



Agreement pertaining to the acquisition and 3rd-line maintenance of:

Present Weather Sensors

DRAFT AGREEMENT

Table of contents

Article 1.	Definitions	6
Article 2.	Scope of this Contract	8
Article 3.	Requirements.....	9
Article 5.	Delivery of the System	9
Article 7.	Documentation and training	11
Article 8.	Factory inspection.....	11
Article 9.	Delayed delivery and untimeliness	11
Article 10.	Acceptance.....	12
Article 11.	Prices and costs	13
Article 12.	Invoicing and payment	13
Article 13.	System guarantee	14
Article 14.	Hardware guarantee	14
Article 15.	Software guarantee	15
Article 16.	Maintenance and support after delivery	15
Article 17.	Technical changes, contractual amendments and alterations.....	15
Article 18.	Escrow.....	16
Article 19.	Liability	16
Article 20.	Intellectual property	16
Article 21.	Confidentiality.....	17
Article 22.	Support after termination	17
Article 23.	Transfer of rights and obligations	18
Article 24.	Non-attributable shortcoming (force majeure).....	18
Article 25.	Termination of this Contract	18
Article 26.	Authority, correspondence and notifications.....	19
Article 27.	Language and reporting	19
Article 28.	General.....	20
Article 29.	Disputes	20
Annex 1	ESPD	21
Annex 2	Mandatory Forms	21
Annex 3	Programme of Requirements and Desirables	21
Annex 4	Pricing Sheet.....	21
Annex 5.1	Draft agreement	21
Annex 5.2	Waiting Room Agreement PWS 2023.....	21
Annex 6	ARIV 2018	21
Annex 7	Explanatory Notes ARIV 2018.....	21
Annex 8	Questioning Form	21
Annex 9	Tender Procedures Complaints Protocol	21
Annex 10	Verification Phase and Delivery	21
Annex 11	Template Certificate of Acceptance	21
Annex 12	Substantiations Form	21
Annex A	Tender of the Supplier.....	21
Annex B	Maintenance Activities Plan (MAP).....	21

Contract

**PERTAINING TO THE ACQUISITION AND
3RD-LINE MAINTENANCE OF
Present Weather Sensors**

between

**THE ROYAL NETHERLANDS METEOROLOGICAL INSTITUTE (*KONINKLIJK NEDERLANDS
METEOROLOGISCH INSTITUUT - KNMI*)
AND**

Date

DD/MM/YYYY

DRAFT AGREEMENT

The State of the Netherlands, Royal Netherlands Meteorological Institute, agency of the Ministry of Infrastructure and Water Management, having its registered office at Utrechtseweg 297, 3731 GA, De Bilt, the Netherlands, represented by Prof. Gerard van der Steenhoven, Director General,

Hereinafter referred to as 'KNMI' or 'the Buyer', and

....., having its registered office at @Address@,

@Town/City@, @Country@, represented by....., @Position@,

Hereinafter referred to as 'the Supplier';

WHEREAS:

- The Contract in the Dutch language is always the authoritative document for the Parties for the entire duration of the cooperation;
- In the event of any discrepancy between this Contract and a translated version, the text and interpretation of the Dutch-language version will prevail;
- The Buyer intends to have 3rd-line maintenance of the procured Present Weather Sensors (PWS) performed by the Supplier, as stipulated in the tender documents;
- The objectives, application and specifications of the PWS to be procured and maintained are set out in the tender documents dated <<publication date>>;
- The Supplier is able to provide these PWS, supplies and services, as required by the Buyer and stated in the Supplier's tender on dd/mm/yyyy;
- After the award, the evaluation process will be initiated with the Supplier considered to have submitted the Most Economically Advantageous Tender (MEAT), as specified in the tender documents;
- The Buyer has decided to award the Contract for the Acquisition and 3rd-line maintenance of the Present Weather Sensors (PWS), Background Luminance Sensor (BLS) and related products, hereinafter referred to as 'the System', as specified in the tender documents of European Tender TN-349307, to the Supplier;
- The Supplier will demonstrate during a Factory Acceptance Test (FAT) that the System complies with the specifications required by the Buyer;
- The Buyer will verify during a Site Acceptance Test (SAT) that the System complies with the specifications required by the Buyer;
- A verification phase will take place whereby a negative outcome will constitute grounds for termination. The Buyer and the Supplier, hereinafter referred to as 'the Parties', wish to establish the arrangements that have been made in this contract ('the Contract');

ARE HEREBY AGREED AS FOLLOWS:

DRAFT AGREEMENT

Article 1. Definitions

The following definitions apply to this Contract:

- a) ARIV 2018: The General Government Conditions for Supplies 2018 (*Algemene Rijksoverheidsvoorwaarden voor leveringen 2018* - ARIV 2018) (**Annex 6**) apply to this Contract. The definitions below are supplementary to or deviate from these.
- b) Descriptive Document: The tender document in which the assignment, the tendering procedure to be followed, the suitability requirements and the evaluation criteria for the tender are described and explained.
- c) BLS: Background Luminance Sensor
- d) Certificate of Acceptance (Annex 11): The official confirmation by the Buyer that the Systems operate in accordance with the specifications and are ready for deployment after the delivered Systems have successfully passed the Site Acceptance Test (SAT) (See also **Annex 10; Verification Phase and Delivery**, section 4.2, Delivery Acceptance).
- e) Non-compliance: Any non-compliance with the specifications that prevents the operation of the Systems in accordance with the stipulated purposes as specified in the tender documents.
- f) FAT: Factory Acceptance Test
- g) Defects: Defects are problems in the functioning, of both hardware and software, in the System that cannot be foreseen in advance.
- h) Delivery: The receipt at the Buyer of a shipment of the Systems. (**Annex 10; Verification Phase and Delivery**, section 4.6, Delivery schedule).
- i) Maintenance: All work intended to ensure the uninterrupted operation of the Systems in accordance with the specifications, as well as the repair of malfunctions and defects.

