



TETRA TECH INTERNATIONAL DEVELOPMENT PTY LTD

("TETRA TECH INTERNATIONAL DEVELOPMENT")

- and -

< **SERVICE PROVIDER NAME** > {}

("SERVICE PROVIDER")

GS – XXXXXXX SERVICES AGREEMENT

for

XXXXX

{}

SERVICES AGREEMENT

THIS AGREEMENT is made **<TETRA TECH INTERNATIONAL DEVELOPMENT WILL INSERT DATE>**

BETWEEN: TETRA TECH INTERNATIONAL DEVELOPMENT PTY LTD
ABN 63 007 889 081 of 33 Richmond Road Keswick SA 5035

("Tetra Tech International Development")

AND

< SERVICE PROVIDER NAME >
[**<ABN:>** of **< address >**]

("Service Provider")

RECITALS

- A. Tetra Tech International Development carries on the business of a management consultant and international project manager. **< PROGRAM NAME >** is managed by Tetra Tech International Development on behalf of the Customer.
- B. Tetra Tech International Development engages the Service Provider to provide the Services and the Service Provider agrees to provide the Services on the terms of this Agreement.

THE PARTIES AGREE as follows:

RECITALS

The recitals are true and form an operative part of this Agreement.

OPERATIVE

Tetra Tech International Development and the Service Provider promise to carry out and complete their respective obligations in accordance with this Agreement, which includes the Agreement Details and the Schedules.

This Agreement is written in plain English as far as possible. Its terms are to be interpreted so as to give efficacy to the Parties' agreement. No rule resolving a doubt as to interpretation against the Party preparing this Agreement will apply. The specific provisions will not limit the interpretation of general provisions.

1 DEFINITIONS

- 1.1. **Agreement** means this agreement and all schedules, annexures and other documents as may be incorporated by reference.

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Template ID: COZ_TMP_ServicesAgreement

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Contractor:

Document Version: 0

- 1.2. **Agreement Details** means the details set out in Schedule 2.
- 1.3. **Alternative Service Provider** is defined in clause 4.9.
- 1.4. **Authority** means any Governmental or semi-Governmental, statutory, municipal or public authority, person, instrumentality, department or body (whether autonomous or not) charged with the administration of a Law and includes any health, licensing or other authority having jurisdiction over the Services.
- 1.5. **Business Day** means any day that is not a Saturday or Sunday or a public holiday in South Australia.
- 1.6. **Tetra Tech International Development** means Tetra Tech International Development Pty Ltd.
- 1.7. **Tetra Tech International Development Group Member** means any entity which Controls or is Controlled by, or is under common Control with, Tetra Tech International Development.
- 1.8. **Tetra Tech International Development's Representative** means the person specified in Schedule 2.
- 1.9. **Commencement Date** means the date specified in Schedule 2.
- 1.10. **Completion Date** means the date specified in Schedule 2.
- 1.11. **Confidential Information** means all information relating to affairs or business of a party including, but not limited to:
- (a) the terms of this Agreement;
 - (b) trade secrets and confidential know-how;
 - (c) information about the business in which Tetra Tech International Development is engaged that is not known to the public and gives Tetra Tech International Development a commercial advantage over competitors who do not know such information;
 - (d) financial, accounting, marketing and technical information and plans, customer and supplier lists, fee rates and price lists, pricing strategies, tender information, know-how, technology, operating procedures and methods of operating, data bases, source codes and methodologies;
 - (e) all copies, notes and records based on or incorporating the information referred to in clause 1.11(a), 1.11(b), 1.11(c) and 1.11(d) but does not include any information that was public knowledge when this Agreement was signed or became so at a later date (other than as a result of a breach of confidentiality by, or involving, the Service Provider),
- of which the Service Provider becomes aware of or generates (both before and after the day this Agreement is signed) in the course of, or in connection with, the Service Provider's engagement with any Tetra Tech International Development Group Member (including confidential information belonging to any third party including the Customer); and
- 1.12. **Contract Material** means all Material created or required to be developed or created as part of, or for the purpose of performing, the Services.

