Draft Agreement ARBIT 2022
concerning

Delivery of a MET/ANSP OPMET System including user license, support and maintenance

The undersigned:

1. The State of the Netherlands, represented by The Royal Netherlands Meteorological Institute, which has its seat in De Bilt, 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,

The Contract Authority and the Other Party hereinafter jointly referred to as 'Parties' and separately as 'Party'

Whereas:

Organisation and objective of the Contracting Authority

A) Contracting Authority The Royal Netherlands Meteorological Institute (KNMI) is the national institute for weather, climate and seismology;
B) In performing its duties as Air Navigation Service Provider (ANSP) the Contracting Authority needs an Operational Meteorological (OPMET) information system for the provision of OPMET data, reports and weather charts to its users in the aviation sector;
C) The Contracting Authority wishes to replace its current OPMET system as it is based on legacy-technology and cannot handle messages in new aviation formats (IWXXM);
D) The Contracting Authority requires the acquisition of a new MET/ANSP OPMET system, consisting of a user license and the provision of support and maintenance of the system;

Course of the contract award procedure

E) In connection with the recitals at a, b, c and d above, the Contracting Authority initiated a procedure to award a contract for delivery, installation of an OPMET system, including a user license, by means of the European Public Tender Procedure;

F) 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 reference number *<number>*;

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.

The following additional terms are defined as follows for the purposes of this Contract:

Acceptance: The approval by the Contracting Authority of the Deliverable or parts thereof.

Acceptance Procedure: the procedure recorded in the Contract for use by the Contracting Authority in determining whether or not to proceed with Acceptance of the Deliverable.

The Product will go through the Site Acceptance Test, as described in Schedule Site Acceptance Test.

Agreed Use: The use that the Contracting Authority intends to make of the Deliverable as known to the Other Party– or as the Other Party may reasonably be expected to know – at the time of the conclusion of the Contract on the basis of the Specifications in so far as such use is not expressly excluded or limited in the Contract.

Completion: the presentation by the Contractor of the Deliverable (or parts of it) for Acceptance.

Contract: the agreements between the Contracting Authority and the Other party of which the Terms and Conditions form part.

Deliverable: a Product to be delivered by the Counterparty, a Public Service Contract to be performed by it or a License to be granted by it or a combination thereof, including Materials and Documentation.

Delivery: the supply by the Supplier of Products in the manner specified in the Contract, as evidenced by a confirmation of receipt thereof issued by the Contracting Authority.

Descriptive Document: The document outlining and explaining the assignment, the tender procedure to be followed, the suitability requirements and the criteria for award.

Fee: the total price agreed for the Deliverable.

Information Memorandum: Document containing the answers to questions from Tenderers and/or any explanations of the Tender Documents. The Information Memorandum constitutes an integral and binding part of this tender process.

Other Party; Counterparty, the Contractor or Supplier with whom the Contract is concluded.

Product /System: The object/service to be delivered by the Supplier to the Contracting Authority on the basis of the Contract.

Specifications: the documents made available to the Other Party (including explanatory notes and amendments) that describe and explain the organization of the Contracting Authority, the Deliverable and the intended use thereof by the Contracting Authority, and the contract award procedure.

Tender: The bid submitted by Tenderer for this Tender Process.

Tender Documents: All documents published or made available to Tenderers by Purchaser for the purpose of this Tender Procedure.

Tender Procedure: The procedure used to procure the defined goods and services.

Tenderer: Entrepreneur who has submitted a Tender for this Tender Procedure.

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 Deliverables described in the Annex 7 – Pricing sheet. The Deliverables basically consist of (numbering corresponds to product numbers in Pricing sheet, preceded by the letter '**D**'):

- delivery of the Product:

Serial number	Subject
D1.1	Delivery, Installation/Configuration and Testing of a STANDARD OPMET system (consisting of a database and an interactive user interface) for storage and provision of OPMET data, messages and weather charts.
D2.1	Delivery, Installation/Configuration and Testing of a CUSTOMIZED OPMET system, which is an upgrade of Product **D1.1** with additional functionalities such as WAFS2023 and SWIM compliancy and SWIM compliant API's for data retrievals and for the production of pre-flight briefing documents.
D1.2/D2.2	Training on usage and configuration of the OPMET system.

- granting of one or more Licences of the Product:

Serial number	Subject
D3.1	Provision of a software Licence for usage of the OPMET system. The Licence should be without any limitation and open for all users of OPMET services provided by the Contracting Authority.

- provision of Support and Maintenance of the Product:

Serial number	Subject
D3.2	Support and Maintenance of the OPMET system.

