

Annex 9

Contract under ARBIT-2022 concerning 202210076 'setting up and running the Area Monitoring System for the Netherlands'

The undersigned:

1. The State of the Netherlands, which has its seat in The Hague, represented by the Minister of Economic Affairs and Climate Policy,
legally represented in this matter by
René van der Burg, Director Core Processes EU, the Netherlands Enterprise Agency (NEA)
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',

The Contracting Authority and the other party will hereafter be referred to jointly as 'Parties' and
individually as 'Party'.

Whereas:

Organisation and objective of the Contracting Authority

- a. the Contracting Authority is responsible for implementing European schemes and paying out European Subsidies;
- b. in performing its duties the Contracting Authority needs a technical partner to help set up an Area Monitoring System (AMS) cloud environment and run and create markers to monitor agricultural activities;

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 'setting up and running an AMS for the Netherlands' by means of an European Public Tender 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 xxx December 2022 and has been published under number <S number>;
- e. The Contractor submitted a tender on <day month year>;
- f. the Contracting Authority awarded the Contract to the Other Party on <date> based on the criterium of the most economically advantageous tender;
- g. The Parties wish to lay down the ensuing legal relationship in a written Contract;

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Agree as follows:

1. Definitions

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

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	<i>Purchase and collection of satellite data and imaging data</i>	Annually

- Performance of the public Service Contract(s):

Serial number	Subject	Number
B1	<i>Hosting production environment (cloud service)</i>	Annually
B2	<i>Hosting test/acceptance environment (cloud service)</i>	Annually
B3	<i>Hosting development environment (cloud service)</i>	Annually
B4	<i>Data transfer</i>	Annually
B5	<i>Archiving services</i>	Annually, starting from 1 January 2024
B6	<i>Developing markers (a list of markers can be found in Annex 1)</i>	13
B7	<i>Developing a data pipeline</i>	In 2023
B8	<i>Adjusting pipeline for the processing of Planet Fusion data</i>	In 2023

B9	<i>Developing a web interface for the different markers that enables NEA to autonomously produce marker data</i>	In 2023
B10	<i>Data satellite processing</i>	In 2023
B11	<i>Developing an analytics platform</i>	In 2023
B12	<i>Signal and indices processing</i>	In 2023
B13	<i>Further development of markers</i>	To be determined, on request

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 Data Processing Agreement;
- 3) the Terms and Conditions, ARBIT 2022;
- 4) the memoranda of information;
- 5) the Tender Document;
- 6) the requirements;
- 7) the Service Level Agreement;
- 8) the tender of <date>, reference (<reference>), submitted by the Other Party to the Contracting Authority.

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 periodic on how the Contract is being performed. This report meets at least the requirements of Chapter 6 of the SLA.

4. Entry into force and term of the Contract

- 4.1 The Contract enters into force on 7 April 2023.
- 4.2 The Contract will end on 31 December 2025.
- 4.3 The Contracting Authority may extend the Contract *two (2)* times on the same terms and conditions for a period of *twelve (12)* months. If the Contracting Authority wishes to exercise this right, it will give written notice of this to the Other Party no later than *six (6)* months before the end of the term referred to in Article 4.2.

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	<i>Purchase and collection of satellite data and imaging data</i>	Make available via AMS Cloud Environment	Continuous throughout the project. Starting from 7 April 2023 monthly.

In the case of Public Service Contracts

- 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
B4	<i>Data transfer</i>	TBD	TBD
B5	<i>Archiving Services</i>	TBD	TBD
B6	<i>Developing markers (a list of markers can be found in Annex 1 (requirements) of the tender document)</i>	Functional AMS Cloud environment. After delivery approval and acceptance of the quality of the marker results.	See Annex 1 of the tender document (requirements) for a more detailed schedule
B7	<i>Developing a data pipeline</i>	TBD	1 June 2023 and finetuning/regular maintenance throughout the duration of the project.
B8	<i>Adjusting pipeline for the processing of Planet Fusion data</i>	TBD	1 September 2023 and finetuning/regular maintenance throughout the duration of the project.
B9	<i>Developing a web interface for the different markers that enables NEA to autonomously produce marker data</i>	Functional web interface. Following delivery and acceptance.	31 December 2023 and finetuning/regular maintenance throughout the duration of the project.
B10	<i>Data Satellite processing</i>	Make available via AMS Cloud Environment.	Continuous throughout the project. Starting from 7 April 2023 monthly.
B11	<i>Developing an analytics platform</i>	TBD	31 December 2023 and finetuning/regular maintenance throughout the duration of the project
B12	<i>Signal and indices processing</i>	Make available via AMS Cloud Environment,	Continuous throughout the project. Starting from 7 April monthly.
B13	<i>Further development of markers</i>	TBD	TBD, for each year a development calendar will be setup.

In the case of maintenance and cloud services

- 5.3 The Other Party will start the services on the date and at the place referred to in the following table.