- 1.13. **Control** of a corporation means having the power (directly or indirectly) to control more than 50% of the membership of the board of directors, more than 50% of the voting shares of the corporation, or otherwise direct or cause the direction of the management and policies of the corporation.
- 1.14. **Customer** means the entity or entities as described under Schedule 2.
- 1.15. **DFAT** means the Australian Government's Department of Foreign Affairs and Trade.
- 1.16. **Default Event** means those events listed in clause 18.2.
- 1.17. **Deliverables** means the reports and any data or other material specified in Schedule 1 required to be delivered throughout the supply of the Services.
- 1.18. **Direction** means any agreement, approval, assessment, authorisation, decision, determination, explanation, instruction, order, permission, rejection, request or requirement given or made by Tetra Tech International Development.
- 1.19. **Escalation Representative** means the person/s appointed by Tetra Tech International Development and the Service Provider respectively to act as their representative for the purposes of resolving any dispute in accordance with clause 24(c) including delegates as the context permits, being the persons specified in Schedule 1 as at the date of this Agreement.
- 1.20. **Fraud** means, in relation to the Services, any act of dishonestly obtaining a benefit or causing a loss by deception or other means including: theft; obtaining property, a financial advantage or any other benefit by deception; causing a loss, or avoiding or creating a liability by deception; providing false or misleading information, or failing to provide information where there is an obligation to do so; making, using or possessing forged or falsified documents; bribery, corruption or abuse of position; unlawful use of computers, vehicles, telephones and other property or services; divulging confidential information to outside sources; hacking into, or interfering with computer systems; any offences of a like nature to those listed above; and includes alleged, attempted, suspected or detected fraud.
- 1.21. **GST** means the tax imposed by the GST Law.
- 1.22. **GST Law** has the meaning attributed in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- 1.23. **Head Contract** means the contract between Tetra Tech International Development and DFAT in connection with the Services amongst other things.
- 1.24. **Intellectual Property Rights** means all intellectual property rights, including:
- (a) patents, plant breeders' rights, copyright, rights in circuit layouts, registered designs, trademarks, know-how and any right to have Confidential Information kept confidential; and
 - (b) any application or right to apply for registration of any of the rights referred to in clause 1.24(a), but for the avoidance of doubt excludes Moral Rights and performers' rights.
- 1.25. **Laws** includes all Acts of Parliament of the Commonwealth of Australia and of the State of South Australia and the requirements of all ordinances, regulations, by-laws, orders, and proclamations.

- 1.26. **Legislative Requirements** means the relevant legislation, regulations, rules and codes and other associated documents applicable to the Services in the country where the Services are taking place.
- 1.27. **Material** means any ideas, discoveries, inventions, information, data, compilations, records, designs, works, technology, software, methods, processes, formulas, names, logos or any other thing of any kind in which Intellectual Property Rights or other rights subsist.
- 1.28. **Modern Slavery** includes any conduct which constitutes modern slavery under any Modern Slavery Law, including without limitation slavery, human trafficking, servitude, forced labour and forced marriage.
- 1.29. **Modern Slavery Laws** means the *Modern Slavery Act 2018* (Cth), the *Modern Slavery Act 2018* (NSW), Divisions 270 and 271 of the *Criminal Code 1995* (Cth), the *Human Rights Act 2019* (Qld), and any other binding or non-binding guidelines issued by an entity or person so authorised under Modern Slavery Law, and anti-Modern Slavery laws or regulations in force in Australia or otherwise applicable to Tetra Tech International Development or the Service Provider from time to time with respect to reporting on or addressing the risks of modern slavery, including business operations and supply chains with respect to related purposes.
- 1.30. **Moral Rights** are the rights, where applicable to the Services or Contract Material, conferred by operation of Part IX of the *Copyright Act 1968* (Cth).
- 1.31. **Notice** means written notice and **notify** has a corresponding meaning.
- 1.32. **Partner Country** means the country/countries in which the Services are to be delivered as specified in the Agreement Details in Schedule 2.
- 1.33. **Parties** means the Service Provider and Tetra Tech International Development, and **Party** means any one of them.
- 1.34. **Personnel** means any subcontractors of the Service Providers and the Service Provider's employees, agents and any other person employed or engaged by the Service Provider to perform any part of this Agreement and includes the Service Provider's Representative.
- 1.35. **Pre-Existing Service Provider Material** means any Material made available by the Service Provider for use in the provision of the Services that existed prior to Commencement Date and was developed by the Service Provider independently from this Agreement.
- 1.36. **Prices** means the prices set out in or determined in accordance with Schedule 2.
- 1.37. **Relevant List** means a list of terrorist organisations made under Division 102 of the *Criminal Code Act 1995* (Cth) and the charter of the *United Nations Act 1945* (Cth).
- 1.38. **Representative** means either of the persons nominated as the Service Provider's Representative and Tetra Tech International Development's Representative from time to time including delegates as the context permits. Each Party's Representative as at the Commencement Date is specified in Schedule 2. Either Party may substitute and replace its Representative with reasonable written notice delivered to the other Party.
- 1.39. **Requirement** includes any requirement, notice, order, direction, recommendation, stipulation or similar notification received from or given by any Authority or under any Law, whether in writing or otherwise and regardless of to whom it is addressed or directed.

