



# MODEL AGREEMENT

## EARLY CONTRACTOR INVOLVEMENT

DG 2025

# Model Agreement Early Contractor Involvement DG 2025: model for the bilateral relationship between the employer and the contractor

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## Foreword

### 1. *Realisation*

On 15 May 2020 the Model Agreement Early Contractor Involvement DG2020 was published. At the time of this publication, the authors indicated that this early contractor involvement model would be a living document, which could be further developed. Since the launch of DG2020, the authors have been involved in various projects home and abroad on the basis of this model. In the scope of further development, the authors have collected experiences and feedback from a large group of users. This process demonstrated that the model was broadly applied, with, depending on the project, more or less adaptations that were usually not of a fundamental nature. There appeared to be no great need for fundamental changes of the model; the need precisely concerns a further (concrete) elaboration of particular subjects and elucidation on certain points. In addition, the authors seize the further development to implement a number of best practices.

This process has led to a further improvement of the first model, being the model that is currently presented to you: the Model Agreement Early Contractor Involvement DG2025

### 2. *Background*

The current model is, just like its predecessor, based on the premise that an early contractor involvement agreement should cover more than just the legal aspect, and therefore also mainly the sociological aspect. This contributes to this model agreement also falling within the category "relational" or "collaborative" contracts. This means that in the ECI agreement itself – and its implementation – express consideration is given to the attitude and behaviour of the parties involved; in both good times and difficult times, in discussions and disputes. Next to it being a legal instrument, the authors also see this model as a project management tool.

### 3. *Legal Relationship*

In practice, when giving an ECI collaboration legal form, two different approaches are considered:

- a) The employer and all of the intended participants within the early contractor involvement team (the ECI-team) enter into a multiparty agreement. Additional bilateral agreements can then be made between the employer and the individual participants.
- b) The employer enters directly into bilateral agreements with the individual intended participants. In these bilateral agreements, the participants involved in the ECI-team each assume obligations in respect of the employer. As a participant in the ECI-team, the contractor is permitted to allow others (third parties) to take part in the ECI-team as a subcontractor, for example, or supplier, design specialist, etc. These third parties each enter into an agreement with the contractor in which they assume that the relevant obligations that the contractor has in respect of the employer, have been included.

The contractor bears responsibility in respect of the employer for these third parties that are involved in the ECI-team by the contractor.

This model is based on the second approach, and therefore describes a bilateral relationship between the Employer and the Contractor in the ECI-team. This model explicitly recognises that the Employer and the Contractor may also involve other ECI-team participants. The Contractor bears responsibility towards the Employer for the third parties that are involved by the Contractor.

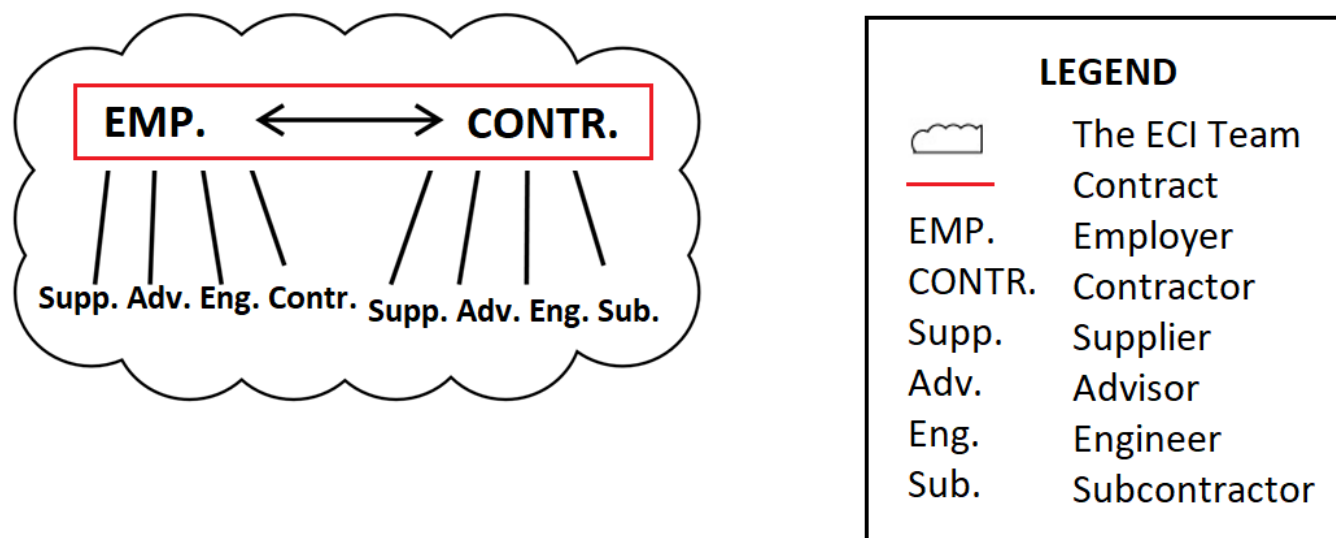


Figure 1 Participants in the ECI-team

When using this model, therefore, an Employer will also have to enter into bilateral agreements with the other ECI-team Participants, such as an architect, a designer, a structural engineer or a cost expert, if the Employer involves them in the ECI-team. If the Contractor also involves parties in the ECI-team as Participants, the Contractor will also have to enter into bilateral agreements with these Participants, in which agreements the relevant obligations applicable to the Contractor towards the Employer – where relevant – will also apply between the Contractor and the Participants from the Contractor.

All of these bilateral agreements (including i. those between the Employer and the Contractor, ii. those between the Employer and other consultants/subcontractors (the other Participants from the Employer), and iii. those between the Contractor and its subcontractors (Participants from the Contractor) must describe the collaboration between each of the ECI-team Participants and thus the functioning of the ECI-team as a whole. The agreements should be mutually compatible for that reason. To this end, the ECI-team Participants must have reciprocal knowledge of their respective obligations in the ECI-team. The sum total of these agreements shapes the ECI-team.

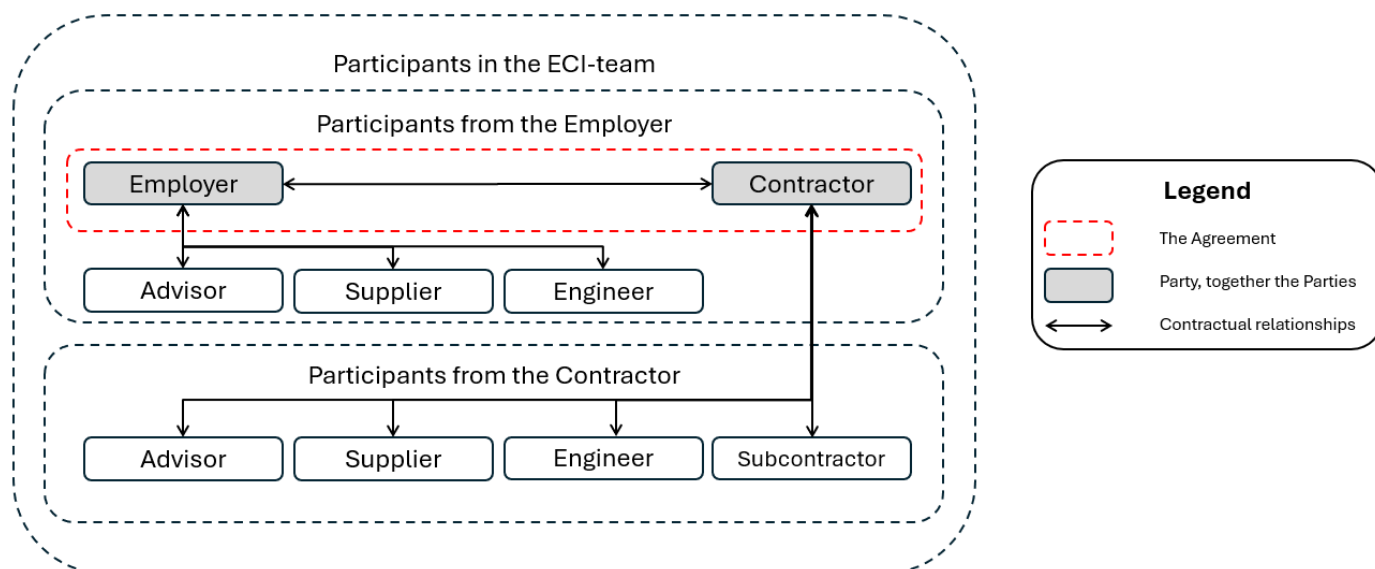


Figure 2 Participants in the ECI-team and their contractual relationships on the basis of bilateral agreements

#### 4. Modifications Compared to DG2020

The underlying model agreement has been amended at several points. In general, a clarification of text, a more concise formulation, legal uniformity, a better alignment with commonly used concepts and the use of gender-neutral



terminology has been pursued. More specifically, elements have been amended from the goal to have the ECI-team collaboration proceed in a better way and enable the Parties to design the model to the requirements arising from their specific instruction.