Serial number	Subject	Delivery address	Delivery date
B1	<i>Hosting production environment (cloud service)</i>	TBD	1 June 2023
B2	<i>Hosting test/acceptance environment (cloud service)</i>	TBD	1 June 2023
B3	<i>Hosting development environment (cloud service)</i>	TBD	1 June 2023

- 5.4 Where the Other Party has committed to making the Source Code available to the Contracting Authority, the latter will receive a copy of the most recent version of the aforementioned Source Code at the first request.

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	<i>Purchase and collection of satellite data and imaging data</i>	<i>TBD</i>	<i>30 days after Delivery (11.1 ARBIT)</i>
B1	<i>Hosting production environment (cloud service)</i>	<i>After a demonstration of the functionality and first delivery of the marker results, which have to approved first by NEA.</i>	<i>30 days after Delivery (11.1 ARBIT)</i>
B2	<i>Hosting test/acceptance environment (cloud service)</i>	<i>After a demonstration of the functionality.</i>	<i>30 days after Delivery (11.1 ARBIT)</i>
B3	<i>Hosting development environment (cloud service)</i>	<i>After a demonstration of the functionality.</i>	<i>30 days after Delivery (11.1 ARBIT)</i>
B4	<i>Data Transfer</i>	<i>TBD</i>	<i>30 days after Delivery (11.1 ARBIT)</i>
B5	<i>Archiving services</i>	<i>TBD</i>	<i>30 days after Delivery (11.1 ARBIT)</i>
B6	<i>Developing markers (a list of markers can be found in Annex 1 (requirements) of the tender document)</i>	<i>After a demonstration of the functionality, delivery of the documentation and (marker) results.</i>	<i>30 days after Delivery (11.1 ARBIT)</i>
B7	<i>Developing a data pipeline</i>	<i>After a demonstration of the functionality and delivery of the documentation describing the data pipeline.</i>	<i>30 days after Delivery (11.1 ARBIT)</i>
B8	<i>Adjusting pipeline for the processing of Planet Fusion data</i>	<i>After a demonstration of the functionality and delivery of the documentation describing the data pipeline.</i>	<i>30 days after Delivery (11.1 ARBIT)</i>
B9	<i>Developing a web interface for the different markers that enables NEA to autonomously produce marker data</i>	<i>After a demonstration of the functionality and delivery of the documentation describing how to use the web interface.</i>	<i>30 days after Delivery (11.1 ARBIT)</i>
B10	<i>Data Satellite processing</i>	<i>TBD</i>	<i>30 days after Delivery (11.1 ARBIT)</i>

B11	<i>Developing an analytics platform</i>	<i>After a demonstration of the functionality and delivery of the documentation describing how to use the platform using 5 example notebooks.</i>	<i>30 days after Delivery (11.1 ARBIT)</i>
B12	<i>Signal and indices processing</i>	<i>TBD</i>	<i>30 days after Delivery (11.1 ARBIT)</i>
B13	<i>Further development of markers</i>	<i>Approval of the timesheets submitted and if applicable a demonstration of the functionality.</i>	<i>30 days after receipt of the timesheet</i>

- 6.2 If the Contracting Authority accepts the Deliverable despite the presence of one of more Defects, it will withhold an amount of 10% from the Fee of the Deliverable until the Defects have been repaired.
- 6.3 For all tasks, it applies that if the Contracting Authority cannot approve the deliverables, the Other Party must make a redelivery with the required changes within an agreed timeframe without extra payment. The Contracting Authority reserves the right to reject a deliverable if it does not meet the quality requirements described in the tender or the quality requirements given in the AMS rules.

7. Fee

- 7.1 The Parties agree the following Fee:

Serial number	Subject	Price per unit excl. VAT	Units	Total Price excl. VAT
A1	<i>Purchase and collection of satellite data and imaging data</i>	<i>Fixed total price per year</i>	<i>5 years</i>	<i>Fixed total price</i>
B1	<i>Hosting production environment (cloud service)</i>	<i>Fixed total price per year</i>	<i>4.58 years</i>	<i>Fixed total price</i>
B2	<i>Hosting test/acceptance environment (cloud service)</i>	<i>Fixed total price per year</i>	<i>4.58 years</i>	<i>Fixed total price</i>
B3	<i>Hosting development environment (cloud service)</i>	<i>Fixed total price per year</i>	<i>4.58 years</i>	<i>Fixed total price</i>
B4	<i>Data transfer</i>	<i>Fixed total price per year</i>	<i>4.58 years</i>	<i>Fixed total price</i>
B5	<i>Archiving services</i>	<i>Fixed total price per year</i>	<i>4 years</i>	<i>Fixed total price</i>