Commented [SK1]: Where service provider is not an Australian entity, consider amending definition of Modern Slavery Laws (see below) and defining Modern Slavery as:

Any conduct which constitutes modern slavery including:

(a) trafficking in persons, as defined in article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime ([2005] ATS 27);

(b) child labour, as defined in article 3 of the ILO Convention (No. 182) Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, done at Geneva on 17 June 1999 ([2007] ATS 38);

(c) slavery, human trafficking, servitude, forced labour and forced marriage or any other conduct which constitutes modern slavery under any Modern Slavery Law.

Commented [SK2]: If service provider is based outside of Australia, references to NSW and QLD legislation can be removed.

Consider including references to guidelines and other materials issued in connection with the the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children ([2005] ATS 27) and ILO Convention (No. 182) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour ([2007] ATS 38).

Commented [SK3]: **means** any law of the Commonwealth of Australia or any State or Territory of Australia, and any other applicable law, pertaining to exploitative practices including slavery, servitude, forced labour, human trafficking, debt bondage, child labour and other slavery-like practices.

- 1.40. **Services** means the services specified in item 1 of Schedule 1, which include and are subject to, the special conditions listed in item 2 of Schedule 2 (if any).
- 1.41. **Service Provider** means the Service Provider contracted to perform the Services under this Agreement.
- 1.42. **Service Provider's Representative** means the person identified in Schedule 2.
- 1.43. **Service Provider's Nominated Account** means the bank account specified by the Service Provider for payment identified in Schedule 1.
- 1.44. **Specification** means any specifications for the Services in Schedule 1.
- 1.45. **Tax** means any income (including payroll), land, indirect and other taxes, excise, levies, imposts, deductions, charges, duties, compulsory loans and withholdings, including Withholding Payments, financial institutions duty, debits tax or other taxes and includes any interest, penalties, charges, fees, fines or other amounts imposed in respect of any of the above, but does not include GST.
- 1.46. **Term** means the term of this Agreement which commences on the Commencement Date and ends on the Completion Date.
- 1.47. **Third Party Material** means any material made available by the Service Provider for the purpose of the Agreement in which a third party holds Intellectual Property Rights.
- 1.48. **Variation** means a change to the Services.
- 1.49. **WHS Legislation** means all applicable Laws and all applicable Requirements (including in the jurisdiction in which the Services are to be performed) regulating matters of occupational health, safety or security.
- 1.50. **Withholding Payment** has the meaning given in Schedule 1 of the *Taxation Administration Act 1953* (Cth).

2 INTERPRETATION

2.1 In this Agreement (unless the context requires otherwise):

- (a) the singular includes the plural;
- (b) the plural includes the singular;
- (c) a reference to one gender includes every other gender;
- (d) words referring to individuals include corporations, unincorporated associations, partnerships, trusts and joint ventures;
- (e) a reference to a Party includes that Party's administrators, successors and permitted assigns;
- (f) where the day on or by which something is to be done is not a Business Day, that thing may be done on or by the next Business Day;
- (g) a reference to a clause, subclause, schedule or attachment is a reference to a clause, subclause, schedule or attachment of this Agreement;
- (h) a reference to a clause number includes its subclauses;
- (i) the word "or" is not exclusive;