3rd-line maintenance (to be performed by the tenderer) is defined as (not limitatively):

- Analysis of failures;
- Repair or replacement* of instrument (malfunction report provided);
- Supply or replacement of instrument modules/components that must be replaced in the context of preventive maintenance;
- Instrument software, settings and configuration set to KNMI standard;
- Updated Factory Acceptance Test (test report provided);
- Updated factory calibration of the instrument (calibration report provided);
- Release of software/firmware updates (with specification of changes and advice on value of update to Buyer).

*Please note that the replacement obligation for instruments that cannot demonstrably be repaired within the second extension period of this Contract (from year 14 onwards) is not compulsory.

Out of scope

NB: 1st and 2nd-line maintenance is the responsibility of Buyer, is performed by Buyer and falls outside of the scope of this Contract.

Description of 1st and 2nd-line maintenance;

1st-line maintenance (at observation site) is performed periodically, or earlier in case of an alert or malfunction. Buyer currently performs periodic 1st-line maintenance on Automatic Weather Stations (AWSs) every six months, and every 2 months at airports and airbases. This includes:

- Inspection of the condition of the instrument, cables and connectors;
- Inspection of the surroundings for factors that could affect the operation of the instrument;

DRAFT AGREEMENT

- Periodic cleaning of the instrument (please note that cleaning can be carried out by a third party using appropriate cleaning tools and instructions);
- Retrieval of instrument data and status to check the correct operation of the instrument;
- Instrument replacement during regular 2nd-line maintenance or in the event of a malfunction.

2nd-line maintenance (at KNMI) is performed in accordance with the maintenance plan at the end of the calibration period, or earlier in case of an alert or malfunction. Buyer currently carries out periodic 2nd-line maintenance every 12 (relative humidity) to 36 months (visibility).

- Malfunction analysis to determine whether 3rd-line maintenance is necessary;
- Thorough cleaning of the entire instrument (including glazing);
- Inspection of mechanical condition (e.g. connections, fuses);
- (Preventive) plug-and-play replacement of components;
- Uploading of (new) software versions (released by the tenderer);
- Changing instrument software/settings/configuration to KNMI standard;
- Verification and adjustment of calibration;
- Performance of the verification protocol.

- j) PWS: Present Weather Sensor(s)
- k) SAT: Site Acceptance Test (See also **Annex 10; Verification Phase and Delivery**, section 4.2, Delivery Acceptance).
- l) System(s): A PWS, BLS, associated calibrator(s), tool(s) and (spare) parts, installation materials and optional masts and associated Software that function as a single unit.
- m) Specifications: The functional, technical and operational requirements of the System (as set out in **Annex 3; Programme of Requirements and Desirables**).
- n) Technical assistance: All technical assistance as required by Buyer regarding the operation and/or maintenance of the System(s).
- o) Update: An amended version of the Software, in which errors, defects, bugs, etc. are fixed or in which the logical coherence is improved.
- s p) Upgrade: An amended or new version of the Software, in which new functionality is added.
- q) Verification phase: A one (1) year verification phase of ten (10) Systems at different locations (**Annex 10; Verification Phase and Delivery**), whereby failure to successfully complete the verification phase will result in the return of the System and termination of the Contract.
- r) Confidential information: is considered to be (i) any information disclosed in writing and designated as confidential, or (ii) any information disclosed orally within thirty (30) days of disclosure and disclosed in writing and designated as confidential, or (iii) any information which by its content is clearly confidential in nature.

DRAFT AGREEMENT

Article 2. Scope of this Contract

2.1. This Contract consists of two (2) objectives:

1. Acquisition of the System as specified in the descriptive document and **Annex 10; Verification Phase and Delivery;**
2. The procurement of 3rd-line maintenance of these Systems and Software.

2.2. The purchase of the System(s), by the Buyer, will be split into batches. (**Annex 10; Verification Phase and Delivery**)

2.3. The acquisition of the System(s) consists of:

95x PWS and 87x BLS or 95 PWS with integrated BLS and associated services and supplies.

2.4. As a supplement to **Article 2.3.**, the Buyer has the right to purchase more systems from the Supplier. The totals stated in **Article 2.3.** can be adjusted up or down by 15% during the Contract.

2.5. If the System is ready for commissioning after completion of the verification phase, the Supplier will transfer ownership of the equipment to the Buyer and provide the necessary services referred to in **Article 16.1.**, including applicable software licences. All of this will be carried out in accordance with the provisions of this Contract and the attached annexes.

