



Explanatory Notes on using the General Government Terms and Conditions for Public Service Contracts 2025 (ARVODI 2025)

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 or interpretation of the ARVODI 2025

1. General introduction

1.1 Purpose of the ARVODI

The General Government Terms and Conditions for Public Service Contracts (ARVODI) were first adopted by an order of the Prime Minister of 5 March 2004. Since then, they have been amended on a number of occasions. The ARVODI contain general terms and conditions for public service contracts between the State of the Netherlands (all government ministries and agencies that fall under their authority) and third parties. In these Explanatory Notes, the ARVODI 2025 are referred to as the ARVODI.

1.2 Changes in the 2025 version compared with the 2018 version

A number of articles from the ARVODI 2018 have been reworded or deleted in the ARVODI 2025 to better reflect current practice within central government. Changes have also been made to the wording of both the articles and the Explanatory Notes to make them easier to read. In addition, the ARVODI 2025 have been brought into line where possible with the wording of the ARBIT 2022.

The main changes are summarised below.

The article 'Assessment and acceptance' has been deleted because the wording no longer reflected current practice. A number of optional provisions on assessing Services have been included in the model contracts.

The title of the article 'Method of notification' has been changed to 'Status of notifications, undertakings or agreements'. The content of the article has also been amended, since agreements and suchlike are in practice usually made by email. See also the notes on article 10.

The scope of the article 'Processing of data' has been broadened compared with the corresponding article in the ARVODI 2018. It now concerns not only personal data but also other data that is provided and/or used in the context of a contract.

Because of the introduction of e-invoicing across central government, the article 'Invoicing' has been amended. The article establishes e-invoicing as standard and provides that the payment period does not start for as long as the e-invoice does not fulfil the applicable requirements.

The article 'Payment and invoice audits' has been reworded to make it clearer. The payment period of 30 calendar days starts the day after receipt of the invoice in question, provided both the Services and the invoice comply with the provisions of the Contract.

The article 'Liability' no longer contains a graduated scale. Liability is now limited to a maximum of four times the contract value per event and 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 €3,000,000 per event and €5,000,000 for each year or part of a year in which the Contract has been in force. This is clearer and better reflects current practice.

In the article 'Insurance', the Contractor's obligation to present a certified copy of the policies and proof of the payment of premiums has been removed.

1.3 Use of the ARVODI

The ARVODI are intended for general public service contracts and not for:

- IT contracts, in which case the General Government Terms and Conditions for IT Contracts (ARBIT) and related model contracts must be used;
- contracts with architects and engineering consultants in the context of the design of a building or other structure, in which case other provisions, such as the General Provisions of the Central Government Real Estate Agency for Contracts with Architects and Consultants (ABAA DNR 2011), may be used;
- purchasing products, in which case the General Government Purchasing Conditions (ARIV) must be used.

RECOMMENDATION: In the event of doubt as to whether the ARVODI are suitable for a certain contract, for example in the case of a mixed contract, it is advisable to contact the legal department.

Using the ARVODI with a model contract

The ARVODI set out the minimum terms and conditions under which central government enters into contracts for the provision of services. There are models for different kinds of contract with concepts, themes and optional provisions that have been carefully harmonised with each other and that form an inseparable whole in combination with the ARVODI. The use of the ARVODI combined with the relevant model contract is therefore strongly recommended.

As the ARVODI apply only if this is explicitly agreed by the Parties, the model contracts always include an article stating that the ARVODI are part of the Contract.

Inclusion in request for tenders

The ARVODI, as well as the related model contracts, are available on the central government intranet. As a rule, the ARVODI and a draft contract are sent together with the request for tenders (both in the case of a public tendering procedure and a limited bidding procedure). The draft contract is a model contract to which the user has made additions reflecting the specific characteristics of the work to be contracted. To help the user do this, the model contracts include input fields, optional provisions and schedules.

1.4 Deviating from the ARVODI

It is possible in exceptional cases to deviate from the ARVODI or parts thereof if the contracted work makes such deviations necessary. Any deviations should be based on the options indicated in these Explanatory Notes and in the accompanying model contracts.