At the request of the users, this model also includes a further explanation.

## Further explanation

### 1. Different approaches to early contractor involvement

It is important that the decision to apply early contractor involvement is a deliberate and well-informed one. It is recommended to apply an assessment process as described in, among others, the Dutch *Leidraad Aanbesteden Bouwopdrachten (Regieraad Bouw, 2009)*. Such assessment can substantiate the potential added value of an early contractor involvement approach, reducing the risk that such collaboration is adopted for inappropriate reasons. The prior identification of the objectives of the ECI-team (as per clause 3 of the Model Agreement DG2025) contributes to such assessment.

There are different methodologies to apply early contractor involvement. Such differences relate to the distribution of roles and tasks, combined with expected liability or responsibility. In practice, such different methodologies also function in different manners. We distinguish two types of early contractor involvement collaborations that use the underlying model agreement:

- a) early contractor involvement followed by a build-only construction contract (such as a contract under the Dutch Uniform Administrative Conditions for the execution of works - UAC 2012 (version 2025) or FIDIC Construction Contract (Red Book) 2017); and
- b) early contractor involvement followed by an integrated design & construct contract (such as a contract under the Dutch Uniform Administrative Conditions for the execution of works - integrated contracts - UAC-GC 2005/2025 or FIDIC Plant and Design-Build (Yellow Book) 2017).

As follows from the underlying model agreement, the process sequence is similar for both types. Differences relate to documents to be concluded by the ECI-team, and the subsequent allocation of tasks and responsibilities during the execution phase.

We refer to early contractor involvement followed by a build-only construction contract as the 'conventional' ECI-team. The Participants establish a Definitive Design developed in the ECI-team, which will be used as a basis for the execution of the works governed by a build-only construction contract. The role of the Contractor in the ECI-team is similar to that of the other consultants, whereby the Contractor may sometimes adopt a more design-heavy role.

If early contractor involvement is followed by an integrated design & construct contract, the Participants establish Specifications (being of a more functional nature). Subsequently, the Contractor evolves the design during the execution phase governed by an integrated design & construct contract. The role of the Contractor in the ECI-team is similar to that of the other consultants.

As this general overview indicates, there is a broad range of approaches. This supports why, at commencement of the early contractor involvement, Parties must make a deliberate and well-informed decision on the tasks and responsibilities of each Participant in the ECI-team, and during the subsequent execution phase.

### 2. Conditions for good collaboration and functioning within the ECI-team

The Employer must take decisions on a number of topics, and verify that they are prepared and have organised the adequate staffing to allow for good collaboration within the ECI-team, before commencing early contractor involvement. In practice, such topics appear to be largely decisive for the success of the early contractor involvement. This concerns, amongst others:

- a) Explicitly determining and formulating why the Employer wishes to cooperate through early contractor involvement, and which added value it envisions. This requires a thorough analysis of the relevant project, the environment, the Employer's organisation and market conditions, in order to be able to conclude whether the involvement of a Contractor in the preparatory phase – through early contractor involvement – has added value.

Such added value may for example be present in case of challenges in the execution of the Project, high demanding stakeholders, or if Parties have not yet cooperated on the construction of a complex project before. It follows from experience that early contractor involvement collaboration contributes to a more predictable and efficient execution phase. Such collaboration can be regarded as an 'investment' in respect of the preparation of the Project, which will pay itself off during execution. A project which has no added value identified upfront, will be less appropriate for early contractor involvement than a project where this has been identified – although we currently also see that some employers apply an early contractor involvement as standard, even if no upfront added value has been identified for a particular project. In such situation, the added value consists of making early contractor involvement collaboration more efficient and more 'common', in a manner that goes beyond a specific project. Next to the abovementioned reasons, there may be other arguments for applying early contractor involvement, such as the ambition to develop innovative techniques, allowing the Contractor the possibility to contribute ideas and contribute their own specific knowledge.

- b) Ensuring the Employer provides sufficient (internal) capacity, is sufficiently involved and gives sufficient mandate to its representatives in the ECI-team. This model agreement assumes that the Employer has an active role within the ECI-team, resulting in a deliberately leading role in the ECI-team. This is a result of how the Participants in the ECI-team are organised, causing designers and contractors to collaborate. This collaboration may lead to discussions among these Participants, which may be resolved by the Employer.
- c) Choosing the allocation of design tasks in the ECI-team. It is in any case the Contractor's task to assess the design considering its own experience and expertise, which includes an examination of the design's correctness and completeness. Depending on the arrangements between the Parties, the Contractor may also have an additional or more extensive role in the design's creation and completion.
- d) Choosing the build-only or design & construct contract that will be used as the basis for the execution period of the Project. This choice has consequences for the output produced in the ECI-team, and for the distribution of risks and the consequences thereof for the contracting of the execution period.
- e) Providing a solid substantiation for the available budget for the Project. The objective hereof is, among others, to determine whether this budget is realistic, and whether it is worth the effort of the Parties to start the ECI-team process. Recital 10 of this model agreement focuses on this objective, by having the Contractor assess the budgetary feasibility considering the information available up to then.
- f) Recital 10 (Target Budget) of the agreement requires the Employer to be transparent about the assumptions used in the financial substantiation of the Target Budget. Clauses 3.3 and 12 require the Contractor to be transparent about its breakdown of the (expected) costs. This includes both its own internal costs, as well as the costs of its supply chain: good collaboration with the supply chain is necessary to gain correct and complete insight into costing.

This model agreement provides the arrangements for the period prior to the execution period, during which the Parties cooperate in an ECI-team context. Characteristic for working on the basis of this model agreement is that the Parties collaborate in a particular manner, including through "explicit working" (which implies that the Parties and individuals involved have active communication before particular decisions or actions are taken, instead of proceeding tacitly and on the basis of unvoiced and unverified assumptions), transparent communication, and a responsive and open approach towards each other. Ideally, a safe environment is created that enables mistakes to be learnt from, which contributes to a positive outcome of a project. It is recommended that the construction contract that is concluded after this agreement, reflects the same collaborative spirit.

The ECI-team collaboration as a model is increasingly combined with entering into long-term agreements with both design consultants and contractors. In such situations, it is advisable to use a separate framework agreement, for which this model agreement can serve as a basis.

### 3. *Phasing*

An ECI-team collaboration forms part of the preparation of a project. As is the case with any form of collaboration, efficiency benefits of Parties having a clear and jointly embraced starting point, goal, and (financial) parameters; when the right information is made available on time and is reviewed; and when there is regular monitoring to ensure that the Parties act in accordance with the agreements made and progress towards the goal.

To improve project management, the activities of the ECI-team in this model agreement are now divided into explicit phases that must be completed in sequence:

Preparation and/or procurement	Early Contractor Involvement Contract (DG2025)				Agreement for execution of the work
	Phase 1 Starting the ECI-team	Phase2 Basic design	Phase 3 Detailed design	Phase 4 Preparing contract formation procedure	

Figure 3 Schematic representation of phases

a) Phase 1

During this phase, the ECI-team starts. The Participants get to know each other, thereby making further agreements on working method as well as form of collaboration to be followed. Depending on the nature and scope of the Project, this phase can be very short (in the form of a so-called “PSU” or project start-up) or it can last several months.

b) Phase 2

During this phase the ECI-team will be working on the basic design, thereby discussing the known parameters of the task. The Participants are required to review the submitted information (including design documentation) to the best of their ability, amongst others on the topic of accuracy and completeness, thereby providing commentary if necessary. During this phase, certain investigations may also be carried out, and the Participants may gather additional information to further develop the design documentation. The Participants record the process undertaken during this phase in reports.

c) Phase 3

During this phase, the ECI-team will work on a more detailed design, in which the basic design is advanced to a level that allows the execution period to commence. The relevant details are included through reporting.

d) Phase 4

During this phase, the documents required for the start of the execution period are drawn up. In addition to earlier documentation, an overview is compiled of the key decisions, considerations, and relevant project-specific circumstances, so that this information is available for a more effective execution. Furthermore, an advanced draft agreement for the work (including appendices) is drawn up, enabling the Parties to begin the contract formation procedure (in accordance with the provisions of Clause 12).

