

### **Instructions**

- Text/provisions that are optional are marked <OPTIONAL>.
- If the Contract concerns the processing of personal data, the Data Processing Agreement (ARBIT 2018) should also be used. The Data Processing Agreement is listed at the end of this document under the schedules. If no Data Processing Agreement has been concluded, remove it from the schedules list.
- If the processing is carried out by an auditor, the Data Processing Agreement must in certain cases be replaced by a schedule entitled 'Provisions concerning data processing by auditors for Assurance Contracts'.

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 and Customs Authority, as it does for staff employed on the basis of a permanent or temporary appointment. For more information, see the instructions to the public service contract.

**NB: Delete these instructions from the final agreement.**

(Date: May 2018)

## **ARBIT 2018 Model Contract concerning**

*<description of the nature of the Deliverable>*

### **The undersigned:**

1. The University of Groningen, which has its seat in Groningen, The Netherlands, legally represented in this matter by  
*<signatory's name and position>*  
hereinafter referred to as the Contracting Authority,

and

2. *<contractor's full name and legal form>*, which has its registered office in *<place>*, legally represented in this matter by *<signatory's name and position>*  
hereinafter referred to as the Other Party,

### **Whereas:**

*Organisation and objective of the Contracting Authority*

- a) the Contracting Authority is responsible for *<description of the organisation of the Contracting Authority, in so far as relevant to the Contract>*;
- b) in performing its duties the Contracting Authority needs *<description of the Contracting Authority's objectives in entering into the Contract with the Other Party>*;

*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 of the nature of contract award procedure>*;
- f) the Contracting Authority awarded the Contract to the Other Party on *<date>*.

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**Agree as follows:**

**Article 1. Definitions**

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

**Article 2. Subject of the Contract**

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

- delivery of the Product(s):

Serial number	Subject	Number
A1	<Products>	

- performance of the Public Service Contract(s):

Serial number	Subject	Number
B1	<consultancy services, Implementation, Installation, support, development of Custom Software, Secondment, Maintenance, other Public Service Contracts>	

- 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 part of the organisation entitled to the Licence, number of users, locations, transactions, systems, etc.)>	

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

2.2 The following documents together constitute the Contract. In the event of mutual inconsistencies, a higher ranked document takes precedence over a lower ranked document:

- 1) this document;
- 2) the Terms and Conditions (Terms and Conditions Schedule);
- 3) the Specifications (Specifications Schedule);
- 4) the other Schedules;
- 5) the tender of <date>, reference (<reference>), submitted by the Other Party to the Contracting Authority.

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

**Article 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 Other Party will report *<period>* on how the Contract is being performed. This report will at least comprise: *<subject of the report>*.

#### Article 4. Entry into force and term of the Contract

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

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 Other Party 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>* 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 Other Party.

#### Article 5. Delivery and Completion

##### *In the case of Products*

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

Serial number	Subject	Delivery address	Delivery date
A1	Products		<i>&lt;date of X days after demand in accordance with Delivery-on-Demand Procedure Schedule&gt;</i>

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

5.2 The Other Party will arrange for 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	Manner of Completion	Address and date
B1	Consultancy Services	<i>&lt;...&gt;</i>	<i>&lt;address, date&gt;</i>
B2	Development of Custom Software	<i>&lt;provision of copies of the Object and Source Code&gt;</i>	<i>&lt;address, date&gt;</i>
B3	Secondment	<i>&lt;provision of Staff as evidenced by monthly submission of timesheets retrospectively&gt;</i>	<i>&lt;address, date&gt;</i>
B4	Support	<i>&lt;...&gt;</i>	<i>&lt;address, date&gt;</i>
B6	Other Public Service Contracts	<i>&lt;provision of copies&gt;</i>	<i>&lt;address, date&gt;</i>
C1	Licences (to Standard Software)	<i>&lt;provision of copies&gt;</i>	<i>&lt;address, date&gt;</i>

5.3 *<OPTIONAL in the case of Standard Software with a right to the Source Code>* In those cases in which the Other Party 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.