B6	<i>Developing markers (a list of markers can be found in Annex 1 (requirements) to the tender document)</i>	<i>Fixed total price per marker</i>	<i>13 markers</i>	<i>Fixed total price per marker</i>
B7	<i>Developing a data pipeline</i>	<i>Fixed total price</i>	<i>1 data pipeline</i>	<i>Fixed total price</i>
B8	<i>Adjusting pipeline for the processing of Planet Fusion data</i>	<i>Fixed total price</i>	<i>1</i>	<i>Fixed total price</i>
B9	<i>Developing a web interface for the different markers that enables NEA to autonomously produce marker data</i>	<i>Fixed total price</i>	<i>1</i>	<i>Fixed total price</i>
B10	<i>Data Satellite processing</i>	<i>Fixed total price</i>	<i>1</i>	<i>Fixed total price</i>
B11	<i>Developing an analytics platform</i>	<i>Fixed total price</i>	<i>1</i>	<i>Fixed total price</i>
B12	<i>Signal and indices processing</i>	<i>Fixed total price</i>	<i>1</i>	<i>Fixed total price</i>
B13	<i>Further development of markers</i>	<i>Maximum price</i>	<i>TBD</i>	<i>Maximum price</i>

- 7.2 Services concerning the further development of markers can be called upon by the Contracting Authority at any given time. The Other Party Contractor will provide the Contracting Authority with a fixed price offer using the hourly rates as provided in the Tender. The maximum hourly rates which can be used to draw up an offer are as follows:

	Hourly rate (excluding VAT)
Junior developer	
Mid-level developer and/or image analyst	
Senior developer and/or project manager	

- 7.3 After 1 January 2026 the annual fees and hourly rates may be adjusted once a year on 1 January by a percentage not exceeding the price index published by Statistics Netherlands for hourly rates of pay excluding special remuneration established under collective labour agreements in the business services sector. The figure for the previous month *October* will be used, with the figure for April 2023 being set at 100%.
- 7.4 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 €5,000 will be deducted from the Fee for every day that the delay in Completion or Delivery continues, up to a maximum of €200,000.

8. Invoicing, indebtedness and payment

- 8.1 The Fee, as specified in Article 7, for serial numbers A1, B1, B2, B3, B4 and B5 can be invoiced on a quarterly basis.
- 8.2 All other costs including the development costs which can be called upon can be invoiced according to the following invoicing schedule:
15% at the start of the assignment
35% halfway through the assignment
50% after completion and acceptance of the results of the assignment
- 8.3 An invoice should contain the following information:
- date of invoice
 - amount of the Fee
 - VAT owed
 - contract number
 - commitment number
 - description of invoiced work, such as development of XX or production of YY.
- 8.4 The Other Party must submit invoices electronically in the manner prescribed in the Tender Document.
- 8.5 Notwithstanding the first sentence of Article 11.1 of ARBIT-2022, the Contracting Authority will pay for the hosting of the production environment and the test/acceptance environment annually in advance in accordance with the provisions of the Service Level Agreement (SLA) Schedule. The Other Party will provide security for this amount by means of a bank guarantee (Bank Guarantee Schedule).
- 8.6 The Other party is liable for any extra costs for Dutch and/or foreign VAT due if they incorrectly charge no VAT or an incorrect amount of VAT to the Contracting Authority. If applicable, the Other Party is liable for accurate payment of VAT in the Netherlands and outside the EU, with the exception of the case stipulated in the following sentence. If the Contracting Authority procures a service from a foreign business and Dutch tax law considers the work to have been performed in the Netherlands, then the Contracting Authority is liable for the payment of VAT to the Dutch Tax and Customs Administration for this/these service(s) performed in the Netherlands.

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 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.
- 9.3 A copy of the Terms and Conditions is appended to the Contract.

10. Other provisions

- 10.1 No information regarding the Deliverable, or the progress of the Deliverable, which the Contracting Authority must deliver for the Government IT Dashboard falls within the duty of secrecy as referred to in Article 17 of ARBIT-2022.
- 10.2 Articles 22.1, 22.2 and 22.4 of ARBIT-2022 do not apply. The Other Party may replace persons charged with implementing the Contract. The Contracting Authority may not refuse the replacement Staff members.
- 10.3 As stated in Articles 3, 12.3 and 31, by written manner electronical communication (e-mail) is meant.

Done on <date> and signed in duplicate by:

FOR THE CONTRACTING AUTHORITY

FOR THE OTHER PARTY

Name: René van der Burg

Name: <name>

Position: Director Core processes EU

Position: <position>

Signature:

Signature:

Date:

Date:

Schedule: Requirements and Specifications

Schedule: Data Processing Agreement (ARBIT 2022)

Schedule: Terms and Conditions: ARBIT-2022

Schedule: Service Level Agreement (SLA)

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: Bank guarantee

Model of a bank guarantee as referred to in Article 16 of ARBIT-2022.

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 once it has been received again 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 at *<place>*,

on *<date>*,

<signature of credit institution>