2.6. The supplier is responsible for the production, delivery and proper operation of the Systems and 3rd-line maintenance. Any parts supplied or produced, or any work carried out by third parties on behalf of the Supplier, are also included in this responsibility.

2.7. The following documents belong to and form an integral part of this Contract:

- Tender documents TN-349307
 - Descriptive document
 - Annex 1 ESPD
 - Annex 2 Mandatory Forms
 - Annex 3 Programme of Requirements and Desirables
 - Annex 4 Pricing Sheet
 - Annex 5.1 Draft Agreement
 - Annex 5.2 Draft Waiting Room Agreement
 - Annex 6 ARIV 2018
 - Annex 7 Explanatory Notes ARIV 2018
 - Annex 8 Questioning Form
 - Annex 9 Tender Procedures Complaints Protocol
 - Annex 10 Verification Phase and Delivery
 - Annex 11 Template Certificate of Acceptance
 - Annex 12 Substantiations Form
 - Annex 13 References Annex 10

DRAFT AGREEMENT

- Annex A Tender of the Supplier
- Annex B Maintenance Activities Plan

If these documents are contradictory in nature, the document with a lower number will prevail over the document with a higher number:

1. Information memorandum;
2. This Contract;
3. Tender documents TN-349307, including annexes;
4. Tender Submitted by the tenderer;
5. The other annexes to this Contract, it being understood that an annex with a lower number takes precedence over an annex with a higher number.

The more specific requirements and specifications always take precedence over the generic ones. This also applies to technical specifications as specified by the Buyer.

Article 3. Requirements

- 3.1. Without prejudice to the specification(s) stated in this Contract, the work, supplies and services will meet the requirements of reliability, good workmanship and use of qualified material. The System will comply with all legal requirements in force at the time of signing this Contract.
- 3.2. If the Systems are subject to approval by a body designated for that purpose by law and/or by the government, the Supplier will be responsible for obtaining such approval and will indemnify the Buyer against such approval.

Article 4. Duration of the Contract

- 4.1. This Contract will enter into force on dd/mm/yyyy. From this date, the Supplier will take all necessary steps to successfully deliver the System, and will maintain this System to ensure the agreed performance.
- 4.2. This Contract (including the verification phase) will have an initial term of ten (10) years, commencing on the date specified in **Article 4.1**.
- 4.3. This Contract can be unilaterally extended twice by the Buyer under the same conditions. Each extension can last for a maximum period of three (3) years. This results in a maximum term of this Contract of sixteen (16) years.
- 4.4. In accordance with the provisions of Article 2.4, the Supplier is obliged to provide a System during the term of this Contract on the same terms as stated in the specifications. If an additional System is purchased during the implementation of this Contract, this will be established in writing and will automatically be subject to the conditions of this Contract.

Article 5. Delivery of the System

- 5.1. Each System ordered will be produced, shipped and delivered so that it can be fully deployed within three (3) months from the date of order, has successfully passed the 'Site Acceptance Test' and delivery is in accordance with the delivery schedule (**Annex 10; Verification Phase and Delivery**, section 4.6, Delivery schedule).
- 5.2. All such deliveries as well as all other deliveries under this Contract will be subject to the

DRAFT AGREEMENT

Delivered Duty Paid KNMI (address: Utrechtseweg 297, 3731 GA De Bilt, the Netherlands) delivery condition in accordance with the applicable Incoterms 2020.

- 5.3. Spare parts, or compatible products meeting the same requirements and capable of replacing original parts, are available for the duration of the Contract, with a minimum of sixteen (16) years. Interim changes in hardware, LRUs or firmware between batches are not permitted without the written consent of the Buyer. In the event of a change, it will be necessary to test whether the changed System is in accordance with the stated Specifications.

Article 6. Software

- 6.1. The Buyer has the right of use of all Software provided on the basis of this Contract, including all related documentation. This right of use is perpetual, and will not be terminated in the event of a breach of the provisions of this Article by the Buyer.
- 6.2. The Supplier hereby grants to the Buyer the non-exclusive, transferable right to use the Software specially developed and/or supplied on the basis of this Contract without licence conditions, including all associated documentation. The right of use is also applicable to changes and adaptations made by the Supplier at the Buyer's request, and to any new versions of the Software, as well as to all possible applications of the Software, even if not mentioned in the documentation. The Supplier guarantees that all new Software to be delivered will be backward compatible, unless agreed otherwise.
- 6.3. Insofar as not expressly determined otherwise in this Contract, the right of use as referred to in **Article 6.2.** includes permission to make copies of the Software solely for the Buyer's internal use, by or on behalf of the Buyer, irrespective of the manner and form in which this is done, all of this for the purpose of using the Software for all purposes for which it is intended and/or for which it is or may be suitable, provided that this is done in the context of the Buyer's normal business and within the framework of this Contract, and provided that notices of copyright and other proprietary rights on such copies are duplicated.
- 6.4. Taking due consideration of the licence conditions and/or copyright restrictions provided with the Software regarding the use referred to in **Article 6.2**, the right of use includes the following:
- a. All actions, including the permanent or temporary reproduction of the Software, in whole or in part, or of a modified version of the Software, that are necessary or beneficial in respect of the use referred to in the previous paragraph;
 - b. Running and storing the software or modified versions thereof for that purpose, all of this also with regard to scientific research, maintenance, error correction, virus control, linking the Software with and/or making it compatible with other equipment and Software, changing user parameters, introducing, changing or removing security measures for user access, making and storing and changing backup copies and examining and testing the Software.
- 6.5. The non-exclusive right of use referred to in **Articles 6.2. and 6.3.** may be transferred to third parties so that these rights can be exercised on behalf of the Buyer. The right of use is not limited to specific equipment or a specific location. If data processing activities are outsourced to a sub-organisation that will perform (part of) the work related to the Software, and that organisation is transformed into an independent organisation, the Buyer may transfer the rights under the licence.
- 6.6. The Supplier has taken cognisance of the content of this Contract, the objectives of the Systems and of the Buyer's organisation insofar as relevant for the purposes hereof, the processes in which the Software will be used and the data streams to be processed with the Software.
- 6.7. The Supplier guarantees that it is entitled to issue the Software licences, and agrees to indemnify the Buyer against any claims for copyright infringement, patent infringement or other infringements of intellectual property rights associated with the software.