RECOMMENDATION: It is advisable to contact the legal department in the event of deviations from the ARVODI.

1.5 Suggestions/questions

It remains important to keep the ARVODI up to date and, where necessary, to adjust them to take account of new insights on the part of users. Suggestions or questions can be submitted to the secretariat of the Corporate Legal Advisory Committee (CBA) (contact details on Rijksporaal) which falls under the Directorate-General for Digitalisation and the Public Sector (DGDOO) of the Ministry of the Interior and Kingdom Relations.

2. Notes on individual articles

A number of articles are explained below. No explanations are included for articles that speak for themselves.

Article 1 Definitions

Article 1 defines a number of terms. Terms in the ARVODI that are capitalised have the meaning described in article 1. These terms have the same meaning when they are capitalised in the model contracts.

A 'Schedule' is an annexe to the Contract that forms part of it. The ARVODI do not require that all pages of the Schedules must be initialled. If the Contracting Authority is worried that confusion may arise about which documents are intended to be Schedules, it can include a provision in the Contract to the effect that Schedules must be initialled.

It follows from the definition of 'Staff' that the term refers not only to persons employed by the Parties but also to persons, including legal persons, hired or used for the performance of the Services. Both employees and persons, including legal persons, who are hired or used are included.

The definition of 'Working Day' refers to the General Extension of Time Limits Act. The official public holidays under the General Extension of Time Limits Act are: New Year's Day, Christian Easter Monday and Whit Monday, Christmas Day and Boxing Day, Ascension Day, the day on which the King's birthday is celebrated and the fifth of May. Where the term 'calendar day' (without initial capitals) is used in the Terms and Conditions, it means every day (Monday to Sunday inclusive, including official public holidays).

Article 2 Application

Only the ARVODI and not the Contractor's terms and conditions apply to Contracts for the provision of services. This is why the model contracts explicitly exclude the applicability of other general terms and conditions. If the Contract is laid down in a different way (in the form of a contract letter

for example) it is important to state clearly that the ARVODI apply and that other general terms and conditions (the Contractor's) are explicitly rejected. A copy of the ARVODI must also be sent together with the request for tenders and with the contract letter.

Please note: The Corporate Legal Advisory Committee (CBA) advises against using contract letters and recommends using model contracts.

Article 3 Requirements for the Services

Pursuant to article 3, the Services to be performed by or on behalf of the Contractor must meet the requirements laid down in the Contract and must be suitable for the intended use as arising from the Contract, and the Contractor must perform the Services competently. In carrying out the contracted work, the Contractor must also exercise the care of a good contractor, as provided by article 7:401 of the Civil Code.

Article 4 Replacement of persons responsible for performing the Services

A degree of continuity regarding the staff used by the Contractor is important for the performance of the Services and the collaborative relationship. It can happen that a Contractor can no longer use a particular person in performing the Services and has to replace that person with someone else. That is why in such cases the Contracting Authority's prior Consent is required.

The Contracting Authority may not withhold its consent without reasonable grounds and may attach conditions to its consent. The Contracting Authority itself is also entitled to ask the Contractor to replace certain persons if the Contracting Authority believes that this is either necessary or desirable in the interests of the proper performance of the contract. The Contractor must then replace this person unless that cannot be reasonably demanded of the Contractor, for example because it is demonstrably impossible to find an adequate replacement.

Article 6 Subcontracting

The engagement of subcontractors by the Contractor for the performance of the Services is permitted only with the Contracting Authority's consent. In addition, subcontractors may be replaced only with the Contracting Authority's consent. This requirement for consent is important because Contracting Authorities want to know who is involved in performing the Services. Contracting Authorities also want to be able to refuse a subcontractor, for instance because there is reasonable doubt concerning the subcontractor's reliability or suitability or because replacement constitutes a prohibited significant change to the contracted work.

So that a decision to withhold consent is not made for trivial reasons, the Contracting Authority may not withhold consent without reasonable grounds.