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- (j) other parts of speech and grammatical forms of a word or phrase defined in this Agreement have a corresponding meaning;
- (k) a reference to any thing (including any right) includes any part of that thing, but performance of part of an obligation does not constitute performance of the entire obligation;
- (l) a reference to any legislation includes all delegated legislation made under it and any amendments, consolidations, replacements or re-enactments;
- (m) a reference to a document includes all amendments or supplements to, or replacements or novations of, that document;
- (n) a promise on the part of 2 or more persons binds them jointly and severally;
- (o) a reference to an asset includes property of any nature, a business, right, revenue and benefit;
- (p) headings are for convenience only and do not affect the interpretation of this Agreement;
- (q) a reference to a body, other than a party to this Agreement (including an institute, association or authority), whether statutory or not which ceases to exist or whose powers or functions are transferred to another body, is a reference to the body which replaces it or substantially succeeds to its powers or functions; and
- (r) specifying anything in this Agreement after the words 'includes', 'including' or 'for example' or similar expressions does not limit what else is included.

2.2 This Agreement between the Parties comprises these standard terms and conditions and all the documents comprised in, and incorporated by reference to, the schedules. If any of the documents comprising this Agreement are inconsistent, they take priority in the following order:

- (a) the special conditions (if any) in Schedule 1;
- (b) these standard terms and conditions (excluding Schedule 2);
- (c) Schedule 2,

provided that any provision which imposes a greater or higher requirement, standard, level of service or scope on the Service Provider will prevail.

3 TERM

- 3.1 This Agreement commences on the Commencement Date and continues for the Term as set out in the Agreement Details in Schedule 2 or until all obligations under this Agreement have been fulfilled, or this Agreement is terminated, whichever is earlier.
- 3.2 The Service Provider must commence provision of the Services on the Commencement Date and complete the provision of the Services by the Completion Date as set out in the Agreement Details in Schedule 2.
- 3.3 The Term of this Agreement may be extended as agreed between the Parties in writing and subject to the Service Provider's performance, availability of funding and Customer approval.

3.4 The Service Provider and Tetra Tech International Development acknowledge and agree that, to the extent that any of the Services have been performed by the Service Provider prior to the Commencement Date, the provisions of this Agreement will also apply to those Services.

4 SERVICES

Provision of Services

4.1 The Service Provider must provide the Services described in the Schedule 1 in accordance with the terms and conditions of this Agreement.

4.2 The Service Provider must either complete the Services by the Completion Date or provide the Services at all agreed times during the Term, as specified in this Services Agreement. Tetra Tech International Development may inspect the performance and outcome of the Services at any time.

4.3 Unless this Agreement states otherwise, the Services may be provided by the Service Provider either personally or through the employment/subcontracting of other persons.

4.4 In providing the Services the Service Provider must:

- (a) complete the Services in accordance with the description in Schedule 1.
- (b) comply with any reasonable Direction given by or on behalf of Tetra Tech International Development from time to time;
- (c) comply with all policies, procedures and directives of Tetra Tech International Development so far as they are made known to the Service Provider;
- (d) comply with all applicable standards, regulations, and where applicable, the requirements set out in this clause 4.4;
- (e) take all reasonable practical measures to ensure the Service Provider's own safety and the safety of the Service Provider's Personnel;
- (f) provide and use appropriate safety equipment and clothing and require employees of the Service Provider to use that equipment;
- (g) provide all labour, materials, plant, utilities and equipment necessary to perform the Service Provider's obligations under the Agreement;
- (h) on request, provide Tetra Tech International Development with written evidence of the Service Provider having:
 - i. current insurance policies that meet the requirements set out in Schedule 2;
 - ii. worker's compensation insurance or insurance to a similar effect, where the Service Provider engages Personnel to deliver the Services and is authorised by this Agreement or Tetra Tech International Development to do so;
 - iii. required registrations for taxation and such other licences, registration or permits that may be required under the applicable laws of the jurisdiction from where the Service Provider usually conducts its business and where applicable, the jurisdiction where the Services are to be delivered.