DRAFT AGREEMENT

6.8. Additional provision supplementing right of ownership.

All intellectual property rights which can or will be exercised in respect of the Performance in any place and at any time are vested in:

- a. The Buyer, insofar as this concerns a Performance that has been or will be designed or manufactured specifically for the Buyer and/or has been or will be realised under the management or supervision of the Buyer or on the basis of its instructions or designs. Insofar as necessary, these rights under the Contract are transferred by the counterparty to the Buyer, which transfer is accepted by the Buyer forthwith and in advance;
- b. The counterparty or a third party in all other cases. In that case, the counterparty will grant the Buyer a non-exclusive right to use the Performance, to be specified in the Contract, which will in any event be sufficient to fulfil the provisions of the Contract(s).

Article 7. Documentation and training

- 7.1. The Buyer has the right to distribute documentation material to the extent applicable in the interest and purpose of the operation. Reproduced material must bear the same copyright notices as the original material.
- 7.2. During the period of the Buyer's use of the System, the Supplier will, at the Buyer's request, make available to the Buyer all information relating to (parts of) the System necessary for the operation, maintenance and use of the System in accordance with this Contract.
- 7.3. The Supplier is obliged to provide training as described in **Annex 3; Programme of Requirements and Desirables**. The training will be concluded with a certificate of attendance for each participating employee of the Buyer who has attended this training. This certificate gives these employees a licence to operate, maintain and use the System, without prejudice to the Supplier's guarantee and 3rd-line maintenance obligations.

Article 8. Factory inspection

- 8.1. The Buyer is entitled to carry out inspections at the factory and examine whether the Supplier is maintaining the agreed quality management system as specified in the descriptive document.
- 8.2. All costs of inspections and tests at the Supplier's factory or factories or those of any subcontractors, including the cost of any necessary personnel or material assistance, will be borne by the Supplier. The Buyer's accommodation and travel costs, including any costs of the Buyer's personnel, will be borne by the Buyer.

Article 9. Delayed delivery and untimeliness

- 9.1. If the agreed delivery dates stated in **Annex 10** are postponed by at least 1 (one) month at the Buyer's request, the Supplier will be entitled to charge the Buyer any additional costs for storage, transport, insurance related to the storage and transport and maintenance of the Systems on submission of the relevant documentation. This expires in the situation where the delay is caused by the System not meeting the requirements or one or more Systems from the previous batch not passing the SAT.
- 9.2. If the agreed delivery date is delayed due to circumstances solely on the part of the Supplier, but not to be regarded as force majeure, the Buyer will be entitled (by way of compensation for damage suffered) to claim an amount of 0.5% of the sale price of the System to be delivered for each full week that this period continues, up to a maximum of 5% of the purchase price of the System.

If during the aforementioned period the Buyer and the Supplier have agreed on an adequate alternative arrangement, or agreement has been reached on (temporary) delivery of

DRAFT AGREEMENT

replacement parts of the System, the compensation will be adjusted accordingly.

- 9.3. If the Buyer is entitled to maximum compensation for the delay in accordance with **Article 9.2** and the delay continues, the Buyer may terminate this Contract as set out in **Annex 6; ARIV 2018**, Article 26.

Article 10. Acceptance

The full acceptance programme will consist of two acceptance phases (the verification phase does not form a part of this), specified as follows:

Factory acceptance

- 10.1. Any System delivered to the Buyer will be subject to a Factory Acceptance Test (FAT). The FAT will be carried out by the Supplier at the Supplier's factory. It must be possible to attend the FAT as a Buyer.
- 10.2. In respect of this FAT, the Supplier will inform the Buyer in writing at least four (4) weeks before the first batch. At the same time, the Supplier will provide the Buyer with one sample FAT protocol and timetable. By signing the FAT report, the Buyer indicates its agreement to this activity. The original of this report will be provided to the Buyer.
- 10.3. If the FAT cannot be carried out successfully due to circumstances solely on the Supplier's side, but not to be considered as force majeure, the Buyer has the right to either reject the failing System or to have the FAT repeated in whole or in part after correction by the Supplier of the defects found. This procedure can be repeated a maximum of three (3) times. After the third time the System will be replaced. The right of rejection remains as long as repeated FATs are performed. From the time that the FAT is repeated, the provisions of Article 9 will apply mutatis mutandis.

