000,000 per event. Liability is also limited to six times the contract value for each year or part of a year that the Contract has been in force, up to a maximum of €5,000,000 for each year or part of a year in which the Contract has been in force (see article 19, paragraph 2 of the ARVODI). In certain cases it may be desirable to include different limits on liability. This optional provision can be used for this purpose.

Please note: it is not advisable to limit liability to only certain types of damage, such as direct damage (and exclude indirect damage). This is because the law does not define direct or indirect damage and the ARVODI already limit liability. Limiting liability to the value of the

contract is also strongly discouraged. This is because the value of the contract is usually far lower than the extent of any damage, so that a large part of the damage would not be reimbursed. It is recommended that the advice of the legal department be sought if a departure from the ARVODI is contemplated.

#### *Insurance*

- 10.3 This clause allows the Contracting Authority to depart from the fairly general insurance clause in the ARVODI and explicitly list the risks the Contractor is required to insure itself against.

#### *Indemnity*

- 10.4 There may be reasons to include an indemnity in the Contract. An indemnity entails the Contractor protecting the Contracting Authority against claims from third parties; any such claims are, as it were, taken on by the Contractor. The Contractor ensures that a defence is put forward against the claim and bears all the associated costs. As this would have a big impact on the business risk to which the Contractor is exposed and could affect insurability, this optional provision must only be included in exceptional cases and after consulting the legal department.

#### *Discrimination*

- 10.5 Central government is committed to combating discrimination in the labour market. An optional provision has therefore been included in the Model which allows the Contracting Authority to cancel the Contract if the Contractor, or a member of its Staff in a managerial or decision-making role, has been convicted of discrimination by final and unappealable judgment. Under the Public Procurement Act 2012 and the Proportionality Guide, this provision can only be included if it is proportionate in view of the nature of the contract. This requires an assessment of whether the provision is in reasonable proportion to the subject of the contract. For public service contracts involving employment relationships (such as temporary employment agency contracts, other contracts for the provision of staff, or contracts relating to facilities services) this will usually be the case and it is therefore reasonable to include this optional provision in the Contract. For other types of contract, it will not usually be proportionate and the optional provision should not be included.

#### *The provision of services by self-employed persons without employees*

##### 10.6 and 10.7

If the Model is used for the provision of services by a self-employed person without employees, the Contracting Authority must determine 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 pay 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.

New model provisions are being drawn up for services provided by self-employed persons without employees. In the meantime, the optional articles 10.6 and 10.7 can be included in the Contract if the self-employed persons without employees are freely replaceable.

#### *General provision departing from the ARVODI*

- 10.8 This is a general provision for departures from the ARVODI and must be used only in exceptional cases. Central government aims to maximise uniformity in contracting. In principle, no changes should therefore be made other than those presented in the Model as alternative or optional provisions. If nevertheless it is desired to depart from the Model in



certain exceptional circumstances, it is recommended that the legal department be consulted beforehand.

**Publication details**

These instructions were drawn up under the responsibility of the Corporate Legal Advisory Committee.  
Further information may be obtained from the CBA Secretariat (contact details available on Rijksportaal).

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