Article 7 Progress reports

It is important, especially in the case of long-term projects, to keep track of the performance of the Services. It is therefore advisable to make agreements about a progress report.

Article 8 Contacts

The Parties designate contacts who will maintain day-to-day contact concerning the performance of the Services. In this context the contacts can make further practical agreements on matters relating to the performance of the Services, but they may not amend the Contract as such. This

means that the contacts cannot make agreements on amending fees, the term of the Contract, the completion date, copyrights, liability and suchlike. Changes of this kind can only be agreed by the persons who are authorised to sign the Contract.

Article 10 Status of notifications, undertakings or agreements

The minutes of meetings or other documents drawn up after the Contract has been concluded often contain agreements that supplement the agreements made in the Contract or deviate from what the Contract says. Agreements of this kind that supplement or deviate from the Contract are valid only if they are made in writing or by email by persons authorised to do so or are subsequently confirmed by those persons. 'Email' is understood to mean electronic communication:

- a. that can be consulted by the addressee,
- b. of which the authenticity is sufficiently safeguarded, and
- c. that enables the identity of the person giving the notification to be determined with sufficient certainty.

In the case of agreements, it must also be possible to determine the moment when the agreement was made with sufficient certainty.

Bear in mind that the required level of reliability will not be the same for every notification or agreement. For example, a higher degree of reliability may be expected of an email containing an undertaking that only the highest-ranking official is authorised to give than an email making an appointment to meet in person.

Interim notifications and agreements

If the Contracting Authority wishes to set particular reliability requirements for the giving and making of specific notifications and agreements, it can do so in the Contract. With regard to electronic communication, the Parties can make agreements about communication security, addressing emails, sending delivery receipts and read receipts, and using certain forms of electronic signatures. If, for example, the Contracting Authority attaches importance to a high degree of reliability with regard to the identity of the sender, then the use of a qualified electronic signature may be prescribed.

Requirement (c): identity

If a Contract has been signed using a wet signature, the identity of the contracting Parties can be established with a substantial degree of certainty. If a Contract is concluded electronically, the same result can be achieved by using a qualified electronic signature. Whether a qualified electronic signature can be used and, if so, on what conditions, differs from one organisation to the next. It is recommended that any questions on this matter be put to one's own IT department.

If the Parties use other forms of electronic signature such as the simple or advanced electronic signature it should be noted that they are less reliable. The legal department should be consulted in the event of questions about which form of electronic signature to use.

Article 11 Confidentiality

Paragraphs 1 and 2

In the context of public service contracts, it happens quite often that information is provided that must not be made public. This article therefore imposes a duty of confidentiality on both Parties. A duty of confidentiality may also be laid down in a written confidentiality declaration signed by the relevant Party.

An agreement on confidentiality between the Parties is not absolute. Notwithstanding such an agreement, a Party may nevertheless be required to disclose certain information, for example on the basis of statute or a court ruling. Examples of statutes that can override a duty of confidentiality are the Open Government Act, the General Data Protection Regulation and the Constitution.

The Parties must also require their Staff to observe the duty of confidentiality. It follows from article 6:76 of the Civil Code that the Parties are responsible for the observance of these duties by their Staff. In order to prevent misunderstandings, it is advisable for the Parties to clearly indicate which type of information is definitely to be regarded as confidential.

Paragraph 5

The Contracting Authority may require the Contractor to return to the Contracting Authority information that the Contractor has in its possession. Members of certain professions, such as lawyers and accountants, are obliged by professional rules to retain certain information. The Contracting Authority cannot demand the return of such information.

Paragraph 6

The Contract may include a provision to the effect that breach of the duty of confidentiality incurs a penalty. This provides an additional incentive for the Contractor to observe the duty of confidentiality.

Article 12 Processing of data

Paragraph 1

Unlike the other paragraphs of this article, paragraph 1 is not only about personal data, but about all data provided by the Contracting Authority and all data generated on the Contracting Authority's instructions.

