

Annex E - Reserve Contractor Agreement

between

Stichting Bevolkingsonderzoek Nederland

and

[Contractor's name]

Version: [version number]

Date: [date]

Reserve Contractor Agreement QA-tool with secure data storage

THE UNDERSIGNED:

- 1) Stichting Bevolkingsonderzoek Nederland, having its registered office and place of business in Utrecht (3511 DT) at Godebaldkwartier 435 (Gebouw Janssoenborch, 9th floor), registered in the trade register of the Chamber of Commerce under number 80204716, hereinafter referred to as: **"Contracting Authority"**, duly represented in this matter by Ms A.H.J. Prieckaerts, in her capacity as director of Stichting Bevolkingsonderzoek Nederland,

and

- 2) **[Contractor's name]** having its registered office in **[city/town]** (**[postcode]**) at **[street name and number]**, hereinafter referred to as: **"Other Party"** and duly represented in this matter by **[representative's name]**;

Stichting Bevolkingsonderzoek Nederland and the Contractor being collectively referred to as: **"Parties"** or separately as: **"Party"**,

TAKING INTO CONSIDERATION THAT:

- A. The Contracting Authority has carried out an European open tendering procedure on <date> with the aim of concluding a Service Agreement with one Tenderer for services concerning the QA-tool with secure data storage;
- B. Contract awarding of the Services (as defined in the Descriptive document (as defined in Section 1.1. below)) took place based on the Descriptive Document pursuant to the Public Procurement Act 2012 (*Aanbestedingswet 2012*);
- C. The Other Party has submitted the Relevant Tender for the Services;
- D. The Contracting Authority has assessed the tender application of **<winning tenderer>** as the most economically advantageous tender based on the best price/quality ratio award criterion;
- E. The Contracting Authority has assessed the Relevant Tender of the Other Party as being the second most economically advantageous tender based on the best price/quality ratio award criterion, and it is therefore ranked second in the relevant tendering procedure;
- F. The Contracting Authority wishes to conclude a Reserve Contractor Agreement with the Other Party in the event that the Contract-awarded Party no longer fulfils its obligations under the agreement; and
- G. The parties wish to set out in writing the ensuing legal relationship in an agreement.

AGREE TO:

1. Definitions

1.1 In this Reserve Contractor Agreement, the following definitions apply:

Descriptive Document	The descriptive document dated <date>, reference <reference> as supplemented or amended by a Summary or Summaries of additional information and changes dated <date>;
Services	The services as set out in the Descriptive Document;
Contract-awarded Party	The party awarded the contract as described in consideration D);
Model Agreement	The draft agreement attached as Annex B to the Descriptive Document;
Original Agreement	The agreement with the Contract-awarded Party;
Parties	The parties to this Reserve Contractor Agreement;

Relevant Tender	The tender application submitted by the Other Party [insert date] to the Contracting Authority, with reference [insert reference number];
Alternative Agreement	The agreement between the Other Party and the Contracting Authority, effectively in the form of the Model Agreement;
Reserve Contractor Agreement	The Reserve Contractor Agreement as set out in Section 1.3 of this agreement; and
Other Party	The other party as defined in the description of the Parties above.

1.2

- 1.2.1 If a term is used defined in this Reserve Contractor Agreement, but is not defined herein, it is assigned the same meaning as in the Descriptive Document.
- 1.2.2 Where a document is referred to in this Reserve Contractor Agreement, it must be deemed to be a reference to the relevant document including its attachments and annexes.

1.3 The following documents, together, constitute the Reserve Contractor Agreement. Insofar as the provisions of these documents are in conflict with each other, the provisions of the previously mentioned document prevail over and above the one mentioned later:

- 1. this agreement;
- 2. the Agreement with reference XX
- 3. the Descriptive Document as supplemented or adjusted by the Information Notices;
- 4. Data Processing agreement; and
- 5. the Relevant Tender including any Appendixes.

2. The 'waiting room'

- 2.1 During the term of this Reserve Contractor Agreement, no performance of the Services will take place (the 'waiting room' phase).