Service Provider non-performance

- 4.5 If the Services do not meet their purpose or are not in accordance with this Agreement, Tetra Tech International Development may by notice and at its sole discretion:
- (a) require the Service Provider to remedy a defect in or redo the Services, by a date specified in the notice (or as otherwise agreed by Tetra Tech International Development), at no additional cost to Tetra Tech International Development; or
 - (b) exercise its right under clause 4.9.
- 4.6 The notice given under clause 4.5(a) (the "**Defect Notice**") must specify the actions required to remedy the defect and time or date by which actions to remedy the defect must be taken.
- 4.7 Without limiting clause **Error! Reference source not found.**, if a Defect Notice is given and the Service Provider fails to:
- (a) remedy a defect in performance of the Services; or
 - (b) redo the Services,
- within the time and according to any reasonable requirements specified in the Defect Notice, Tetra Tech International Development may exercise its right under clause **Error! Reference source not found.**
- 4.8 If Tetra Tech International Development has reasonable cause to believe that the Service Provider:
- (a) has been unable, or is reasonably likely to be unable, to:
 - i. comply with clauses 4.4(a) – (e) and clauses 4.4(g) – (h); or
 - ii. meet the due date for milestone listed in Item 4 of Schedule 2;
 - (b) cannot meet any essential specifications for the Services advised by Tetra Tech International Development (whether such specifications are set out in Schedule 1 or in a Direction or Variation);
 - (c) has or is unlikely to, comply with the Defect Notice,
- then Tetra Tech International Development may exercise its right under clause 4.9.
- 4.9 If clauses 4.5, 4.7 or 4.8 apply, Tetra Tech International Development may, at its sole discretion, engage an alternative service provider ("**Alternative Service Provider**") to perform such aspects of the Services as it determines necessary to ensure the Services are completed on time and/or in accordance with this Agreement.
- 4.10 Where Tetra Tech International Development engages one or more Alternative Service Provider/s under clause 4.9:
- (a) Tetra Tech International Development must issue a notice advising the Service Provider that it will be exercising its right under clause 4.9 ("**Notice of Material Non-Compliance**"). The reasons for issuing the Notice of Material Non-Compliance and details of work the Alternative Service Provider is engaged to perform must be provided in the Notice of Material Non-Compliance;
 - (b) reimbursable cost and expenses, which includes all fees, costs and expenses charged by the Alternative Service Provider to carry out the work detailed in the Notice of Material Non-Compliance (together, "**Alternative Service Provider's Costs**") must be borne by the Service Provider; and

- (c) the Alternative Service Provider's Costs and any other reimbursable costs and expenses, will be recoverable by Tetra Tech International Development as a debt due and payable, or in accordance with clause 18.3.

4.11 Any act, omission or conduct by Tetra Tech International Development pursuant to clause 4.9, does not and will not be deemed to:

- (a) prejudice Tetra Tech International Development's right of termination under clauses 18 or 19; or
- (b) constitute a waiver or an election by Tetra Tech International Development to terminate this Agreement.

Suspension of Services

- 4.12 Tetra Tech International Development may Direct the Service Provider to suspend any of the Services for such time as Tetra Tech International Development thinks fit, in which case the Service Provider must comply with that Direction.
- 4.13 Tetra Tech International Development may at any time give the Service Provider a written notice to resume performing any suspended Services, in which case the Service Provider must do so as soon as practicable after the date of the notice.
- 4.14 Any cost incurred by the Service Provider by reason of a suspension under clause 4.12 must be borne by the Service Provider unless the suspension is needed due to an act or omission by Tetra Tech International Development, its employees, consultants or agents, or is solely for Tetra Tech International Development's convenience, in which case Tetra Tech International Development must pay the Service Provider any extra costs reasonably and necessarily incurred by the Service Provider as a result of the suspension, as reasonably determined by Tetra Tech International Development.
- 4.15 Tetra Tech International Development will not be liable for, or in connection with, (and the Service Provider may not make) any loss, claim or demand in connection with any suspension except under clause 4.14.

Customer Funding

- 4.16 The Service Provider acknowledges that if there is a policy or funding decision which impacts upon Australia's overseas development assistance budget and associated programs, without limiting any other rights or remedies available to Tetra Tech International Development under this Agreement or the Customer under the Head Contract, the Customer may reduce funding available to Tetra Tech International Development under the Head Contract which relates in whole or in part to the Services under this Agreement and in that event Tetra Tech International Development may reduce the whole or part of the Prices for the Services under this Agreement as determined by Tetra Tech International Development (acting reasonably) after discussions with the Service Provider as contemplated in clause 4.17.
- 4.17 Upon Tetra Tech International Development receiving notice from the Customer of policy or funding decisions as contemplated by clause 4.16, Tetra Tech International Development will notify the Service Provider and the Service Provider will discuss with Tetra Tech International Development, in good faith, a reduction of the Prices under this Agreement having regard to the reduction of the Customer's funding to Tetra Tech International Development.