- adjustment of the Product:

Serial number	Subject
D4.1	Adjustment of the software according to Contract Authority's specific wishes and requirements.

- 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 Tender documents including Memoranda of Information;
3) ARBIT 2022;
4) Site Acceptance Test;
5) the Tender of *<date>*, reference (*<reference>*), submitted by the Other Party to the Contracting Authority.

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 quarterly on how the Contract is being performed. This report will at least contain:

1) An overview of the performance of the OPMET system, e.g. the achieved uptime frequency;
2) An overview of software issues and incidents that needed to be resolved;
3) An overview of software changes that have been made.

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 The Contract ends at the earliest five (5) years after the completed and successfully passed Site Acceptance Test (SAT). Successful completion of SAT is mandatory for continuation of the Contract.

4.3 Five (5) years after the completed and successfully passed Site Acceptance Test (SAT) the Contracting Authority may unilaterally extend the Contract three times for a period of two (2) years up to a maximum of six (6) years on the same terms and conditions. If the Contracting Authority wishes to exercise this right, it will give written notice of this to the Other Party no later than one month before the end of the term referred to in article 4.2 or one month before the end of the extended Contract referred to in this article.

Article 5. Delivery and Completion

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
D1.1	Delivery, Installation/Configuration and Testing of the STANDARD OPMET system.	N/A	**Preferably** within eight (8) months, but not later than fifteen (15) months, after the date of the Final Award of the Contract. ***Final date to be determined.***
D2.1	Delivery, Installation/Configuration and Testing of the CUSTOMIZED OPMET system.	N/A	Within 5 years after acceptance of the STANDARD OPMET system. Further to be determined.
D1.2/D2.2	Training on usage and configuration of the OPMET system.	KNMI De Bilt or Online	Within one (1) month after Delivery of the STANDARD OPMET system **and** Within one (1) month after Delivery of the CUSTOMIZED OPMET system.

5.2 The Other Party will arrange for the provision of Licenses, Support and Maintenance and the Guarantee to adjust the Software to specific wishes and requirements of the Contracting Authority, 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
D3.1	Licence for usage of the OPMET system.	By written notice to the Contracting Authority	Immediately after the completed and successfully passed Site Acceptance Test.
D3.2	Support and Maintenance of the OPMET system	Part of Service Level Agreement	Immediately after the completed and successfully passed Site Acceptance Test.
D4.1	Adjustment of the Software	On request of and after acceptance of the adjustment by the Contracting Authority	*To be determined*

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
D1.1	Delivery, Installation/Configuration and Testing of the STANDARD OPMET system.	Site Acceptance Test will have to be completed and passed successfully.	15 days after Delivery, Installation, Configuration and Testing (11.1 ARBIT)
D2.1	Delivery, Installation/Configuration and Testing of the CUSTOMIZED OPMET system.	Site Acceptance Test will have to be completed and passed successfully.	15 days after Delivery, Installation, Configuration and Testing (11.1 ARBIT)
D1.2/D2.2	Training on usage and configuration of the OPMET system.	Training completed	7 days after the Training has been completed
D3.1	License	By written notice to the Contracting Authority	7 days after the completed and successfully passed Site Acceptance Test
D3.2	Support and Maintenance	In accordance with the provisions of the Service Level Agreement Schedule	7 days after the completed and successfully passed Site Acceptance Test
D4.1	Adjustment of the Software	Site Acceptance Test will have to be completed successfully. For changes to the software the same Schedule: Site Acceptance Test is applicable as for the original Product **D1.1** and **D2.1**.	15 days after Delivery, Installation and Configuration of the adjusted Software (11.1 ARBIT)

6.2 For Deliverables **D1.1** and **D2.1**, the Contracting Authority may accept the Deliverable despite the presence of one of more Defects. This will be the case when the SAT is successful with minor errors (see Schedule Site Acceptance Test). In that case the Contracting Authority may withhold an amount of 20% from the Fee until the Defects have been repaired.

6.3 If in case of a *failed* SAT for Deliverable **D1.1** or **D2.1**, during the second SAT the System still shows errors with respect to the Mandatory (M) Requirements listed in Annex 3 “Program of Requirements” or shows poor operational functioning and/or performance (such as e.g. stability issues or slow responsiveness), the Contracting Authority has the right to unilaterally cancel the Agreement.