## Article 6. Acceptance

6.1 The acceptance of the Deliverable will take 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 Delivery (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 Delivery (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	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 Delivery (11.1 ARBIT)> <OPTIONAL a different term as referred to in article 11.4 ARBIT>
	<Combination of the above Deliverables, in which case Acceptance is dependent on the operation of the whole>	<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>

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

## Article 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 <other Public Service Contracts> is:	<fixed total price or other fee criterion>	<fixed total price or other fee criterion>
C	The Fee for the licence is:	<fixed total price or other fee criterion>	<fixed total price or other fee criterion>
	<Combination of the above deliverables giving a fixed total price> The Fee for the Deliverable is	<fixed total price or other fee criterion>	<fixed total price or other fee criterion>
	<b>Total Fee</b>	<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 agreed service levels owing to a failure imputable to the Other Party, 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 Other Party, 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>.

## Article 8. Invoicing, indebtedness and payment

8.1 The Fee is owed from:

Serial number	Subject	Time of indebtedness
X	Subject of art. 7	<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 Other Party 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, the Other Party 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 Contract> Notwithstanding the first sentence of article 11.1 of the ARBIT, the Contracting Authority will pay for the Maintenance annually in advance in accordance with the provisions of the Service Level Agreement Schedule. The provisions of article 16 of the ARBIT do not apply.

8.5 <OPTIONAL If an amount is paid as an advance to the Other Party and security is required in exchange> The Contracting Authority will pay to the Other Party 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 8.1.

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

## Article 9. General and special terms and conditions

9.1 Any general and special terms and conditions of the Other Party or of third parties used by the Other Party in performing the contractual obligations in relation to 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 Other Party or of third parties used by the Other Party in performing the contractual obligations in relation to the Deliverable also apply if and in so far as:

- their applicability is not excluded in the Specifications;
- (a) the Other Party 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 Other Party can demonstrate that the rights of the Contracting Authority under the



Contract will not be reduced or its obligations under the Contract 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 Other Party guarantees to the Contracting Authority that such acceptance will not restrict the Agreed Use in any way.
- 9.4 A copy of the Terms and Conditions is appended to the Contract.

#### **Article 10. Other provisions**

- 10.1 <OPTIONAL> Articles 22.1, 22.2 and 22.4 of the ARBIT 2018 do not apply. The Other Party may replace persons charged with implementing the Contract. The Contracting Authority may not refuse the replacement Staff.
- 10.2 <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).
- 10.3 The Parties will conclude a data processing agreement. This data processing agreement will be applicable to the handling and processing of personal data and non-personal data by the Other Party for the purposes of the Contracting Authority.

Done on <date> and signed in duplicate by:

FOR THE CONTRACTING  
AUTHORITY

Name: <name>  
Position: <position>

Signature:

Date:

FOR THE OTHER PARTY

Name: <name>  
Position: <position>

Signature:

Date:

**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.

### *Other Party*

The <position>, currently <name>, is authorised to bind the Other Party 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 should be used in the SLA:

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

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

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

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

Response Time: the time within which the Other Party (or Staff of the Other Party) 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 such as Response Times and Repair Times 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: Bank Guarantee**

*Model of a bank guarantee as referred to in article 16 of the ARBIT*

The undersigned

*<full name and legal form of the credit institution>*, which has its registered office in *<place>*, represented by *<signatory's name and position>*,

whereas:

the State of the Netherlands, which has its seat in The Hague, represented by the Minister of *<name of portfolio>*, hereinafter referred to as the Contracting Authority,

concluded a Contract on *<date of Contract>* with:

*<contractor's full name and legal form>*, which has its registered office in *<place>*, hereinafter referred to as the Other Party,

to perform *<description of the Deliverable>*, referred to below as 'the Contract', and that the Contracting Authority will pay an advance on the Fee to the Other Party,

hereby gives the Contracting Authority an irrevocable undertaking:

to promptly pay to the Contracting Authority as its own debt – merely upon receipt of a written notice from the Contracting Authority that the Other Party has failed to perform any obligation under the Contract and has failed to repay the advance – whatever amount the Contracting Authority declares that it is entitled to claim from the Other Party in this respect, up to an amount not exceeding € *<amount of advance>*, plus the statutory interest on that amount calculated from the day of the Other Party's failure up to the moment of full and final payment of the amount.

This bank guarantee will lapse if it has been received back by the undersigned.

This bank guarantee is governed by the law of the Netherlands. Disputes will be referred exclusively to the competent court in the district of The Hague.

Thus signed in *<place>*,

on *<date>*,

*<signature of credit institution>*

**Schedule: Acceptance Procedure**

**Schedule: Model Timesheets**

**Schedule: Delivery-on-Demand Procedure**

**Schedule: Data Processing Agreement (ARBIT 2018)**