Paragraph 2

This provision gives the Parties a contractual basis for holding each other to account for compliance with statutory obligations and the data controller's written instructions (which are usually set down in a separate data processing agreement).

Paragraph 3

If, in performing the Contract for the Contracting Authority, the Contractor processes personal data, the General Data Protection Regulation requires this to be regulated in a data processing agreement. Usually the data processing agreement will be signed at the same time as the Contract. If the need to conclude a data processing agreement only arises during the term of the Contract, the Parties can invoke paragraph 3 against one another.

If the Contractor, in the performance of the Contract, processes personal data, but does not do so in the capacity of a processor, there is no 'processor-controller' relationship. In that case there will be no need for a data processing agreement, but agreements can be made about the protection of the personal data that is to be exchanged.

Paragraph 4

The processing of personal data can give rise to the imposition of administrative sanctions by the supervisory authority or the bringing of civil claims by third parties. Although these legal procedures are generally directed at one of the Parties, it can also be in the other Party's interest

to put forward a defence. Paragraph 4 obliges each of the Parties in such a situation to involve the other Party in a timely manner in putting forward a defence.

Article 13 Security

Paragraph 1

For the Contracting Authority, the security of staff, premises and information is extremely important. The Contractor is therefore required to observe the Contracting Authority's internal rules and codes of conduct. The Contracting Authority is required to inform the Contractor in good time about these rules. The Contractor must then inform its Staff about them.

Paragraphs 2 and 3

The Contracting Authority may require the Contractor to present a 'certificate of conduct' (*verklaring omtrent het gedrag* (VOG), sometimes referred to as 'certificate of good conduct') for each person the Contractor is to deploy on the contract. This may be necessary, for example, if the contract is one in which the Contractor's Staff acquires knowledge (or may acquire knowledge) of confidential information. In such cases, the Contracting Authority is also entitled to require of the Contractor that the Staff who will work on the contract undergo a security check by the General Intelligence and Security Service (AIVD).

Article 14 Payment, Additional Work and reductions in the agreed work

Paragraph 1

It is assumed in the ARVODI that the Contractor will be paid on the basis of actual time worked. For example, the Contractor can submit monthly invoices for the costs actually incurred and the time actually spent, possibly subject to a maximum ceiling if this is specified in the Contract.

Instead of payment based on actual time worked, it is also possible to agree a fixed price with the Contractor.

Paragraphs 2 and 3

Although it is important to set out the work to be performed as fully as possible in the Contract, the need for Additional Work may arise during the term of the Contract. This is especially the case if a fixed price has been agreed.

Please note: Expanding the scope of the agreed work can breach the Public Procurement Act 2012 because it can constitute a prohibited significant change to the contracted work. This must be taken into account when deciding whether or not to request that Additional Work be performed.

The Contractor must always perform Additional Work desired by the Contracting Authority amounting to up to 10% of the contracted work. The agreed terms and conditions apply to this Additional Work, including those concerning fees or prices.

Please note: it does not follow from this provision that Additional Work of up to 10% is always permitted on the basis of the Public Procurement Act 2012. It could still constitute a prohibited significant change to the contracted work.

Paragraph 4

A reduction in the agreed work can also arise in certain circumstances. If a Party (usually the Contracting Authority) considers that there is reduction in the agreed work, it is important that that Party inform the other Party of this as soon as possible. A situation where the other Party ends up investing needlessly in work that is no longer necessary must be avoided.

***RECOMMENDATION:** Since Additional Work and reductions in the agreed work can breach the Public Procurement Act 2012, it is recommended that the legal department be contacted.*

Article 15 Invoicing

With a view to the efficient processing of payments, the general rule is that invoices must be submitted electronically. Information for suppliers on how to submit their invoices is provided in the 'Information leaflet e-invoicing the Dutch central government'. If, in an exceptional case, e-invoicing is not possible or desirable, alternative invoicing arrangements can be agreed in the Contract.