3. Reverting of the Reserve Contractor Agreement

- 3.1 If termination of the Original Agreement takes place within one (1) year after 1 April 2023, therefore by 31 March 2024 at the latest, the Contracting Authority can invoke the Other Party.
- 3.2 After receipt by the Other Party of a written notification of invocation from the Contracting Authority, the Other Party will cooperate with the actual formation and implementation of the Alternative Agreement and a service level agreement, in accordance with the Relevant Tender and for the remaining term of the Agreement, as described in paragraph 3.6 and 3.8 of the Descriptive Document. The maximum term of the Alternative Agreement and the service level agreement will not exceed eight (8) years after 1 April 2023.
- 3.3 If the Contracting Authority and the Other Party enter into an Alternative Agreement, then, by undersigning this Reserve Contractor Agreement, the Other Party is bound to the Relevant Tender in terms of the QA-tool Call for Tenders with reference <reference>. Contrary to the provisions of the Descriptive Document relating to the period of validity, the Other Party will fulfil its Relevant Tender during the term of this Reserve Contractor Agreement.
- 3.4 Immediately after undersigning the Alternative Agreement, the Other Party will proceed with implementation to enable full performance of the Services as soon as possible thereafter, but not later than six months after undersigning the Alternative Agreement.

4. Duration and Termination

- 4.1 The Reserve Contractor Agreement is entered into from 1 April 2023 for a period of one (1) year.

4.2 Article 30 ARBIT-2018 applies to this Reserve Contractor Agreement where any reference to (i) the “Counterparty” is a reference to the Other Party; and (ii) the “Contract” is a reference to this Reserve Contractor Agreement. As a result, the Contracting Authority is authorised to terminate this Reserve Contractor Agreement without judicial intervention, in whole or in part, with immediate effect if one of the events in Article 30 ARBIT-2018 arises with respect to the Other Party. The Contracting Authority will inform the Other Party in writing if the Contracting Authority wishes to make use of its authority as described in the previous sentence.

5. No reimbursement

5.1 The Contracting Authority will not reimburse the Other Party for any costs or investments made for the purpose of the Tender or this Reserve Contractor Agreement.

5.2 If the Contracting Authority and the Other Party enter into an Alternative Agreement, the Parties may consult with each other on any possible reimbursement of reasonable costs incurred for the purpose of entering into the Alternative Agreement.

5.3 If the Alternative Agreement is invoked, the Other Party must offer the Services for the prices quoted in the Tender of the Other Party.

6. Contacts

6.1 Contact for the Contracting Authority is
Contact for the Other Party is

7. Final provision

7.1 Variances to this Reserve Contractor Agreement will only be binding to the extent that they have been expressly agreed to between the Parties in writing.

7.2 By undersigning this Reserve Contractor Agreement, any oral and written agreements possibly made previously by the Parties regarding the Services will lapse.

7.3 The Parties may not pledge or transfer their rights or obligations under this Reserve Contractor Agreement by operation of law or otherwise, without the prior written consent of the other Party.

8. Applicable law and competent court

8.1 This Reserve Contractor Agreement, any non-contractual obligation arising out of it or related to it, and any dispute, discussion, legal proceedings or claim of any nature whatsoever, as a result of, or which is in any way related to this Reserve Contractor Agreement or its formation, is governed by and will be interpreted in accordance with Dutch law.

8.2 The Parties to this Reserve Contractor Agreement agree that the Court of The Hague has exclusive jurisdiction to take cognisance of and decide on any claim, dispute or proceedings arising out of or related to this Reserve Contractor Agreement, a non-contractual obligation arising out of it or is related to it or is related to the formation of this Reserve Contractor Agreement or its validity and, for these purposes, both Parties irrevocably submit to the jurisdiction of that court.

AGREED, AND DRAWN UP AND SIGNED IN DUPLICATE IN [CITY/TOWN] ON [DATE]

Ms A.H.J. Prieckaerts

[name of the Contractor's representative]

Stichting Bevolkingsonderzoek Nederland

[Contractor]