This model agreement focuses increasingly on cost control, respectively the element of price during formation of the construction contract. The permanent task of the Participants to warn for undesired cost consequences (mainly in respect of the execution period) has been made more explicit. This emphasises that developing a price is a continuous process, aimed at resulting in a price for the execution of the work that is acceptable to both Parties.

#### 4. Development of pricing for execution

This model agreement focuses increasingly on controlling the expected execution costs, and therefore also the element of price during formation of the construction contract. This is reflected in for instance the following adjustments:

- Regarding the Target Budget, the statement on the feasibility thereof, at the time of the conclusion of the Agreement, is still desired. Such statement requires the Employer to provide sufficient substantiation (including a detailed breakdown of the Target Budget, how it was established, and the expected scope of the work), enabling the Contractor to make a meaningful assessment of its feasibility.
- A similar statement is repeated at the end of phases two, three, and four mentioned above. Its purpose is to prevent that Parties wait too long to properly align on the price for executing of the Project.
- The ongoing obligation for Participants to warn for (negative) consequences for execution costs has been further elaborated. This emphasizes that price formation is a continuous process aimed at coming to a price acceptable to the Parties (and also other Participants) for carrying out the Project.

- d) The manner of developing the price during contract formation (as provided in Clause 12) has been simplified. The option to escalate to an expert has been removed, given that price has already received considerable attention during the ECI-team collaboration. The Parties must reach an agreement within a set timeframe. If this is not successful, the Employer may decide to engage another contractor to execute the Project.

## 5. *Attitude and Behaviour*

Clause 5 of the agreement contains provisions relating to the attitude and behaviour of the Participants in the ECI-team: this is a key element for good collaboration. Other key elements include: clear arrangements on the allocation of tasks and roles, and extensive and concrete warning obligations.

Early contractor involvement prepares for the execution phase. One of the main objectives of the ECI-team being to ensure that discussions and mutual alignment takes place before the execution phase, rather than only during this phase. Warnings done in a timely manner, whereby Participants adopt the right attitude and conduct, contribute to this.

The aforementioned requires the Participants to collaborate with each other in a transparent manner, to be aware of each other's tasks and responsibilities, and to be willing to help each other, as reflected in various provisions of the agreement.

The role of the Employer is an active one, which includes overseeing the ECI-team and taking decisions in due time to avoid unnecessary delays in the progress of the ECI-team.

## 6. *Risks and Chances*

The model agreement pays attention to the process of risk management. Sometimes, ECI-team collaborations will take a similar approach towards opportunities. Part of this is reflected in the task for the Participants to be on the lookout for optimisations. Furthermore, a file of opportunities can be introduced. If such a file is created, it is recommended to work with a so-called 'Trade Off Matrix' to compare the feasibility of opportunities with their impact (for example on costs, risks, and time).

## 7. *Appendices*

The model agreement requires that several appendices are agreed upon. Ideally, several of these are developed through pre-contractual coordination between the Parties (with or without the involvement of other Participants), rather than solely at the initiative of the Employer or the Contractor.

An example of an appendix that the Parties can jointly establish, is the Collaboration Plan.

Sometimes procurement procedures require bidders to submit a draft Collaboration Plan as part of their bid, also being a method to select the winning bidder (through a sub-award criterion). This draft can, after including certain amendments, serve as the basis for the relevant appendix. This is a recommended approach, as it leads to a jointly supported and concrete vision of collaboration.

The Collaboration Plan may among others contain arrangements on:

- a) The organisation of the ECI-team (including the degree of integration of the Participants);
- b) The collaboration within the ECI-team;
- c) Regular consultations within the ECI-team;
- d) The decision-making process within the ECI-team (including sessions aimed at collaboration);
- e) The use of a joint document management system;
- f) A list with the most important persons, and their tasks, responsibilities and powers, who participate in the ECI-team on behalf of the Participants including arrangements on the replacement of persons;
- g) The requirements per Participant in the ECI team (including the requirements applicable to the persons participating in the ECI-team on behalf of these Participants, like competences and qualifications), and other

details on how the Parties intend to work together (which may be as concise or detailed as the Parties wish); and

- h) The structuring of knowledge transfer and (the measurement of) learning ability.

Through this plan, the Parties can articulate the collaboration principles underlying their partnership (such as reciprocity, fairness, autonomy, loyalty, integrity, and consistent behaviour). The plan can describe how they (together with the other Participants) will implement these principles and the Collaboration Plan, and how they intend to periodically discuss and assess their actual collaboration.

The Contractor's proposal is not included as an appendix: it is recommended to incorporate the relevant parts (such as a Collaboration Plan) into the appropriate sections of the agreement.

## 8. *Application*

The underlying contract is a model. As such, it must be adapted for use in a specific project to align with the particular characteristics of that project, the parties involved and applicable laws. For this reason, the model contains additional explanations and considerations in several places in the form of footnotes. These footnotes must be removed before signing. The authors strongly recommend engaging professional advice and guidance when applying an ECI-team approach, even if this is done based on the present model.

## Acknowledgements

The authors of this "Model Agreement for the ECI-team DG2025" (Andrea Chao, Arno Hoesink, Henbert Remmers, Jaap de Koning and Joost Merema) would like to thank all the persons involved who have contributed to this updated model.

The authors hope you will be inspired when reading and working in an ECI-team based on this model.

## *Disclaimer*

When drawing up the present document for usage in the Netherlands, the authors exercised the utmost of care. The document has not been prepared for usage outside of the Netherlands. Use of this document is at your own risk. None of the authors, nor the organisations for which they work, is responsible, liable or otherwise obliged to compensate in any way for the consequences of the contents of this document and/or its use (in whole or in part), in respect of any party whatsoever. By using this document in whole or in part, the user and third parties accept the provisions of this disclaimer.

For the creation of this model, input was requested and obtained from various parties and individuals working in the construction sector. Although this input was carefully and extensively considered, this model is not established with equal representation of country-wide stakeholders. Consequently, this model is also not a contract model or a set of general terms and conditions in the sense of guideline 3.9 C of the Dutch Proportionality Guide (as it applies at the time of the publication of this model).

This model is a carefully balanced whole, consisting of provisions that are closely interrelated. If users make changes, it is essential to do so with care and to take into account the impact of those changes on the entire agreement.

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## Information English translation – 17 September 2025

This informal English translation is based on the original version of the model. This original version was prepared in Dutch, and was written taking into account the spirit, culture, structure and legal situation as it is in the construction industry in the Netherlands. The reason that we decided to translate it, is that we want to make this document available for inspiration, also for professionals who do not read Dutch. In this process we changed a few references to very specific local law situations. If you want to use this translation as the basis for an agreement, which is subject to the disclaimer mentioned above, it must be tailored to local law.



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The undersigned:

.....

hereinafter referred to as: the "Employer", duly represented in this matter by:

.....

and

.....

hereinafter referred to as: the "Contractor", duly represented in this matter by

.....

each of these Parties is referred to hereinafter as a "Party" and collectively as the "Parties",

whereas:

1. The Employer intends to realise the project [*add clear, precise and unambiguous description of project/end result*]<sup>1</sup> (hereinafter referred to as: the "Project"). In order to realise the Project, work must be carried out in preparation for the execution period of the Project (preparatory work during the design period<sup>2</sup>) and in execution of the Project (execution of the works after the design period);
2. In order to realise the Project, the Employer wishes to carry out certain preparatory work, or have this carried out, by making use of the knowledge and experience in various areas of expertise. The organisations that make this knowledge and experience available for the Project work together with the Employer in the form of an ECI-team (hereinafter referred to as: the "ECI-team"), in which each of these organisations is a participant (hereinafter referred to as: a "Participant") in the ECI-team. The Employer has determined the requirements such as competencies and qualifications that must be met by the individuals participating in the ECI-team on behalf of these organisations;
3. The ECI-team Participants will carry out the preparatory work in a coordinated manner, each independently on the basis of their bilateral agreement with the Employer or the Contractor, for the purpose of the ECI-team's objective as defined below;
4. The Parties are convinced that proper collaboration and efforts to that end, as well as devoting attention to attitude and behaviour within the ECI-team are conducive to the mutual relationships between the ECI-team Participants, and thus to the successful completion of the Project;
5. The Employer will actively participate in the ECI-team;
6. Each Participant entering into a bilateral agreement with the Employer (hereinafter referred to as: "Participant from the Employer") has contractual obligations only in respect of the Employer and not in respect of the other Participants. The work each Participant from the Employer performs in the ECI-team is performed as an obligation in respect of the Employer;
7. Each Participant entering into a bilateral agreement with the Contractor (hereinafter referred to as: "Participant from the Contractor") has contractual obligations only in respect of the Contractor and not in respect of the other Participants. The work that each Participant from the Contractor performs in the ECI-team is performed as an obligation in respect of the Contractor;

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<sup>1</sup> The texts between square brackets represent options and suggestions for the user.