Paragraph 4

Additional Work as referred to in article 14, paragraph 2 is to be invoiced separately by the Contractor. It must be made clear what costs were incurred further to the written quotation for the Additional Work submitted by the Contractor to the Contracting Authority.

Article 16 Payment and invoice audits

Paragraph 1

Central government considers it important that suppliers are paid as soon as possible, and in any event within 30 calendar days of receipt of the invoice at the latest. The payment term of 30 calendar days is a statutory time limit (see article 6:119b, paragraph 5 of the Civil Code) and is also laid down in central government-wide policy. A different payment term can only be agreed in exceptional cases.

The Contractor is only entitled to be paid once an invoice that meets the requirements has been received. If the invoice does not meet the applicable requirements, the Contracting Authority must request a new invoice as soon as possible. The payment term then begins when the correct invoice is received.

The same applies in instances where the Contracting Authority determines that the Services do not comply with the Contract. The Contracting Authority must inform the Contractor of this and, if necessary, suspend payment. The Contractor is only entitled to payment once it has subsequently performed the Services in compliance with the Contract.

Paragraph 2

Statutory commercial interest will be payable by the Contracting Authority on amounts that are not paid on time. The interest due is calculated from the day after the end of the payment term using the interest rate for commercial transactions.

If the Contracting Authority does not pay on time, it will also be liable to pay compensation (see article 6:96 of the Civil Code). This relates to collection charges. The Contractor must demand payment of the statutory interest and the compensation by submitting a separate invoice for this purpose to the Contracting Authority.

Paragraph 3

The Contracting Authority can have an accountant check an invoice. This check should as a rule be carried out confidentially. In this context, the accountant must be supplied only with the data that is needed to carry out the verification.

Paragraph 5

Continuity of service provision is very important for the Contracting Authority. If the Contracting Authority is delaying payment because it considers that an invoice is inaccurate or incomplete or that the Services do not meet the required standard, this does not entitle the Contractor to stop providing the service either temporarily or permanently.

Article 17 Advance

Paragraph 1

As a rule, the Contractor is not paid before it has performed the Services (or has started doing so). This is reasonable in view of the fact that companies that do business with central government in its capacity as Contracting Authority are exposed to little if any credit risk. However, special circumstances may warrant the payment of an advance. For example, if performing the Services demonstrably requires the Contractor to make substantial investments. In that case the Contracting Authority has to try to gauge the risk that the Contractor will not fulfil or only partly fulfil its contractual obligations to the Contracting Authority.

The payment of advances is governed by the Central Government Financial Management Order. The Order stipulates that security must be demanded in certain circumstances. Security, in the form of a bank guarantee, must be demanded for the payment of advances of €500,000 and over (see article 13, paragraph 4 of the Order). This is a form that is drawn up by a bank at the request and for the account of the Contractor by which the bank, on certain conditions, guarantees to pay a certain maximum amount if a claim is made by the Contracting Authority under the guarantee.

It can be reasonable in other cases to request a bank guarantee if there is a relatively long period between the payment of an invoice amount by the Contracting Authority and the performance of the Services by the Contractor. In most cases the bank will require that the Contractor's bank account be blocked for an amount equal to the guarantee. The Contractor cannot access the blocked amount. In addition, the issuance of a bank guarantee can give rise to considerable costs for the Contractor. The Contracting Authority must take this into account when deciding whether to request a bank guarantee.

A bank guarantee is not required if a Contract is being concluded with another public body, as there is very little risk of it being declared bankrupt before completion of the services.

Paragraph 2

A model on-demand bank guarantee for the ARVODI is available. If it is needed, the model is enclosed with the Contract. A copy of the bank guarantee must be attached to the Contract as a Schedule. The original of the guarantee is deemed to constitute a security and must be returned after the expiry of the guarantee period. It is therefore important to keep a guarantee carefully once it has been issued.

Article 19 Liability

By law, Parties' liability for damage they cause is in principle unlimited. In the ARVODI it has been decided to limit Parties' liability. Consequently, liability for damage is now limited to four times the contract value per event up to a maximum of €3,000,000 per event and 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. The contract value means the agreed contract value including any changes made during the term of the Contract.