5 VARIATIONS

- 5.1 Tetra Tech International Development may at any time direct the Service Provider to perform a Variation. All such Directions must be in writing and specify that they direct a Variation.
- 5.2 The Service Provider must not carry out a Variation unless directed to do so by Tetra Tech International Development in writing.
- 5.3 Where the Service Provider proposes a Variation for its own convenience, it must provide all information reasonably required by Tetra Tech International Development. The Service Provider acknowledges that Tetra Tech International Development may approve or reject the proposed Variation at its sole discretion and is not required to have regard to the interests of the Service Provider when making its decision.
- 5.4 If the Service Provider considers any Direction requires a Variation but the Direction is not in writing or does not specify that it directs a Variation, the Service Provider must promptly notify Tetra Tech International Development in writing setting out why the Service Provider considers the Direction requires a Variation. In that case the Service Provider must not comply with the Direction unless the Service Provider receives a written:
- (a) Direction specifying a Variation; or
 - (b) Notice that Tetra Tech International Development disagrees, stating its reasons.
- 5.5 If a notice is issued under clause 5.4(b), the Service Provider must comply with the Direction but may, within 20 Business Days, dispute Tetra Tech International Development's notice under clause 5.4(b) by giving notice under clause 24.
- 5.6 The Service Provider acknowledges that Tetra Tech International Development is not liable for or in connection with (and the Service Provider may not make) any claim relating to any Variation except where such Variation is pursuant to a Direction in accordance with clause 5.1.
- 5.7 The Prices may be adjusted for each Variation. Unless the amount of the adjustment is agreed, the adjustment may be calculated by Tetra Tech International Development on the basis of applicable rates or fees in this Agreement or, if none, then reasonable rates or fees.
- 5.8 The Service Provider is not obliged to perform a Variation that is outside the general Scope of the Services contained in Schedule 1.
- 5.9 The Service Provider agrees that no Variation will invalidate this Agreement.

Commented [SK4]: 1.1 The Prices may be adjusted for each Variation, as agreed between the parties on the basis of application rates or fees in this Agreement or, if none, reasonable rates or fees. .

6 DELIVERABLES

- 6.1 If the Service Provider is to provide Deliverables then the details of the Deliverables (if any) set out in Schedule 1, including the delivery dates and the form and content requirements, must be complied with by the Service Provider.
- 6.2 Title in the Deliverables will vest in Tetra Tech International Development on their delivery to Tetra Tech International Development.

7 SERVICE PROVIDER'S WARRANTIES

- 7.1 The Service Provider warrants and represents that the Services will:

- (a) be provided in full, with due care and skill;
- (b) be provided to a professional standard and in a timely manner;
- (c) be provided in the most cost-effective manner and using suitable materials;
- (d) be complete and in accordance with the description in this Agreement;
- (e) be performed by the Service Provider and/or its Personnel; and
- (f) be performed to the Specification (if any).

7.2 The Service Provider warrants and represents that it has made its own assessment of all information made available to the Service Provider in respect of the Services and sought all appropriate professional advice.

7.3 The Service Provider acknowledges and agrees that Tetra Tech International Development is relying on the representations and warranties made by the Service Provider in connection with this Agreement (including the warranties and representations set out in this clause 7).

8 SERVICE PROVIDER'S RELATIONSHIP AND CONDUCT

8.1 The Service Provider must:

- (a) conduct itself in a manner that does not invite, directly or indirectly, Tetra Tech International Development's officers, employees or agents to behave unethically, to prefer private interests over Tetra Tech International Development's interests or to otherwise contravene the Tetra Tech International Development Code of Conduct and Client Service Standards as stated in Schedule 4 or any Code of Ethics for the Australian Government, and,
- (b) ensure that its Personnel observe and comply with the provisions of this Agreement.

8.2 Nothing in this Agreement (including this clause 8) constitutes a relationship of employer and employee, principal and agent, or partnership between Tetra Tech International Development and the Service Provider.