Article 7. Price and other financial provisions

7.1 The Parties agree the following Fee:

Serial number	Subject	Price	Price incl. VAT
D1.1	Delivery, Installation/Configuration and Testing of the STANDARD OPMET system.	*<fixed total price or price per Product>*	*<fixed total price or price per Product>*
D2.1	Delivery, Installation/Configuration and Testing of the CUSTOMIZED OPMET system.	*<fixed total price or price per Product>*	*<fixed total price or price per Product>*

D1.2/D2.2	Training	*<fixed total price or price per Product>*	*<fixed total price or price per Product>*
D3.1	License (price for the first year).	*<fixed total price or other fee criterion>*	*<fixed total price or other fee criterion>*
D3.2	Support and Maintenance (price for the first year).	*<fixed total price or other fee criterion>*	*<fixed total price or other fee criterion>*
D4.1*	Adjustment of the Software	*To be determined*	*To be determined*
	Total Price/Fee	*<Enter Price/Fee>*	

*Any adjustments may vary. In case of requested adjustments, the Contracting Authority will specify the adjustments and the Contractor will submit a quotation specifying the number of hours required for the adjustments and at the agreed hourly rate. The work will only start after the approval of the Contracting Authority.

7.2 The Fee for Product Deliverable **D4.1** depends on the number of hours required for the adjustments and on the hourly rate. For the first year the Contractor offers a hourly rate. This hourly rate may be adjusted (indexed) once every year on January first, starting in 2026, by a percentage not exceeding the Services Producer Price Index (SPPI) for the Category Information and Communication, published by Statistics Netherlands (CBS) on their website https://www.cbs.nl, for hourly rates of pay including special remuneration established under collective labor agreements in the business services sector. The figure for the previous month *December* will be used, with the figure for December in the year when the Contract starts being set at 100%.

7.3 The payment schedule for Product Deliverables **D1.1** and **D2.1** will be as follows:
- 30% of the price for "delivery, installation/configuration and testing of the OPMET system", after the Contracting Authority approves the results of the Factory Acceptance Test (FAT);
- 70% of the price upon a completed and successfully passed Site Acceptance Test (SAT). In case the SAT is passed successful with minor issues, 20% of this amount will be withheld until the issues are resolved.

7.4 If, upon Completion or Delivery, Deliverable **D1.1** or **D2.1** has failed the SAT, Deliverable **D1.1** and if applicable **D2.1**, will be rejected by the Contracting Authority. Payment will be postponed until the Defects are resolved and an amount of 0.2% will be deducted from the Fee for every day that the identified Detects are not repaired, up to a maximum of 10%.

7.5 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 0.2% will be deducted from the Fee for every day that the delay in Completion or Delivery continues, up to a maximum of 10%.

7.6 If the Deliverable **D3.2** for Support and Maintenance does not meet the agreed service levels regarding the uptime of the OPMET system, owing to a failure imputable to the Other Party, the Fee for Support and Maintenance in the year that the service levels are not fulfilled, may be subject to a discount in accordance with the following table:

Service levels	**Criterion**	**Discount**
Measured uptime of the OPMET system per year	*98% to 99,8*	*25%*
Measured uptime of the OPMET system per year	*< 98%*	*50%*

Please see the Draft Service Level Agreement (SLA) in Annex 1A for details on the measured uptime of the OPMET system, on required service levels and incentives/penalties.

Article 8. Invoicing, indebtedness and payment

8.1 The Fee is owed from:

Serial number	Subject	Time of indebtedness
D1.1	Development, Delivery, Installation / Configuration and Testing of the STANDARD OPMET system.	
	30% of **D1.1**	after proven FAT
	70% of **D1.1**	after successful SAT
D2.1	Development, Delivery, Installation / Configuration and Testing of the CUSTOMIZED OPMET system.	
	30% of **D2.1**	after proven FAT
	70% of **D2.1**	after successful SAT
D1.2/D2.2	Training	After Delivery of Product **D1.2/D2.2** Training
D3.1	License	At end of every year during the term of the Contract.
D3.2	Support and Maintenance	At end of every year during the term of the Contract.
D4.1	Adjustment of the Software	After successful Delivery and Acceptance of Product **D4.1**.

8.2 An invoice should contain the following information:
- date of invoice
- amount of the Fee
- VAT owed
- Specification of Product/Service delivered
- SAP reference number

The Other Party must submit invoices electronically. The invoice must be addressed as follows:

Ministry of Infrastructure and Water Management

UDAC/F&I/040

P.O. Box 20906

2500 EX The Hague, The Netherlands

and sent electronically to the Ministry of Infrastructure and Water Management using the e-mail address udacfacturen@minienw.nl bearing the SAP reference <xxxxxx> (to be provided at contract start).

In order to transfer payment, it is important that the invoice is sent to the above e-mail address. The invoice should also state the SAP order number. If information is missing, the invoice will not be processed.