No distinction is made between different types of damage (for example, direct and indirect damage), as this distinction is not made in legislation either. Moreover, central government does not wish to limit liability any further. This would mean central government would itself have to bear an even greater share of the damage caused and meet the cost from public funds. This would not be a desirable situation.

Besides a limit on liability per event from which damage arises, a limit is also included on liability per contractual year. If several events giving rise to damage occur in a single contractual year, liability in that year is limited to the amount in question. The same maximum amount applies in the following contractual year. If the term of a Contract is less than a year, the maximum in question applies to the entire term. In other words, the maximum is not prorated. If one or more years have passed since the entry into force of the Contract and the final contract period is shorter than a year, the maximum in question applies for the entire final period. Here too, therefore, the maximum is not prorated. It is also important to note that an event does not mean an event as referred to in the Contractor's insurance policy conditions.

In exceptional cases there may be reason to make different agreements on liability. An optional provision is included in the model contracts for this purpose. Whether the liability rules set out in article 19 are appropriate in a particular instance must be assessed on a case-by-case basis. This must in any case involve taking into account the potential extent of the damage if the Contractor does not fulfil its obligations and how likely it is that this situation will arise during the term of the Contract (once or several times).

RECOMMENDATION: It is advisable to ask the legal department for advice if alternative agreements on liability are being considered.

This article includes four (customary) exceptions to the limitation of liability.

The exception under (b) relates not only to intent or gross negligence on the part of the management of a Party's business but also intent or gross negligence on the part of Staff. That is important because the Services are usually performed by the Staff and not the managers.

The exception under (d) relates to damage resulting from an infringement of legislation on the protection of personal data. The protection of natural persons during the processing of personal data is a fundamental right. Violation of this fundamental right can lead to serious damage for natural persons.

Rapid technological developments and globalisation have brought new challenges for the protection of personal data. There has been an increase in the degree to which personal data is collected and shared. A more robust protection regime was therefore introduced in 2018 by means of the EU General Data Protection Regulation (GDPR).

The more robust protection of personal data has also resulted in an increase in the financial risks entailed by processing personal data, not only because the supervisory authority can impose far higher penalties, but also on account of the increased costs of reimbursing, preventing and limiting damage that can be suffered by data subjects.

The attribution of liability for privacy infringements in the ARVODI is modelled on the way liability is attributed in the GDPR. This can be summed up as 'the polluter pays'. A data controller is liable unless the processor has not complied with the obligations of the GDPR or the Data Protection Directive for Police and Criminal Justice specifically addressed to processors or where the processor

has acted outside or contrary to lawful instructions of the controller (the instructions usually being laid down in a data processing agreement).

If processors' liability were to be subject to an upper limit, this would compromise the effectiveness, proportionality and deterrent effect of penalties imposed for the unlawful processing of personal data envisaged by the GDPR. This is why this article provides that the limitation of liability ceases to apply in cases of damage due to privacy infringements.

Finally, for the sake of clarity, the article explicitly provides that damage includes fines imposed by the supervisory authority.

Article 20 Force majeure

Paragraph 2

Paragraph 2 lists circumstances in which a Party cannot invoke force majeure because they are circumstances for which that Party bears more of the risk. In those cases the Party will therefore still have to fulfil its obligations. In the case of Staff illness, for example, the Party must hire replacement Staff so that it can meet its obligations.

Paragraph 3

It should be noted that this paragraph repeats a rule laid down in article 6:78 of the Civil Code.

Article 21 Cancellation and notice of termination

Article 21 gives two possibilities for ending the Contract (or ending the Contract early), namely cancellation (article 21.1 to 21.3 inclusive) or termination (article 21.4).

Paragraph 1

Under article 6:265 of the Civil Code, a failure by a party to discharge one of its obligations entitles the other party to cancel the contract either in full or in part, unless the failure, in view of its special nature or limited significance, does not warrant cancellation and the attendant consequences. Article 21.1 of the ARVODI follows the wording of the article in the Civil Code. The Party that wishes to cancel the Contract must be able to demonstrate a failure on the part of the other Party to discharge its obligations as laid down in the Contract. This failure must be sufficiently serious; not all failures warrant cancellation.