8.3 The Service Provider acknowledges that this Agreement (including this clause 8) does not give the Service Provider or the Service Provider's employees authority to bind Tetra Tech International Development.

8.4 The Service Provider must not and must ensure that the Service Provider's employees do not, directly or indirectly assume or create or attempt to assume or create any obligation on behalf of or in the name of Tetra Tech International Development.

9 SERVICE PROVIDER'S REPRESENTATIONS

9.1 The Service Provider warrants and represents that prior to entering this Agreement it has made such enquiries and examined such information as it considers necessary to satisfy itself:

- (a) as to the nature, scope extent and degree of difficulty of the services to be performed by it pursuant to this Agreement; and

(b) as to the availability of suitably qualified and experienced personnel, and all other facilities and information which it is required to provide for the purpose of supplying the Services.

9.2 The Service Provider warrants and represents that, at the date of signing this Agreement, no conflict of interest exists, or is likely to arise in the performance of its obligations under this Agreement.

9.3 The Service Provider must use its best endeavours to ensure that no conflict of interest arises in relation to the performance of any aspect of this Agreement.

10 NO MINIMUM PURCHASE

Tetra Tech International Development is under no obligation to purchase a minimum quantity of Services from the Service Provider during the Term.

11 NON-EXCLUSIVITY

11.1 This Agreement is entered into on a non-exclusive basis.

11.2 Tetra Tech International Development may purchase other services similar to the Services in this Agreement from other providers.

12 PRICE

12.1 In consideration for the supply of the Services, Tetra Tech International Development will pay the Prices.

12.2 The Prices (exclusive of GST) include all taxes, duties or government charges imposed or levied in Australia or overseas in connection with this Agreement, other than GST.

12.3 The Prices (inclusive of GST) include all costs of compliance with the Service Provider's obligations under this Agreement. No other costs or expenses are payable by Tetra Tech International Development.

13 TERMS OF PAYMENT

13.1 The Service Provider must submit to Tetra Tech International Development correctly rendered invoices.

13.2 An invoice will be correctly rendered if:

- (a) it complies with the requirements of this Agreement;
- (b) the Service Provider's Nominated Account (or the account nominated pursuant clause 13.4) is correctly set out; and
- (c) if appropriate and required by Tetra Tech International Development, it is accompanied by documentation substantiating the amount claimed.

13.3 Unless this Agreement states otherwise, Tetra Tech International Development will pay for the Services within 30 days after:

- (a) completion of the Services or a relevant milestone as set out in Schedule 2; and

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(b) receipt of a correctly rendered invoice for the Services, whichever occurs later.

13.4 If the Service Provider wishes to nominate a bank account for payment that is not the Nominated Account set out Schedule 2 of this Agreement, the Service Provider must provide information to enable Tetra Tech International Development to verify the bank account. Tetra Tech International Development will only make payment where it has verified the bank account information.

13.5 A payment by Tetra Tech International Development to the Service Provider is not an admission of liability.

13.6 If Tetra Tech International Development makes a payment and subsequently learns that performance specifications have not been met or that, on review, the amount paid is greater than the amount payable under this Agreement, the payment is deemed an overpayment and recoverable from the Service Provider.

13.7 Any overpayment may be:

- (a) offset against any amount subsequently due to the Service Provider;
- (b) offset against any claims by the Service Provider of underpayment at a later date; or
- (c) recovered in Court as a debt due and payable to Tetra Tech International Development;

13.8 Without limiting Tetra Tech International Development's rights or remedies under this Agreement or at law, if Tetra Tech International Development elects, in accordance with the Agreement, to recover an amount from the Service Provider or the Service Provider otherwise owes any debt to Tetra Tech International Development in relation to the Agreement, Tetra Tech International Development may:

- (d) deduct the amount from payment of any claim; or
- (e) give the Service Provider notice of the existence of a debt recoverable which is to be paid by the Service Provider within 30 days after receipt of notice.

14 INTELLECTUAL PROPERTY RIGHTS

14.1 This clause 14 does not affect the ownership of the Intellectual Property Rights in any Pre-Existing Service Provider Material or Third-Party Material.

14.2 The Service Provider must obtain all necessary copyright and other Intellectual Property Rights permissions before making any Pre-Existing Service Provider Material or Third-Party Material available as part of the Services.