<sup>2</sup> Such preparatory work may relate to drawing up certain design deliverables, drawing up a construction schedule, adjusting the Target Budget, drawing up the Risk File, etc.

8. The present Agreement (hereinafter referred to as: the "Agreement") is entered between the Employer and the Contractor. This Agreement describes the contribution that the Contractor will make to the preparatory work. This Agreement also describes the collaboration and coordination between the ECI-team Participants;<sup>3</sup>
9. The Contractor will carry out the execution of the works once the contract formation procedure (as further detailed in this Agreement) has been successfully completed. Once the contract formation procedure has been successfully completed, the Parties will enter into a construction contract subject to the applicability of *[refer to a set of general terms and conditions for construction works]*;<sup>4</sup>
10. The financial executability and feasibility of the Project are important for each Participant. Each Participant has the obligation to warn if they no longer assess the Project as executable or (financially) feasible. For the verification hereof, the Employer has formulated a provisional available budget (hereinafter to be referred to as: the "Target Budget") for the Project. This Target Budget relates to an estimate of the costs of the Contractor (including the costs of the Participants from the Contractor), for the execution of the preparatory work, for the execution of the works for the Project and, if applicable, also for the maintenance work during a specific period, possibly followed by dismantlement and/or demolition of the Project. At the time of the conclusion of this Agreement, each of the Parties warrants that they have no reason to assume that this Target Budget is unrealistic for carrying out the work as foreseen. For this, the Employer provides insight into the substantiation on which the Target Budget is based. The sole objective of this statement is to assess in advance whether it is advisable to initiate and carry out the preparatory work in the manner described in this Agreement;
11. *[Add if applicable: The Employer has followed a procurement procedure for the closure of this Agreement, and the subsequent possible construction contract, in accordance with [reference to the applicable procurement regulations and the specific procurement procedure]];*

the Parties declare to have agreed as follows:

**1. Legal nature**

- 1.1 The Parties declare that they deem the Agreement to be an advisory contract within the meaning of *[add reference to appropriate legal concept]*.

**2. Contract documents, order of precedence and definitions**

- 2.1 In conjunction with one another, the following documents describe the rights and obligations ensuing for the parties from the Agreement:<sup>5</sup>
- (A) The Agreement signed by the Parties, including the recitals in the whereas section and without Appendices;
  - (B) (Appendix 1) Collaboration Plan;
  - (C) (Appendix 2) Description of the activities per ECI-team Participant;
  - (D) (Appendix 3) Target Budget, including the substantiation on which it is based;
  - (E) (Appendix 4) Information notices;<sup>6</sup>
  - (F) (Appendix 5) Draft construction contract;

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<sup>3</sup> The Employer or the Contractor, respectively, must also include the arrangements for collaboration and coordination between the ECI-team Participants in the bilateral agreements that each of them has with a Participant.

<sup>4</sup> If maintenance work is assigned to the Contractor during a specific period, possibly followed by decommissioning and/or demolition, that work must also be the subject of an agreement between the Parties.

<sup>5</sup> If this Agreement is entered into through a procurement procedure, it is advisable not to attach the tender document as a separate Appendix, but to incorporate it in the relevant Appendices.

<sup>6</sup> It is recommended that the amendments to the ECI-team Agreement, such as those ensuing from the information notices, be included the Agreement in their entirety prior to signature.

(G) (Appendix 6) Method for drawing up an open budget;

(H) (Appendix 7) Information (with the exception of the information notices included in Appendix 4) shared with the Contractor by or on behalf of the Employer prior to the conclusion of the Agreement.

2.2 In the event of any conflict between the documents referred to in Clause 2.1, the Agreement (including recitals and without Appendices) will take precedence over the Appendices and the Appendix with a lower number will take precedence over the Appendix with a higher number. In the event of any conflict between the information included in the information notices, an information notice of a more recent date will take precedence over an information notice of an earlier date, unless another applicable order of precedence is expressly provided for in the Agreement.

2.3 Capitalised words and expressions in this Agreement have the following meaning, unless expressly stated otherwise:

<b>Term</b>	<b>Meaning</b>
Agreement	The present ECI-team Agreement, including recitals and Appendices.
Appendix	An appendix to this Agreement as referred to in Clause 2.1.
Contractor	Has the meaning given to it under 'undersigned' at the start of this Agreement.
Collaboration Plan	The plan that describes in detail how the Parties will shape the collaboration between the Participants.
Definitive Design	A description of the works to be carried out in such detail that it provides a clear picture of the appearance, the structure, the use of materials, the finishing and detailing, the structural design and the nature and capacity of the installations. <sup>7</sup>
ECI-team	The organisation chosen for part of the design phase of the Project with the meaning assigned to it in recital 2, comprising the Participants.
ECI-team Objective	Has the meaning given to it in Clause 3.1;
Employer	Has the meaning given to it under 'undersigned' at the start of this Agreement.
Participants	The Employer, Participants from the Employer (including the Contractor) and Participants from the Contractor. Each of these organisations is a Participant.
Participants from the Contractor	The organisations referred to in the Clause 4.1 with which the Contractor has entered into bilateral agreements, on the basis of which these organisations make their knowledge and experience available to the Contractor for the purpose of the Project and the ECI-team Objective during a specific stage of the design period of the Project, subject to the provisions of this Agreement. Each of these is a Participant from the Contractor.
Participants from the Employer	The organisations referred to in the Clause 4.1 (including the Contractor) with which the Employer has entered into bilateral agreements, on the basis of which these organisations make their knowledge and experience available to the Employer for the purpose of the Project and the ECI-team Objective during a specific stage of the design period of the Project, subject to the provisions of this Agreement. Each of these is a Participant from the Employer.
Parties	The Employer and the Contractor jointly. Each of these is a Party.

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<sup>7</sup> It is recommended that the Parties jointly specifically determine what they understand under a Definitive Design in their contractual relationship.

Preliminary Design	The development of a rough presentation of the construction, such that this gives a proper impression of the location, the functional and spatial structure, destinations, user facilities, architectural appearance and the integration of constructive aspects and those regarding the technical installation.
Project	Has the meaning given to it in recital 1.
Specifications	[Add definition suitable for the Project].
Risk File	An overview of identified risks, specified as follows: <ul style="list-style-type: none"> <li>(A) A description of the risk;</li> <li>(B) The probability of the risk occurring;</li> <li>(C) The likely consequences (in terms of time, money and other consequences) following the occurrence of the risk;</li> <li>(D) The control measures to be applied to mitigate the risk or its impact before the risk occurs;</li> <li>(E) The remaining risk (residual risk) after application of the control measures; and</li> <li>(F) The allocation of the residual risk (possibly including an (additional) control measure).</li> </ul>
Target Budget	Has the meaning given to it in recital 10.

### **3. ECI-team Objective**

3.1 The objective of the ECI-team (hereinafter to be referred to as: the “ECI-team Objective”) is the formation of the documents mentioned in Clause 3.3 that meet the requirements of the Employer mentioned in Clause 3.4, thereby considering what is mentioned in Clause 3.5 on the basis of the documents included in Clause 3.2.

3.2 For the benefit of achieving the ECI-team Objective, the Employer has drawn up the following documents prior to the commencement of this Agreement:

- (A) [Terms of reference (attached in Appendix 7)];
- (B) [A Preliminary Design (attached in Appendix 7)];
- (C) [A definitive Design (attached in Appendix 7)];
- (D) [Any other documents that may be relevant].

The Employer will also provide these documents to the other Participants from the Employer at the start of the preparatory work in the ECI-team. The Contractor is obliged to provide these documents to the Participants from the Contractor. Without prejudice to the Contractor’s obligations to warn pursuant to inter alia the Clauses 7.1(I) and 7.1(J), the Employer will be responsible for the accuracy of all information that the Employer provides pursuant to this Agreement, including the information as incorporated in Appendix 7.