It is possible for the Contract to be cancelled in part. Some of the agreed Services can then still be performed by the Contractor.

Sometimes, however, mutual confidence is impaired to such an extent that even partial cancellation is no longer a realistic option.

Paragraph 2

If a Party invokes force majeure this may give the other Party reason to cancel the Contract. Cancellation is only possible once a period of 15 Working Days has elapsed. The period of 15 Working Days begins on the date on which the circumstance giving rise to force majeure arose.

Paragraph 3

The ARVODI set out a number of circumstances in which the Contract can be cancelled, such as the bankruptcy of the Contractor.

Suspension of payments, or a provisional suspension of payments, is mainly intended to give businesses the opportunity to make a fresh start and avoid bankruptcy. This can be taken into account if consideration is being given to cancelling the Contract.

Because the Contract will usually be the result of a public procurement procedure (European or otherwise), an addition has been made to the article to the effect that the Contracting Authority can cancel the Contract if grounds for exclusion are found to apply to the Contractor. These are the mandatory grounds for exclusion laid down in section 2.86 of the Public Procurement Act 2012, but also the optional grounds for exclusion laid down in section 2.87 of the Public Procurement Act 2012,¹ if the Contracting Authority has declared them applicable in the tender documents. It can also occur that the Contractor no longer satisfies the selection criteria or minimum requirements set during the procurement procedure. This depends in part on the details of the procurement procedure that was followed. This is why no consequences are attached to this in the provisions of the ARVODI. In cases where there is cause to do so, specific provisions can be included for this purpose in the Contract that is sent with the tender documents.

RECOMMENDATION: *It is advisable to contact the legal department in cases where cancellation is being considered.*

Paragraph 4

The Contracting Authority may terminate the Contract at any time during the term of the Contract. This right is derived from article 7:408 of the Civil Code. The Contracting Authority does not have to give a reason for terminating the Contract and is not required to observe a notice period. There need be no breach of contract on the part of the Contractor. Nevertheless, the termination must satisfy the standards of reasonableness and fairness. It is therefore advisable to explain why a Contract is being terminated. It can also be reasonable in some cases to observe a period of notice after all.

If the Contract is being terminated, the Contracting Authority owes a reasonable payment for work already done by the Contractor and for future commitments already assumed. The Contractor must take measures within reasonable bounds to limit costs. For example, the Contractor may be required to end contracts with third parties where possible. The method of settling accounts can never result in the Contracting Authority, in connection with the termination of the Contract, having to pay the Contractor more than the contract value or the unpaid part thereof. In addition, the Contractor is not entitled to compensation (including for loss of profit).

Article 23 Intellectual property rights

General

There are different kinds of intellectual property (IP) rights. The main kind to feature in the context of contracts to which the ARVODI are declared applicable are copyrights. Copyright arises when a work is created, on condition that the work has its own, original character and bears the personal stamp of its creator. Most contracted work under the ARVODI, such as the drawing up of policy recommendations or a research report, will meet these criteria.

Database rights can play a role in contracts as well. There are also other IP rights, such as related rights, trade name rights, patent rights, trademark rights, plant breeders' rights, semiconductor topography rights and designs. These IP rights are less likely to arise in contracts to which the ARVODI are declared applicable.

¹ Or sections 2.76 and 2.77 of the Public Procurement (Defence and Security) Act (ADV).

Paragraph 1

The default position adopted in this paragraph is that all copyrights and database rights accrue 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 therefore 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).

This default position can be deviated from. In certain cases it is not necessary for the Contracting Authority to obtain the copyrights and database rights, while it can be very much in the Contractor's interest to retain 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). An optional provision to this effect has been included in the model contracts.