(E-)Invoice

It is also possible to invoice via E-invoicing. For more information about E-invoicing, please confer the website https://www.logius.nl/diensten/e-factureren/ or https://www.helpdesk-efactureren.nl/e-facturen-versturen.

You can submit your invoice(s) as an E-invoice with the following mandatory data:

- Reference: 45xxxxxxxx (SAP order number);
- Name supervisor: mr. Oscar Brinkhof;
- A clear description of the delivery or service / name hired candidate, hourly rate and number of worked hours.

When addressing the E-invoice, you can use the following Organizational Identification Number (OIN*): 00000001821693992000

Invoice requirements can be found on the website of the Ministry of Infrastructure and Water Management. Invoices must contain the correct details. Invoices submitted without the requirements listed above will not be processed.

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 Product 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 licenses 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 (ARBIT 2022) is appended to the Contract.

Article 10. Other provisions

10.1 Any derogations from this Contract are binding only if they have been expressly agreed by the Parties in writing.

Dispute resolution:

10.2 Parties will aim to resolve any dispute rising from present agreement amicably.

10.3 The applicable law for this agreement shall be Dutch law.

10.4 When an amicable resolution cannot be reached the competent court in The Hague, The Netherlands, will settle all disputes.

Done on <*date*> and signed in duplicate by:

FOR THE CONTRACTING AUTHORITY	FOR THE OTHER PARTY
Name: <*name*> Position: <*position*>	Name: <*name*> Position: <*position*>
Signature:	Signature:
Date:	Date:

Schedules:

- Schedule: Specifications
- Schedule: Contacts
- Schedule: Terms and Conditions
- Schedule: Service Level Agreement
- Schedule: Site Acceptance Test

Schedule: Specifications

The Specifications of the Product are described in the Tender Documents (including the Program of Requirements), which are attached in this Annex.

Schedule: Contacts

Contracting Authority
The *Contract Manager*, currently *mr. O. Brinkhof,* 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

See attached Annex 2 Terms and Conditions ARBIT 2022.

Schedule: Service Level Agreement (SLA)

The SLA is Annex 1A. Service Level Agreement.

Schedule: Site Acceptance Test

The primary goal of the Site Acceptance Test (SAT) is to verify the basic functionality of the software, in relation to the Tender Requirements and the Desirables offered by the Tenderer, and the 24/7 operational functioning and performance of the software System. The SAT will take place at KNMI, location De Bilt in The Netherlands.

At least two (2) weeks before the planned SAT, the Tenderer will provide the Contracting Authority with a Factory Acceptance Test (FAT) report. The FAT report must describe which of the basic functionalities from the "Program of Requirements" in Annex 3 and the Desirables offered by the Tenderer have been tested and what the results of these tests are. Missing tests are only allowed upon mutual agreement between the Tenderer and the Contracting Authority that these tests cannot be done in Factory. When some of the performed tests show errors, the Contracting Authority decides which errors should be solved first before delivery, installation and configuration of the software and the start of the SAT test.

The duration of the SAT is maximum two (2) weeks. In that period basic functionality will be tested. This includes all Mandatory (M) Requirements listed in Annex 3 "Program of Requirements", and the Desirables that have been offered by the Tenderer. Furthermore during the SAT, 24/7 operational functioning of the software system and its performance will be verified.

During the SAT KNMI expects full support from the Tenderer regarding troubleshooting, answering configuration and technical questions and support during configuration of the software system.

The result of the SAT can be either *successful*, *successful with minor issues*, or *failed*.

1. In case of a *successful SAT*, all Mandatory (M) Requirements listed in Annex 3 "Program of Requirements" and all Desirables Open and Closed that have been offered by the Tenderer, must have passed the SAT successfully;
2. In case of a *successful SAT with minor issues*, all Mandatory (M) Requirements listed in Annex 3 "Program of Requirements" have passed the SAT successfully, but some of the Desirables Open and Closed that have been offered by the Tenderer have failed the SAT. In this case the software will be accepted but the failed items need to be repaired by the Tenderer;
3. In case of a *failed SAT*, some or more of the Mandatory (M) Requirements listed in Annex 3 "Program of Requirements" have failed the SAT, or 24/7 operational functioning and/or the performance of the software system has proven to be not adequate. In this case the software needs to be repaired within maximum two (2) months by the Tenderer and a new SAT will be planned.

If in case of a *failed SAT*, during the second SAT the software system still shows errors with respect to the Mandatory (M) Requirements listed in Annex 3 "Program of Requirements" or shows poor operational functioning and/or performance (such as e.g. stability issues or slow responsiveness), the Contracting Authority has the right to unilaterally cancel the agreement.