Site acceptance

- 10.4. Any System delivered to the Buyer that has passed the Factory Acceptance Test will be subject to a Site Acceptance Test (SAT) protocol, performed by the Buyer in batches. The SAT will be developed and approved by the Supplier and the Buyer. The SAT will be conducted entirely in accordance with the agreed specifications. See **Annex 10; Verification phase and Delivery**, section 4.2, Delivery acceptance.
- 10.5. During the SAT, with a processing time of 2 weeks, each System will be calibrated (1 day) and verified in full compliance with the Verification Protocol (**Annex 3; Programme of Requirements and Desirables**, number 35) provided by the Supplier. A component of the SAT is also a 1-week verification on the test field during which the sensor must function continuously in accordance with the stated requirements.
- 10.6. Immediately after the successful completion of the SAT, the Certificate of Acceptance will be signed by the Buyer (**Annex 11; Template Certificate of Acceptance**). Two (2) copies of the Site Acceptance Test report must be signed for acceptance. One (1) copy remains with the Buyer, the second copy is for the Supplier.
- 10.7. If the SAT cannot be carried out successfully due to circumstances solely on the part of the Supplier, but not to be considered as force majeure, the Buyer has the right to either reject the failing System or to have the Site Acceptance Test repeated in whole or in part after correction of the defects found. This procedure can be repeated a maximum of three (3) times. After the third time the System will be replaced. The right of rejection remains as long as repeated SATs are performed. From the time that the SAT is repeated, the provisions of Article 9 will apply mutatis mutandis.
- 10.8. Ownership of the System will pass from the Supplier to the Buyer on the acceptance date

DRAFT AGREEMENT

specified in the SAT report.

Article 11. Prices and costs

- 11.1. The purchase price and maintenance costs of the Systems, broken down by item, are shown in the Supplier's proposal with the use of **Annex 4; Pricing Sheet**. These prices and fees for the items include all relevant costs arising from the provisions of this Contract and the attached annexes.
- 11.2. The amounts stated in this Contract are in Euros, excluding the payable VAT. The price/fee for the PWS is fixed for the first 10 years, and for the rest of the years of the Contract the price/fee will be subject to adjustment in accordance with the following price indexation (CPI - [StatLine - Service prices; commercial services and transport, index 2015=100 \(cbs.nl\)](#) during the past 12 months, category 712) and the Contract between the Parties. The Supplier will submit a proposal to this effect to the Buyer no later than 3 months before the expiry of the fixed-price period.
- 11.3. The price/fee for the 3rd-line maintenance is fixed for the first 5 years of the Contract and may be adjusted after the 5th year in accordance with the price indexation (CPI - [StatLine - Service prices; commercial services and transport, index 2015=100 \(cbs.nl\)](#) during the past 12 months, category 712) and the Contract between the Parties. The Supplier will submit a proposal to this effect to the Buyer no later than 3 months before the expiry of the fixed-price period.

Article 12. Invoicing and payment

- 12.1. The charges as stated in **Article 11.** of this Contract will be invoiced in accordance with the payment schedule below:
1. Payment of 100% of the purchase price of the delivered batch within thirty (30) days of:
 - a. the successful completion of the FAT and
 - b. all Systems ordered from a batch thereof having been delivered and
 - c. the successful completion of the SAT and
 - d. signing of the Certificate of Acceptance, including the calibration certificate, and
 - e. receipt of the relevant invoice.
 2. The annual fee for 3rd-line maintenance work will be invoiced on 1 January for the coming year for the actual number of systems accepted by Buyer at that time and outside of the guarantee period.

- 12.2. Invoices should be addressed and sent by email to:

Ministry of Infrastructure and Water Management
p/o UDAC/F&I/040
PO Box 20906
2500 EX The Hague (the Netherlands)

With reference to the SAP order number specified on the purchase order.
UDACfacturen@minienw.nl

DRAFT AGREEMENT

12.3. Payments are to be made in Euros.

12.4. If the Buyer has not notified the Supplier with a reasonable argument to withhold a payment, then **Annex 6; ARIV 2018**, Article 11 will apply.

Article 13. System guarantee

13.1. In addition to **Annex 6; ARIV 2018**, Article 4, the Supplier guarantees that the Systems will function or continue to function for 16 years after acceptance in accordance with the specifications as stated in European Tender TN-349307.

13.2. The Supplier will modify the hardware and/or Software to meet the specifications, free of charge, within 30 days of receiving the registered written notice from the Buyer. This adaptation will take place in such a way that the offered possibilities of the Software are not affected, and will take place in consultation between the Buyer and the Supplier. The necessary inspection of the Systems will not incur any cost to the Buyer.

13.3. The Supplier will only be liable for Defects that occur under the conditions of use provided for in European Tender TN-349307, this Contract and under proper use, operation and maintenance of the System. The Supplier's liability does not cover any Defects caused by faulty maintenance or repairs by the Buyer or caused by modifications carried out without the Supplier's express written consent, unless the Defects were caused by the Buyer's personnel trained and certified by the Supplier as stated in **Article 7.3**.