Paragraph 2

Sometimes the Services are performed by the Contractor using existing IP rights that belong to the Contractor or a third party, such as for example certain research methodologies or software. In other words, these IP rights did not arise in the context of the Services. The Contractor / the third party is – and remains – the owner of the rights and the rights do not pass to the Contracting Authority. In that case the Contracting Authority is granted a right of use (also called a licence) so that the Contracting Authority can continue to use the results of the Services. The Contractor / the third party may also grant a right of use to others (which is why it is described as a non-exclusive right). It is up to the Contractor to arrange a right of use with the third party.

Paragraph 5

Even after the assignment of the copyright, the creator still retains certain rights known as personality rights. On the basis of these rights the creator may, for example, oppose the publication of the work without their name being mentioned. The creator is entitled to renounce certain of their personality rights. This is regulated in paragraph 5. This does not apply, however, to the right to oppose 'any distortion, mutilation or other impairment of the work that could be prejudicial to the honour or reputation of the creator or his value in this capacity', nor to publishing the work under a different name. These rights are therefore retained by the creator.

Paragraphs 6 and 7

The Contracting Authority does not wish to encounter problems resulting from any use by the Contractor, in performing the Services, of work to which third parties claim IP rights. This is why the Contractor must indemnify the Contracting Authority against any claims and costs in such a situation. If a third party makes a claim against the Contracting Authority, the Contractor must represent the Contracting Authority in this connection and the Contractor will bear all costs of that claim. In addition, in such an event the Contracting Authority may also cancel the Contract, after consulting the Contractor, without recourse to the courts.

Paragraph 8

Usually the Contracting Authority has no need for IP rights other than copyright and database rights. The other IP rights are therefore not assigned to it as a rule. If the Contractor obtains a different kind of IP right the Contracting Authority must not experience any problems as a result. This paragraph therefore provides that, in that case, the Contracting Authority is granted a right of use (also called a licence) so that it can continue to use the results of the Services.

Article 24 Assignment of rights and obligations under the Contract

Paragraph 1

Since Parties will want to know whom they can call to account under the Contract, this article provides that rights and obligations arising from the Contract may not be assigned to third parties without prior written consent. If no consent is given, an assignment of rights or obligations has no effect and the Parties remain bound by the Contract.

Paragraph 2

Paragraph 2 provides that consent is not needed for the establishment of limited rights, such as the right of pledge. The Contractor is therefore permitted to pledge current and future receivables to a bank or other credit institution.

Article 25 Insurance

It is important for the Contracting Authority that the Contractor is insured in case there is an event giving rise to damage. The Contractor can demonstrate this by providing a written statement from the insurer from which it is apparent that the Contractor has taken out insurance and has paid the premiums.

There is no requirement to take out specific types of insurance since needs will vary according to the industry in question. What matters for the Contracting Authority is that the Contractor has taken out adequate and customary insurance cover in accordance with generally accepted standards.

Article 26 Employment conditions

Paragraph 1

The Contracting Authority requires the Contractor to comply with the applicable legislation on employment conditions (including the Placement of Personnel by Intermediaries Act (WAADI), the Minimum Wage and Minimum Holiday Allowance Act, the Working Hours Act and working conditions legislation) and the collective labour agreement applicable to the Contractor and its employees. This is underlined in paragraph 1 of this article.

Paragraphs 2 to 5

Paragraphs 2 to 5 are included in connection with the Sham Employment Arrangements Act (WAS), such as the vicarious tax liability system introduced in the Civil Code (whereby the main contractor is liable for any salaries tax and social insurance contributions that subcontractors fail to pay). The Contracting Authority is thus prevented from being held liable, under the WAS, for the payment of salary owed to employees of a subcontractor.

Article 27 Bribery and conflicts of interest

Fighting corruption and preventing conflict of interest are a high priority for central government. It is for this reason that this article makes it possible for the Contract to be cancelled in the event of a conflict of interest or certain conduct that is referred to in the Criminal Code.

Article 30 Publicity

This article does not apply to situations where a Contractor wishes to provide the contract as a reference in a procurement procedure; it is therefore permitted to do so.