3.3 The Parties to this Agreement, as well as the other ECI-team Participants, cooperate through the phases mentioned below to contribute to the creation of the documents listed below, which must meet the Employer’s requirements. The finalisation of a phase (and consequently the start of the next phase) can only take place after a decision thereto in the ECI-team thereby considering Clause 9.2. The progress of the ECI-team is organised through the following successive phases:

Phase 1



- (A) A further elaboration of the arrangements and tasks arising from the Collaboration Plan, if and where necessary, including:
  - (i) A sufficiently detailed planning to enable the Participants to perform their work in the ECI-team, including the scheduling of regular meetings; and
  - (ii) A more detailed elaboration on measuring the progress of the work performed by the Participants in the ECI-team; and
  - (iii) An elaboration on how the collaboration between the Participants in the ECI-team will be recurrently assessed; and
- (B) *[Identify other documents (considering these were already mentioned in possible procurement guidelines or bid)].*

## Phase 2

- (C) Reports holding the conclusions of the Participants (other than the Employer) resulting from their obligation to assess the information as provided by the Employer up until then pursuant to the Clauses 7.1(D) and 7.1(E) from the perspectives of accuracy and completeness, and where necessary, to comment;
- (D) Reports holding the interim conclusions of the Participants (other than the Employer) resulting from their continuing obligation to advise the Employer pursuant to Clause 7.1(F) (including but not limited to submitting proposals for amendments, and advising on the practicability of the Project and the financial feasibility considering the Target Budget);
- (E) Minutes of the meeting of the ECI-team, in which the reports referred to above under (C) and (D) above are discussed by the Participants;
- (F) A *[Preliminary Design]* / *[Definitive Design]* that will be developed on the basis of the documents referred to in Clause 3.2, including a report that holds the most important decisions taken by the ECI-team, considerations and circumstances relevant to the Project;
- (G) A draft construction schedule to carry out the works pursuant to the envisaged construction contract;
- (H) A draft cost estimate for the execution of the works based on the *[include applicable standard for cost estimates]* that includes a comparison with (the substantiation of) the Target Budget;
- (I) An overview of the required permits, exemptions, decisions and approvals, and of those already obtained, including those which must have been granted or obtained before the end of phase 4, whether irrevocable or not, before the contract formation procedure as laid down in Clause 12 can commence;
- (J) An updated version of the Risk File;
- (K) By the end of this phase: a report holding the assessment of the Employer whether the documents developed during this phase satisfy the requirements set out in Clause 3.4;
- (L) Minutes of the meeting, or another form of written confirmation, to complete this phase, in which:
  - (i) The Employer states the amount of the Target Budget applicable at that moment; and
  - (ii) Each Participant states to have no reasons to presume that the Project is not executability or otherwise not (financially) feasible, thereby taking into account the knowledge and information on the Project acquired up to that moment. The sole objective of this statement is to verify by the end of this phase whether it is sensible to continue to work in the manner as described in this Agreement; and

- (M) *[Identify any other documents (such as plans of action, plans focussing on safety, stakeholders and communication, and other documents already referred to in possible procurement guidelines or bid)].*

#### Phase 3

- (N) *[Definitive Design]* / *[Specifications]* developed based on the draft documents prepared during phase 2;
- (O) A construction schedule to carry out the works pursuant to the intended construction contract;
- (P) A draft cost estimate for the execution of the works based on the *[include applicable standard for cost estimates]* that includes a comparison with (the substantiation of) the Target Budget;
- (Q) An updated overview of the required permits, exemptions, decisions and approvals, and of those already obtained, including those which must have been granted or obtained before the end of phase 4, whether irrevocable or not, before the contract formation procedure as laid down in Clause 12 can commence;
- (R) An updated version of the Risk File;
- (S) By the end of this phase: a report holding the assessment of the Employer whether the documents developed during this phase satisfy the requirements set out in Clause 3.4;
- (T) Minutes of a meeting, or any other kind of written confirmation, to complete this phase, in which:
- (i) The Employer states the amount of the Target Budget applicable at that moment; and
  - (ii) Each Participant states to have no reasons to presume that the Project is not executability or otherwise not (financially) feasible, thereby taking into account the knowledge and information on the Project acquired up to that moment. The sole objective of this statement is to verify by the end of this phase whether it is sensible to continue to work in the manner as described in this Agreement; and
- (U) *[Identify any other documents (such as plans of action, plans focussing on safety, stakeholders and communication, and other documents already referred to in possible procurement guidelines or bid)].*

#### Phase 4

- (V) A report holding the assessment of the Employer whether the documents developed during this phase satisfy the requirements set out in Clause 3.4;
- (W) A report that holds the most important decisions taken by the ECI-team, considerations and circumstances relevant to the Project, including with regard to sustainability and safety;
- (X) To finalise this phase: minutes of a meeting, or any kind of other written confirmation, in which each Participant states to have no reasons to presume that the Project is not executability or otherwise not (financially) feasible, thereby taking into account the knowledge and information on the Project acquired up to that moment. The sole objective of this statement is to verify by the end of this phase whether it is sensible that the Employer commences the contract formation procedure, as referred to in Clause 12; and
- (Y) *[Identify any other output of the ECI-team]*.

3.4 The requirements that the documents referred to in this Clause 3.3 must satisfy are: *[describe in a precise, clear and complete manner the requirements and preconditions that the documents referred to in Clause 3.3 must satisfy if they are to be acceptable to the Employer]*.

3.5 While developing the documents listed in Clause 3 and performing their respective obligations, the Parties, and the other Participants in the ECI-team, take the following documents and the information included therein, as well as the following objectives into account:

- (A) Collaboration Plan (attached in Appendix 1, as amended from time to time);
- (B) The planning for the design period (attached in Appendix 7, as amended from time to time);
- (C) The Target Budget (attached in Appendix 3, as amended from time to time);
- (D) *[Identify the objective the Employer has with the Project, ensuring the Participants become familiar with this, including: sustainability of the neighbourhood, increase in road safety, a future-proof public space, safeguarding of accessibility of infrastructural works by extending their lifetime];*
- (E) *[Identify the objective the Employer has with the collaboration through an ECI-team, ensuring the Participants become familiar with this, including: exploring design optimisations, optimising the design and execution capacity, minimisation of nuisance to the environment, increase of workability, limiting specific risks, etc.]; and*
- (F) *[Identify how the Participants should take sustainability into account and which objectives apply to this, for instance by considering the increase of current/future circular use of building materials, decreasing the single-score Environmental Cost Indicator or Environmental Performance Calculation for Buildings as much as possible, obtaining specific sustainability certification, clean and emission-free building, reporting obligations (for example arising from the Corporate Sustainability Reporting Directive)].*

#### **4. Composition of the ECI-team**

4.1 The ECI-team has the following Participants:

- (A) The Employer and on its behalf *[position of individual participating on its behalf]*. The role of the Employer relates to: *[describe briefly]*;
- (B) The Contractor and on its behalf *[position of individual participating on its behalf]*. The role of the Contractor relates to: *[describe briefly]*;
- (C) *[State the other ECI-team Participants as well as the individuals (including their positions) participating on their behalf]*.

4.2 How Participants collaborate is further elaborated on in Appendix 1. The requirements applicable to each Participant are included in Appendix 1. The specific activities to be performed by each Participant for the purpose of the ECI-team Objective are detailed in Clause 6 (with regard to the Employer), Clause 7 (with regard to each Participant with the exception of the Employer), Clause 8 (with regard to the Contractor) and Appendix 2.

4.3 After consultation with the Contractor, the Employer is entitled to expand the ECI-team or to replace or remove one or more other Participants from the Employer. This extension, replacement or removal does not affect the Contractor's position as regards the exclusive right to submit an offer as described in Clause 12.

4.4 After approval from the Employer, the Contractor is entitled to replace or remove one or more other Participants from Contractor. The Employer may not withhold this approval on unreasonable grounds.

4.5 The Employer is entitled to request the Contractor to replace or remove one or more other Participants from the Contractor, which request the Contractor may only refuse for compelling reasons.

4.6 The Parties will consult each other if one of the Parties wishes to replace the person participating in the ECI-team on their behalf.

#### **5. Collaboration in the ECI-team**

5.1 The ECI-team Participants will carry out the preparatory work in a coordinated manner, each independently on the basis of their bilateral agreement with the Employer or the Contractor, respectively, for the purpose of the ECI-team's Objective. Where the Agreement describes an obligation that applies or also applies in the bilateral agreement between the Employer and a Participant from the Employer or the Contractor and a Participant

from the Contractor, the Employer and the Contractor respectively guarantee the other Party that this obligation is included in the relevant bilateral agreement.