13.4. The Supplier will make critical updates available free of charge for as long as the Buyer uses (parts of) the System.

Article 14. Hardware guarantee

14.1. The guarantee period is twenty-four (24) months from the date on which the Certificate of Acceptance is signed.

14.2. The Supplier will maintain the hardware in good condition for the entire duration of the contract at no cost, and will also conduct all necessary settings and repairs and provide correctly functioning parts or sensors to replace defective ones, which will then become the property of the Buyer. Any repaired or new part is covered by a guarantee period of twenty-four (24) months from the time of repair or replacement.

14.3. The Supplier guarantees that the hardware is free from defects in design, manufacture or materials. During the guarantee period the Supplier is obliged to provide replacement sensors or parts for defective parts at no cost, including shipping and testing costs, upon return of the replaced parts.

14.4. If a hardware component does not function properly, the Buyer will send it to the Supplier. To repair the hardware component, the Supplier will conduct all necessary settings, repairs and replacement parts, which will then become the property of the Buyer free of charge. Any repaired or new part is covered by a guarantee period of twenty-four (24) months from the time of repair or replacement.

14.5. If it becomes apparent that the work described in **Article 14.2. or 14.4.** had to be carried out as a result of causes attributable to the Buyer, the Buyer will reimburse the costs incurred by the Supplier in this respect. These costs will be calculated on the basis of the agreed fees or, failing that, on the basis of the Supplier's applicable fees for similar work.

DRAFT AGREEMENT

- 14.6. The Supplier may make upgrades available during and after the guarantee period. The Supplier will offer these upgrades to the Buyer at a reasonable cost. The Buyer is free to decide whether to accept and implement the offered upgrade(s).

Article 15. Software guarantee

- 15.1. The guarantee period is twenty-four (24) months from the date on which the Certificate of Acceptance is signed.
- 15.2. On the basis of this guarantee, the Supplier will detect and repair as soon as possible, without charging the Buyer any costs, any Defects in the Software that have manifested themselves during the guarantee period and that have been notified in writing by the Buyer within one (1) month.
- 15.3. If it becomes apparent that the work described in **Article 15.2.** had to be carried out as a result of causes attributable to the Buyer, the Buyer will reimburse the costs incurred by the Supplier in this respect. These costs will be calculated on the basis of the agreed fees or, failing that, on the basis of the Supplier's current fees for similar work.
- 15.4. Guarantee conditions are not applicable to (parts of) the Software modified in any way by a party other than the Supplier, or parties or persons designated or approved by the Supplier.

Article 16. Maintenance and support after delivery

The technical assistance and maintenance are described in the various tender documents attached as annexes to this document.

- 16.1. If the critical performance indicators stated in **the Maintenance Activities Plan as described in Annex 3** are not complied with, the Buyer may reclaim or offset an amount of 5% of the annual 3rd-line maintenance fee.
- 16.2. The Buyer reserves the right, in the event that the Supplier is unable to supply the agreed replacement parts, to purchase them from sources other than the Supplier; guarantees of the Supplier as stated in **Article 13.1.** will in no way be reduced by the use of other goods and services, provided that such parts or services have the same quality standards. The Parties may agree to subject such goods and services to acceptance by the Supplier, which acceptance the Supplier will only withhold on reasonable grounds.
- 16.3. If a new or additional System is purchased by the Buyer, this will be subject to the terms of this Contract. See **Article 4.4.**
- 16.4. During the term of this Contract, the Supplier will keep sufficient spare parts in stock so that the System can (continue to) meet the requirements. The Supplier will not charge the Buyer for keeping stock.
- 16.5. The Supplier will inform the Buyer at least 6 months in advance that a product, compatible product or support can no longer be supplied, subject to the provisions of **Articles 13, 16.1 and 16.3.**

Article 17. Technical changes, contractual amendments and alterations

- 17.1. The Buyer may propose amendments or additions to the Contract (directions). If the amendments or additions result in an increase or decrease in the price and/or bring about a change in the time schedule, the Supplier will agree to the directions requested/proposed by the Buyer. These amendments or additions will only be

DRAFT AGREEMENT

applicable if agreed in writing by both Parties.

- 17.2. Supplementary to **Article 17.1**, the Supplier may also make proposals to amend or supplement the Contract. These will only be applicable if agreed in writing by both Parties. Amendment and/or replacement of one or more components will not have the effect of restricting the Buyer's use of the System.
- 17.3. During the agreed period of use of the System, all technical changes, developments or modifications required by Buyer will be submitted as Engineering Change Proposals (ECPs). These ECPs will only be accepted if agreed in writing by both Parties.

Article 18. Escrow

- 18.1. The Buyer requires the Supplier to provide Escrow.
- 18.2. The escrow should include all non-public domain information reasonably required by the Buyer to remedy malfunctions and maintain and manage the Software in such a way that the agreed use remains possible. The escrow must fulfil the conditions normally applicable in the Dutch market for escrow at the time when the arrangements are made.
- 18.3. The Supplier will prove at the Buyer's first request that the escrow is in compliance with the relevant provisions of the Contract, or make such an arrangement.
- 18.4. Any costs incurred in establishing an escrow arrangement will be borne by the Supplier.