- 5.2 Each Participant from the Employer has contractual obligations exclusively in respect of the Employer and not in respect of the other Participants, with the exception of the contractual obligations that the Contractor has in respect of the Participants from the Contractor. Each Participant from the Employer (and therefore including the Contractor) bears responsibility for the performance of their obligations in respect of the Employer. Each Participant from the Contractor has contractual obligations exclusively in respect of the Contractor and not in respect of the other Participants. The Parties do not intend to agree to any third-party clauses in this Agreement.
- 5.3 Each Participant, and on its behalf the person who participates in the ECI Team, shows in attitude and behaviour:
- (A) That it acts flexibly, proactively and transparently;
  - (B) That, notwithstanding the nature of the bilateral agreements as referred to in Clause 5.1, it is focused and contributes to good collaboration in the ECI-team;
  - (C) That it has consideration for the ECI-team Objective and the legitimate interests of the other Participants;
  - (D) That it does not shy away from discussion points with other Participants, makes an effort to discuss these in a timely manner and discusses them in a solution-oriented manner;
  - (E) That it pro-actively and timely discusses its own mistakes as well as mistakes of other Participants; and
  - (F) That it proactively, timely, benevolently and in a solution-oriented manner seeks solutions for its own mistakes as well as for the mistakes of other Participants; and
  - (G) That it proactively, timely, in a well substantiated manner, in writing and unambiguously warns if it does no longer consider the Project to be executable or (financially) feasible.
- 5.4 If, further to Clauses 3.3(L)(ii), 3.3(T)(ii), 3.3(X) or 5.3(G), a Participant indicates that it no longer considers the Project to be executable or (financially) feasible, the Participants will consult each other about the reasons on which this consideration is based. If, and to the extent necessary following such consultation, the Parties will decide which measures are to be taken to remedy such reasons, or decide to terminate the Agreement early.
- 5.5 Prior to the conclusion of the Agreement, the Employer has shared and discussed the Target Budget with the Contractor. The Target Budget includes a substantiation<sup>8</sup> that matches with the preliminary character of the Target Budget and the moment at which this was discussed. The statement of the Contractor in recital 10 is based on this Target Budget, that has been provided accordingly, including such substantiation. The Employer is entitled to amend the Target Budget.
- 5.6 In amongst others the following situations during the underlying Agreement, (i) the Parties will consult each other about a possible amendment of the design as referred to in the documents mentioned in Clause 3.2 and/or the planning for the preparatory work and/or the execution of the works, and (ii) the Employer is entitled to amend the Target Budget:
- (A) If the work activities by the ECI-team give rise to amend, within the scope of the Project, the design as referred to in the documents mentioned in Clause 3.2;
  - (B) If changes occur in the assumptions and circumstances on which the Project, the Agreement (including the documents referred to in Clause 3.2) and/or the draft construction contract are based;
  - (C) If the proper fulfilment of the Agreement, the draft construction contractor and/or the Project require additional work activities;

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<sup>8</sup> Such substantiation may for example comprise the provision of a cost estimate for the execution of the works.

- (D) If circumstances arise which could not or did not need to be taken into account considering the status of the design as referred to in the documents mentioned in Clause 3.2;
- (E) If relevant and unforeseen changes in (governmental) regulations or decisions arise;
- (F) If the Parties decide that further to the developing, maintaining and/or contributing to the Risk File, the Contractor will take measures to mitigate a risk or the impact hereof, or if a (residual) risk is allocated to the Contractor which had not already been allocated to the Contractor pursuant to this Agreement or the draft construction contract;
- (G) If the substantiation on which the Target Budget is based appears to contain inaccuracies, inconsistencies, imperfections and/or overly ambitious cost estimates and/or turns out to be based on incorrect or outdated information and/or assumptions;
- (H) If the Parties identify situations falling under the draft construction contract that will lead to a change in price for the execution of the works;
- (I) If unforeseen circumstances within the meaning of *[refer to relevant provision from applicable law]* arise; and/or
- (J) *[Add other circumstances, such as for instance of unforeseen political nature].<sup>9</sup>*

## **6. Employer's obligations in the ECI-team**

6.1 Considering the ECI-team Objective, the Employer is obliged in respect of the Contractor to fulfil obligations in a timely manner in the ECI-team and to perform the following activities:

- (A) The obligations that arise from the Collaboration Plan for the Employer;
- (B) Managing the ECI-team and coordinating the activities of the Participants from the Employer. If Participants from the Contractor participate in the ECI-team, the aforementioned "coordinating the activities" also concerns giving coordination instructions to the Contractor regarding its coordination of the activities of the Participants from the Contractor. These instructions exclusively relate to the manner in which the Contractor performs its own coordination tasks with respect to the work of the Participants from the Contractor. The Contractor continues to be responsible for the fulfilment of arrangements and contractual obligations in respect of the Participants from the Contractor and for organising collaboration within their own organisation. The foregoing includes the organisation of periodic meetings for all Participants, including a kick-off, and determining the frequency of and organising meetings between the relevant Participants;
- (C) Monitoring the progress and warranting proper performance of the activities to be performed by the Participants from the Employer, with the exception of the Contractor, as described in Clause 7 and Appendix 2;
- (D) Organising and providing for sufficient and timely assignment of suitable persons in accordance with Appendix 1, who have been given an adequate mandate by the Employer for effective decision-making within the ECI-team on behalf of the Employer, in so far as necessary for the performance of the activities;
- (E) Making their requirements known, as well as any wishes, pertaining to the Project;

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<sup>9</sup> If this Agreement is concluded via a public tender, it is recommendable to verify this stipulation, in particular from a procurement law perspective, and to clearly indicate within which scopes the Target Budget and other aspects of the Project (such as the design) can be amended, how the Target Budget must be regarded from a procurement law perspective, and how the Target Budget relates to a potential ceiling amount (noting thereby that the introduction of a ceiling amount from a procurement law perspective in an ECI-team can usually only be considered for the costs of the Contractor during the ECI-team).



- (F) Taking and communicating all decisions necessary for the progress of the preparatory work for the Project;
- (G) Informing the ECI-team about the applicable agreements with third parties (other than the arrangements with the Participants) and about obligations imposed by the competent authorities regarding the Project, both in so far as applicable;
- (H) Conducting consultations with the competent authorities for the purpose of obtaining the requisite exemptions, approvals, permits and other types of consent for the Project, and informing the ECI-team of the progress thereof in a timely manner;
- (I) Assessing to the best of their ability and commenting on designs, plans, budgets and proposals, including for changes, made by one or more Participants;
- (J) Immediately warning the ECI-team in writing and unambiguously when the Employer identifies a shortcoming by one of the Participants, if and in so far as being informed of that shortcoming is relevant for the other Participants;
- (K) Designating a Participant to draw up and maintain the Risk File, and subsequently contributing to that Risk File, including identifying risks seen or that reasonably ought to be seen by the Employer with a view to adding such risks to the Risk File;
- (L) Designating a Participant who will bear ultimate responsibility as a structural engineer for the structural safety of the Project during the design and construction period;
- (M) Designating a Participant who will bear responsibility for drawing up draft minutes of the meetings of the ECI-team;
- (N) Scheduling and performing its own activities in the ECI-team in accordance with the current schedule for the design period;
- (O) Informing other Participants about the progress of its activities, also giving insight into the decisions it has taken in that regard;
- (P) Complying with its statutory obligations in the area of safety, and monitoring the compliance by each of the Participants from the Employer (with the exception of the Contractor) with their statutory obligations in the area of safety;
- (Q) The provision of the complete information, to the extent relevant considering the ECI-team Objective and to the extent that the Employer has this at its disposal;
- (R) *[Name other specific preparatory activities];*
- (S) *[Option: designating a Participant or a third party to be charged with the role of safety coordinator, also taking into account work safety during performance of the works, including environmental safety, and the safety of the Project after the works are concluded, which is understood to include structural safety and fire safety.]*
- (T) *[Option: performing risk management measures or having these performed during the design period of the Project, to which end the Employer has made agreements with one or more Participants from the Employer]; and*
- (U) *[Option: conducting the following investigations or having these conducted: [name investigations]].*

## **7. Obligations of Participants in the ECI-team (other than the Employer)**

- 7.1 The following uniform obligations are borne by each Participant (other than the Employer), considering the provisions in Clause 5.2. Considering the ECI-team Objective, the following obligations and activities will be performed in a timely manner based on the experience and expertise of the Participant concerned:

- (A) The obligations that arise from the Collaboration Plan for the relevant Participant;
- (B) Scheduling and performing their own activities in the ECI-team in accordance with the schedule for the design period, as amended from time to time, considering the coordination by and further instructions from the Employer, which instructions may only be given after consultation between the Employer and the Participant concerned;
- (C) Participating in meetings when the Employer has indicated that participation is desired;
- (D) To the best of their ability, assessing the accuracy and completeness, among other aspects, of and commenting on all information (including the documents mentioned in Clause 3.1, the schedule for the design period and the Target Budget) provided or issued to them. This information is issued within the context of entering into the bilateral agreement with the Employer, or is issued by or at the request of the Employer during the course of the aforementioned agreement;
- (E) To the best of their ability, assessing the accuracy and completeness, among other aspects, of and where necessary commenting on all designs, schedules, budgets, proposals (including for changes) and other documentation, regardless of whether these are of a preliminary or final nature, of other Participants;
- (F) To the best of their ability, advising the Employer for the purpose of the ECI-Team Objective. Advising is understood to include:
  - (i) Presenting proposals and/or change proposals;
  - (ii) Providing information regarding the feasibility of the Project, the financial feasibility considering the Target Budget, and the safety of the Project, which is understood to include the structural safety and fire safety; and
  - (iii) Where necessary, supplementing and presenting change proposals for information obtained, including the Target Budget;
- (G) To the best of their ability, advising with regard to work safety during performance of the works, including the safety in the environment, and regarding the safety of the Project after the works are concluded, which is understood to include structural safety and fire safety;
- (H) To the best of their ability, advising with regard to environmental impact and energy consumption, both while performing the works and during the use of the Project, and regarding the reuse of construction materials during the entire life cycle of the Project;
- (I) To the best of their ability, advising about the risks of the Project and mitigating such risks, also by contributing to drawing up and maintaining the Risk File, including identifying risks that they see or reasonably ought to see, with a view to adding such risks to the Risk File;
- (J) Immediately and unambiguously warning the Participants in writing and warning them again if necessary when a situation occurs in which:
  - (i) Documentation (which is understood to include designs, schedules, budgets and proposals, including for changes), information, data or instructions issued or to be issued, regardless of whether their nature is preliminary or final; and/or
  - (ii) Decisions for which preparations are being made or that have been or will be made, that are or reasonably could be disadvantageous to realising the ECI-Team Objective and/or contain mistakes or show defects such that the Participant concerned would be acting contrary to the requirements of reasonableness and fairness if they were to proceed on that basis in performing the preparatory activities without warning;
- (K) Periodically informing the other Participants about the progress of their activities; and

(L) All that ensues from the law or is fair or customary according to the nature of the bilateral agreement.

## **8. Contractor's obligations in the ECI-team**

- 8.1 In addition to the activities and responsibilities by virtue of Clause 7 that are borne by each ECI-team Participant, with the exception of the Employer, the Contractor is obliged to perform the activities mentioned hereinafter.
- 8.2 For the purpose of its activities in the ECI-team, the Contractor makes its specific experience and expertise available to the Employer in respect of the following subjects: *[name the relevant subjects such as: performance of construction activities, maintenance, costs with regard to the works and the maintenance]* To that end, the Contractor will perform the following activities in the ECI-team in a timely manner:
- (A) Coordinating the activities of the Participants from the Contractor, in which the Contractor will comply with coordination instructions from the Employer;
  - (B) Monitoring the progress and warranting proper performance of the activities to be performed by the Participants from the Contractor, as described in Clause 7 and Appendix 2;
  - (C) Organising and providing for sufficient and timely assignment of suitable persons in accordance with Appendix 1, who have been given an adequate mandate by the Contractor for effective decision-making within the ECI-team on behalf of the Contractor, in so far as necessary for the activities and other obligations of the Contractor;
  - (D) Contributing to the preparatory activities in the following manner: *[name the specific preparatory activities to be performed by the Contractor]*;
  - (E) Complying with its statutory obligations in the area of safety, in so far as the Contractor bears such in performing the preparatory activities allocated to it, and monitoring compliance by each of the Participants from the Contractor with their statutory obligations in the area of safety;
  - (F) Supplying an interim estimate of the costs for performing the works at the following points in time. The estimate of the costs must be provided by means of *[include applicable standard for cost estimates]* including a comparison with (the substantiation of) the Target Budget: *[specify moments in time; in any case during phase 2 and phase 3]*;
  - (G) *[Option: drawing up and maintaining the time schedule for the preparation and the performance of the Project];* and
  - (H) *[Option: conducting the following investigations or having these conducted: [name investigations]].*

## **9. Decision-making and reporting**

- 9.1 The Parties to this Agreement, as well as the other Participants, are each authorised to organise a meeting of the ECI-team.
- 9.2 In the ECI-team, decisions must be taken in the following manner: the Participants take a decision in an explicit manner, by consensus and in writing. If the Participants cannot reach a decision on a particular subject, the Employer will take a decision, without prejudice to bilateral arrangements that apply between the respective Participants.
- 9.3 Minutes are drawn up of all meetings of the ECI-team. The minutes include a summary of the design or other suggestions made by one or more of the Participants, a summary of the decisions made, and a description of the discussions regarding the aforementioned suggestions and decisions. The ECI-team will adopt the minutes in the next meeting.

## **10. Compensation for the Contractor**

- 10.1 The Employer compensates the Contractor for its participation in the ECI-team, and participation by the Participants from the Contractor, based on the following hourly rates, increased by compensation for the

following possible cost items that are eligible for compensation: *[add table of hourly rates and a list of cost items that are eligible for separate compensation, or refer to an Appendix drawn up for that purpose and attached to this agreement.]*

- 10.2 The Contractor charges the amount mentioned in Clause 10.1 on a monthly basis on the basis of the progress and further arrangements made for that purpose. The Contractor will include a detailed summary of its hours with the invoice.
- 10.3 The term for payment is *[4 weeks]* after receipt of the invoice.
- 10.4 If the Parties decide to expand the Contractor's hours as compared to the activities originally foreseen in the Agreement, prior to the performance of those activities the Parties will make arrangements in writing regarding the modification of the Target Budget and the amount included in it for compensation of the Contractor's activities in the ECI-team, and where necessary, the amendment of the construction schedule.

## **11. Liability and insurance**<sup>10</sup>

- 11.1 The Employer indemnifies the Contractor against claims from third parties, including the Participants from the Employer, and with the exception of the Participants from the Contractor, if and in so far as these claims are related to the activities performed by the Contractor by virtue of this Agreement. This does not detract from the Contractor's liability in respect of the Employer.
- 11.2 In case of a default of the Contractor, the Employer must issue to the Contractor a written notice of default with a reasonable term to rectify its default. This obligation does not apply if the default can no longer be rectified, or it can reasonably not be expected from the Employer to issue such notice of default.
- 11.3 The Contractor is liable for damages incurred by the Employer as result of an attributable default by the Contractor. The liability of the Contractor is limited to compensation of direct damages, and is limited to an amount of *[three times]* the compensation payable by the Employer to the Contractor under this Agreement.<sup>11</sup>
- 11.4 If the Employer has demanded the Contractor engages a certain person or party for the performance of its obligations under this Agreement, the liability of the Contractor towards the Employer as result of a default by such person or party is limited to the liability such person or party has towards the Contractor.
- 11.5 The Contractor is not responsible for a suggestion made by it in the area of another Participant from the Employer if that Participant from the Employer accepts that suggestion. This does not detract from the Contractor's obligation to warn on the basis of, among others, Clauses 7.1(I) and 7.1(J), if it realises or at any time arrives at the realisation that the original suggestion involves an apparent error or defect.
- 11.6 Merely participating in the decision-making of the ECI-team does not result in any liability of the Contractor for decisions made by the ECI-team. This does not detract from the Contractor's possible liability ensuing from any other provision of this Agreement.
- 11.7 To cover the Contractor's possible liability by virtue of the Agreement, it has taken out the following insurance policies:
  - (A) *[Name the relevant types of insurance and the amounts covered]*.
- 11.8 Within *[two weeks]* after concluding the Agreement, the Contractor will issue a copy of the policies for these types of insurance to the Employer.

## **12. Contracting stage construction contract**

- 12.1 Immediately when the Employer has determined that the documents as mentioned in Clause 3.3 satisfy the requirements described in Clause 3.4, it will notify the Contractor of the abovementioned determination in

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<sup>10</sup> This clause especially requires attention from a local law perspective.