Article 19. Liability

- 19.1. In the context of liability, Article 14 of ARIV 2018 is applicable. See **Annex 6; ARIV 2018, Article 14 ARIV**.
- 19.2. The Supplier indemnifies the Buyer against all intended third-party claims arising from any act or omission of the Supplier in its performance in the context of this Contract.

Article 20. Intellectual property

- 20.1. The Supplier indemnifies the Buyer against any claims by third parties in respect of alleged infringement of any (intellectual) property rights caused by or arising from the use of the System and/or the Software, or any part thereof, made available in pursuance of this Contract, provided that the Supplier is promptly notified in writing of any such claims and the Buyer provides the Supplier with all authorisations, information and assistance necessary to defend against such claims. Such indemnification will also include all costs incurred by the Buyer to defend against such claims.
- 20.2. If it is established in or out of court that the use of (any part of) the System infringes any (intellectual) property right and the Buyer is denied use as a result, the Supplier will, at its own expense and at its own discretion:
- either obtain the right to continue using the System and/or the Software or the relevant part thereof at the Buyer's expense;
 - or replace the infringing goods or part of them with other non-infringing goods in compliance with the same specifications;
 - or modify these goods in such a way that they no longer constitute an infringement.

DRAFT AGREEMENT

- 20.3. Modification and/or replacement may not result in the Buyer being restricted in its ability to use the System. If the Supplier fails to achieve any of the above solutions, the Supplier will take back the Systems and refund the purchase price, with the deduction of a reasonable amount for the use of the System, to the Buyer.
- 20.4. The indemnity as referred to in **Article 20.1.** will apply subject to the proviso that the Buyer will not, either verbally or in writing, make any statements, promises, rights or facts, make any commitment to or agreements with the third party to claim patent infringement, without prior written consent. This does not apply to statements lawfully made as a witness or on behalf of the Buyer or the party authorised to use the System.
- 20.5. If the delivered System was manufactured according to designs or drawings of the Buyer, the Buyer will be bound towards the Supplier in the same way as arising from **Article 20.1.** of this article.
- 20.6. The provisions of the foregoing paragraphs will apply mutatis mutandis if a third-party claim is based on infringement of any copyright or registered trademark, or on infringement of legally registered drawings or models.
- 20.7. The provisions of **Articles 20.1 to 20.6** apply exclusively to the mutual relationship of the Parties as Supplier/Buyer and not to their possible relationship as infringing party/holder of patent, registered trademark or copyright or of the right to legally registered drawings or models.
- 20.8. The Supplier hereby grants the Buyer an irrevocable power of attorney or authority to perform all further (legal) acts necessary or desirable in respect of the rights transferred or granted in this Contract, anywhere in the world, in whole or in part. At the Buyer's request, the Supplier will provide all cooperation and assistance in performing all (legal) acts necessary or desirable to give effect to the rights granted or transferred in the Contract.
- 20.9. The Supplier hereby grants the Buyer the right of ownership of all output of the System.
- 20.10. The Buyer has no wish to obtain any intellectual property right on software that rests with the Supplier.

Article 21. Confidentiality

- 21.1. The Parties endeavour to keep all confidential information (as defined in **Article 1**) strictly confidential, to withhold it from third parties and not to use it for purposes other than the implementation of this Contract, unless the Parties have agreed otherwise in writing. Affiliated companies and personnel of the Parties will not be considered as third parties, provided, however, that such affiliated companies and personnel are bound by similar obligations in relation to this confidentiality clause.
- 21.2. **Article 21.1.** will not apply in the event that the providing party can prove that certain information is already publicly known other than through breach of this confidentiality obligation or when a party is compelled by a competent (judicial) authority to disclose confidential information.
- 21.3. The Supplier is not permitted to refer (in advertising or otherwise) to the fact that the Buyer is one of its customers without the Buyer's prior written consent.
- 21.4. Where not provided for in Article 21, **Annex 6; ARIV 2018, Article 8** will apply.

Article 22. Support after termination

DRAFT AGREEMENT

- 22.1. In the event of the (premature) termination of this Contract, the Supplier will do everything reasonably necessary to ensure that a new Supplier or the Buyer itself can continue or take over the performance and/or similar implementation of this Contract on behalf of the Buyer. Furthermore, the Supplier will return to the Buyer all documents, data, software, books and/or other items that the Buyer has provided to the Supplier in connection with the Systems and/or Software within 14 calendar days.
- 22.2. The Supplier will provide the services specified in **Article 22.1.** under the terms of this Contract or – in the absence thereof – further arrangements to be agreed between the Parties.

Article 23. Transfer of rights and obligations

- 23.1. The Supplier will not assign all or any part of its rights or obligations under this Contract and its implementation to any third party without the prior written consent of the Buyer.
- 23.2. The Buyer may attach conditions to such consent, such as (but not limited to) representations by potential subcontractors regarding quality standards, financial guarantees, acting in accordance with this Contract. Orders in contravention of the above provisions will be invalid in respect of the Buyer.
- 23.3. The Supplier is entitled to transfer the right to receive payment by virtue of this Contract (in whole or in part) to a third party, provided that the Supplier notifies the Buyer in writing, subject to full reservation of the rights of the Buyer and the obligations of the Supplier, while the Buyer retains the right to compensation in respect of each payment in the event that the Buyer still has any claim against the Supplier.