<sup>11</sup> When drawing up the draft construction contract for the works, consider how the Parties want to deal with the liability of the ECI-team-contractor for any attributable failure in the ECI-team, which remained unnoticed at the time, that has consequences on the costs of performance of the Project works.

writing and simultaneously provide an amended draft construction contract with the appendices that are already available. The contracting stage as explained in this Clause 12 commences from the date of this determination, and the Employer is no longer entitled to cancel the Agreement on the basis of *[refer to relevant provision from applicable law]*.

- 12.2 During a period of *[two weeks]* from the date of the determination mentioned in Clause 12.1, the Parties will negotiate the following subjects with the objective of laying them down in the draft construction contract (Appendix 5), without this meaning that a construction contract has been concluded already between the Parties:
- (A) The allocation to the Contractor of specific risks included in the Risk File, to the extent that these have not already been allocated to the Contractor pursuant to the draft construction contract, or an amendment in the allocation hereof;
  - (B) Provisions concerning liability and compensation of damage (including costs) in so far as the draft construction contract (Appendix 5) does not provide already for such;
  - (C) Any suspensive or resolute conditions in the draft construction contract, including but not limited to *[for example, consider referring to the irrevocability of specific permits]*; and
  - (D) Other provisions that are relevant in the opinion of the Parties in so far as the construction contract (Appendix 5) does not specifically provide for them.
- 12.3 Once the Employer has determined that the Parties have reached agreement on the subjects mentioned in Clause 12.2, the Employer will inform the Contractor of this determination, in writing. It will invite the Contractor to issue an offer for the works on the basis of the documents and conditions mentioned in Clauses 12.1 and 12.2. The Employer will explain which parts are to be included in the offer, in any event including the price.
- 12.4 The Contractor will make its offer no later than *[two weeks]* after the Employer has invited the Contractor in accordance with Clause 12.3. With it, the Contractor will provide an open estimate (in the manner determined by the Parties in Appendix 6) giving insight into the premises of the price included in its offer. If and to the extent that Appendix 6 does not provide for suitable methods that are usually applied on the market to determine certain parts of this offer on the basis of verifiable amounts of unit rates and percentages, the Contractor will determine its offer for these parts on the basis of methods usually applied on the market (with verifiable amounts of unit rates and percentages). If this offer deviates from earlier cost assessments, this offer will contain a detailed substantiation that will enable the Employer to understand and assess such deviations. The offer, and the offer as adjusted over the course of the negotiations as referred to in Clause 12.5, constitutes an irrevocable offer during the entire contracting stage as described in this Clause 12.
- 12.5 After receipt and review of the offer, the Employer decides whether to accept the offer or to negotiate with the Contractor regarding this offer. The Employer will inform the Contractor of its decision in writing no later than *[two weeks]* after receipt of the offer.
- 12.6 The negotiations referred to in Clause 12.5 are conducted between the Parties on an exclusive basis. On an exclusive basis means that during the period mentioned in the next sentence, the Employer will not maintain contact regarding the works or preparations for the works of the Project with other parties that might be interested in concluding a construction contract in respect of the Project. The negotiation period lasts for *[eight weeks]* calculated from the time of the date of the Employer's decision to enter into negotiations as referred to in Clause 12.5.
- 12.7 During the negotiations as described in this Clause 12, the Parties will take each other's legitimate interests into account and will negotiate in good faith.
- 12.8 During the negotiations regarding the construction contract, the Parties will negotiate exclusively concerning the following subjects:
- (A) The price and/or the various components in its substantiation;



- (B) The allocation of risks included in the Risk File, in so far as allocated to the Contractor, the pricing of the risks and/or the relevant risk control measures; and/or
- (C) Liability and compensation of damage (including costs) in so far as the draft construction contract (Appendix 5) does not provide for such.

- 12.9 At any time during the period referred to in Clause 12.6, the Employer may decide to accept an offer from the Contractor valid at that time, as a result of which the construction contract between the Parties is created.
- 12.10 If the Parties have not reached agreement after the end of the period mentioned in Clause 12.6, the Employer may enter into a construction contract of the Project with a third party. In that event, the Employer owes no compensation to the Contractor other than as referred to in Clause 10.1. The Contractor will not obstruct the Employer in any way on the basis of this Agreement from entering into a construction contract with a third party in that event.

### **13. Termination of the Agreement**

- 13.1 Without prejudicing the statutory options for early termination of the Agreement, each of the Parties may cancel or terminate the Agreement by registered letter without requiring *[court or arbitral]* intervention if:
  - (A) The Parties have not reached a consensus in accordance with the procedure described in Clause 12 concerning the construction contract and the Employer has informed the Contractor on the basis of Clause 12.10 that the period of exclusivity has ended;
  - (B) The other Party is granted suspension of payments and the administrator does not demonstrate to the satisfaction of the Party entitled to cancel and/or terminate that this Agreement and any construction contract will be properly performed, or if the other Party is declared bankrupt; or
  - (C) *[add any other circumstances]*.
- 13.2 Upon early termination of this Agreement, the Employer will pay the Contractor for its work until the moment of termination, in compliance with the stipulations in Clause 10.1. In addition, the Employer will compensate the Contractor for its reasonable costs still to be incurred, as result of the obligations that the Contractor had already assumed at the time of early termination, if and to the extent that the Contractor assumed these with the reasonable expectation that its involvement in the ECI-team would be continued.
- 13.3 After early termination of this Agreement, the provisions in Clauses 14 through 16 continue to apply between the Parties.

### **14. Intellectual property rights**

- 14.1 The Employer is the only party entitled to all intellectual property rights (including, but not limited to, copyrights), and the owner of all documentation (including drawings and calculations) drawn up or developed by the Contractor and/or to which it has contributed in another way within the context of this Agreement, except if and to the extent that the Parties explicitly agree otherwise in writing.<sup>12</sup>
- 14.2 In so far as intellectual property rights (including but not limited to copyrights) are vested in the documentation provided by the Contractor or a Participant from the Contractor, including drawings and calculations, these intellectual property rights are delivered and transferred by the Contractor to the Employer with this Agreement or in advance (which situation may take place earlier) for no consideration, if applicable after acquiring these from the Participant from the Contractor. In so far as necessary, at the Employer's request the Contractor will cooperate in the aforementioned delivery and transfer or will guarantee that the Participant from the Contractor will cooperate in this.
- 14.3 After early termination of this Agreement, in its contractual relationship with the Contractor, the Employer will not make use of documentation drawn up or developed by the Contractor, or to which the Contractor has

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<sup>12</sup> Depending on the degree to which the Contractor has presented innovations, consider making further arrangements regarding a licence for the Contractor for the use of such innovations.

contributed in some other way within the context of this Agreement, until the Employer has satisfied all of its financial obligations in respect of the Contractor by virtue of Clause 10.

**15. Confidentiality**

- 15.1 Neither Party will disclose the information it has learned in respect of the substance of this Agreement, the agreements that might ensue from the Agreement and the substance of the negotiations conducted or still to be conducted by the Parties, in any way, or make it otherwise known to or accessible for third parties. Each Party warrants that its employees, management bodies or third parties engaged by it (including the Participants concerned) will abide by this confidentiality.
- 15.2 The Parties' confidentiality obligation does not pertain to information or data:
- (A) That a Party is required to provide to a third party in order to exercise its rights and/or perform its obligations based on this Agreement or any agreements that might ensue from the Agreement;
  - (B) That a Party is obliged to provide on the basis of the law, regulations, a court order and/or an arbitral award, or that it needs within the context of financial accounting and reporting;
  - (C) If that information or the data has or have become public and this cannot be attributed to a Party;
  - (D) For which a Party has given the other Party permission to disclose;
  - (E) That the Employer needs in order to be able to enter into a construction contract with a third party, once the exclusivity referred to in Clause 12.10 no longer applies; and/or
  - (F) That the Employer is required to provide within the context of a loan.

**16. Disputes and Applicable Law**

- 16.1 This agreement is governed by *[refer to applicable law]*.
- 16.2 *[Refer to court or arbitration]* has exclusive jurisdiction to adjudicate all disputes with regard to or ensuring from this Agreement.

**17. General**

- 17.1 The Parties are prohibited from transferring the rights and/or obligations ensuing from this Agreement, to a third party, in part or in full, other than with previous written consent from the other Party.
- 17.2 Unless expressly provided otherwise in this Agreement, the Parties will bear their own costs, charges and expenditures have incurred in connection with the formation of this Agreement.

*[Location, date]*

Employer

.....

Contractor

.....

Name:  
Job title:

Name:  
Job title:



Bird & Bird

Witteveen + Bos

PRO6 managers

TAUW