Article 24. Non-attributable shortcoming (force majeure)

- 24.1. Supplementary to Article 15 of ARIV 2018, the following cases will in any event not qualify as force majeure: late delivery or unsuitability of materials, EMC and insect problems.

Article 25. Termination of this Contract

- 25.1. Without prejudice to any other rights or claims, the Buyer may terminate all or part of this Contract by registered letter if:
- The Supplier is in default in the performance of any obligation arising from this Contract;
 - The Supplier is unable to comply with any obligation that may be claimed on the basis of this Contract;
 - The Supplier is declared bankrupt or suspension of payments is granted to its creditors, temporarily or otherwise;
 - Any benefit is or has been offered or provided by the Supplier or any of its employees to any person who is a member of any body of the Buyer or to any of its employees or representatives.
- 25.2. If this Contract is terminated by the Buyer on the basis of any provision of **Article 25.1.**, the Supplier will refund all sums already paid to it by the Buyer, with the addition of statutory interest on such sums from the date of payment, provided that the Systems cannot be used or operated by the Buyer as a result of such default by the Supplier. If only part of this Contract is terminated, the obligation of refund only exists in respect of the amounts relating to the terminated part of this Contract, without affecting the guarantee

DRAFT AGREEMENT

and maintenance of the remaining Systems.

25.3. If the verification procedure leads to a negative result (**Annex 10; Verification Phase and Delivery**), the Buyer will terminate the Contract, in accordance with the provisions of Annex 10.

25.4. The Buyer may also suspend the implementation of this Contract in whole or in part or terminate this Contract in whole or in part in situations other than those provided for by law or by **Article 25.1** or ARIV, provided that in that event the Buyer compensates the Supplier in full for the damage and losses suffered by the latter as a result. In that case, the Buyer will observe a period of notice of six (6) months.

25.5. Where not provided for in Article 25, **Annex 6; ARIV 2018, Article 16** will apply.

Article 26. Authority, correspondence and notifications

26.1. No act of the Buyer or the Supplier, such as consent and approval, will constitute a waiver by the Supplier or the Buyer of any responsibility or obligation arising from this Contract, unless expressly agreed in accordance with **Articles 26.2. and 26.3.**

26.2. Amendments to this Contract and to the annexes to this Contract will become effective if specified in writing and signed by the Buyer and Supplier.

26.3. Other agreements, instructions and directions of a technical or organisational nature will become binding following the written approval of both Parties.

26.4. Correspondence and notifications will be addressed as follows:

To the Buyer:

KNMI
Contract manager WO,
PO Box 201
3730 AE DE BILT, the Netherlands.

To the Supplier:

.....
.....
.....

Article 27. Language and reporting

27.1. All notifications, reports, data and communications in connection with the work of the Supplier in the context of this Contract will be in the Dutch or English language. In the event of differences in interpretation between texts in the Dutch and English languages, the Dutch version will prevail.

27.2. On request, the Supplier will periodically (once a year in December) submit reports to the

DRAFT AGREEMENT

Buyer on the progress of the work in the context of this Contract to the contact person of Buyer. In this regard, see **Annex B; MAP** (Maintenance Activities Plan).

Article 28. General

- 28.1. This Contract is governed by the laws of the Netherlands.
- 28.2. This Contract is also governed by the General Government Purchasing Conditions 2018 (*Algemene Inkoopvoorwaarden Rijksoverheid 2018 - ARIV 2018*).
- 28.3. The general sales conditions and/or industry terms and conditions of the Supplier do not apply to this Contract, and are expressly rejected.
- 28.4. The applicability of the 'United Nations Convention on Contracts for the International Sale of Goods' (the 'Vienna Convention on the Sale of Goods') is excluded.
- 28.5. Provisions that by their nature are intended to apply after the termination of this Contract will also continue to apply after termination.

Article 29. Disputes

- 29.1. Any dispute relating to the conclusion, interpretation or implementation of this Contract or further Contracts arising from it, as well as any other dispute concerning or arising in connection with this Contract, of a legal or factual nature, not excluding anything, will be submitted for resolution to the court of competent jurisdiction in The Hague. However, the Buyer and Supplier will not apply to the court until they have made every effort to reach a private settlement of such a dispute.
- 29.2. The Parties may agree to submit a dispute as referred to in the previous paragraph to arbitration in accordance with an instrument of settlement to be drawn up, or to seek binding advice in respect of a dispute.
- 29.3. A dispute has arisen once one of the Parties indicates this by means of a registered letter to the other party.

DRAFT AGREEMENT

Annex 1 ESPD

Annex 2 Mandatory Forms

Annex 3 Programme of Requirements and Desirables

Annex 4 Pricing Sheet

Annex 5.1 Draft agreement

Annex 5.2 Waiting Room Agreement PWS 2023

Annex 6 ARIV 2018

Annex 7 Explanatory Notes ARIV 2018

Annex 8 Questioning Form

Annex 9 Tender Procedures Complaints Protocol

Annex 10 Verification Phase and Delivery

Annex 11 Template Certificate of Acceptance

Annex 12 Substantiations Form

Annex A Tender of the Supplier

Annex B Maintenance Activities Plan (MAP)