14.3 All Intellectual Property Rights in the Contract Material vest in Tetra Tech International Development on creation.

14.4 To the extent that:

- (a) Tetra Tech International Development needs to use any of the Pre-Existing Service Provider Material or Third-Party Material to receive the full benefit of the Services, the Service Provider grants to, or must obtain for Tetra Tech International Development, a perpetual, world-wide, royalty free, non-exclusive licence that includes the right to

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sublicense, use, reproduce, adapt, modify and communicate that Pre-Existing Service Provider Material or Third-Party Material;

- (b) the Service Provider needs to use any of the Contract Material, Tetra Tech International Development grants to the Service Provider, subject to any conditions or restrictions specified by Tetra Tech International Development, a world-wide, royalty-free, non-exclusive, non-transferable licence that includes the right to sublicense, use, reproduce, adapt, modify, distribute and communicate such Contract Material solely for the purpose of providing the Services.

- 14.5 The licence granted to Tetra Tech International Development under Clause 14.4(a) does not include a right to exploit the Pre-Existing Service Provider Material or Third-Party Material for commercial purposes.
- 14.6 The licence granted to the Service Provider under Clause 14.4(b) does not include a right to exploit the Contract Material for commercial purposes.
- 14.7 If the Contract Material involves works that may be subject to copyright, the Service Provider must obtain consents from all Personnel engaged to create or author such Contract Material, to any acts or omissions by Tetra Tech International Development, the Customer or their respective employees, servants, agents or licensees that breach or infringe the relevant Personnel's Moral Rights. The Service Provider must ensure that such consents are obtained genuinely and be given without duress of any kind.
- 14.8 The Service Provider indemnifies Tetra Tech International Development, its officers, employees and agents against all loss, damage or expense arising in respect of any action or claim for alleged infringement of any patent, copyright, registered design, trade mark or any other Intellectual Property Rights, by reason of Tetra Tech International Development receipt or enjoyment of the Services.

15 INDEMNITY

- 15.1 The Service Provider indemnifies, and undertakes to keep indemnified, Tetra Tech International Development and Tetra Tech International Development's officers, employees, agents and contractors, from and against any costs, losses, damages, expenses (including legal expenses), liabilities or other outgoings of whatever kind suffered or incurred by Tetra Tech International Development or Tetra Tech International Development's officers, employees, agents and contractors arising out of or in connection with:
 - (a) any negligence, wrongful act or omission, wilful default, wilful neglect, Fraud or breach of duty by the Service Provider or any of its Personnel;
 - (b) any breach of a warranty given by the Service Provider under this Agreement;
 - (c) any Default Event or breach by the Service Provider of any of the provisions of this Agreement;
 - (d) loss of, or damage to, any real or personal property owned, leased, licensed or controlled by Tetra Tech International Development, or any real or personal property of any third party, arising out of or in connection with the performance of the Services or any activity for which the Service Provider is directly or indirectly responsible;

- (e) personal injury (which includes illness) or death of any person arising out of or in connection with the performance of the Services or any activity for which the Service Provider is directly or indirectly responsible; and
- (f) an infringement of or upon Tetra Tech International Development's Intellectual Property Rights, or Intellectual Property Rights in the Contact Material that vest with the Customer at the time of creating such material.

15.2 The Service Provider's liability to indemnify Tetra Tech International Development under this clause 15 will be reduced proportionately to the extent that Tetra Tech International Development's negligent acts or omissions contributed to the relevant loss or liability indemnified.

15.3 In no event will either Party's liability include any amount for indirect loss, loss of bargain, loss of revenues or profits, damage to goodwill, or other consequential losses incurred due to a breach, unless such loss is reasonably contemplated by this Agreement. Nothing in this clause 15.3 will preclude the recovery by the affected Party of loss or damage which may fairly and reasonably be considered to arise naturally, that is according to the usual course of things, from the breach or other act or omission giving rise to the relevant liability.

15.4 Nothing in clause 15.3 operates to exclude or limit any liability incurred by the Parties as a result of or in connection with:

- (a) a loss or liability, which at law cannot be limited or excluded; or
- (b) liability to a third party which is the subject of an indemnity.

15.5 This clause will survive termination of this Agreement.

16 INSURANCE (OPTION 1)

16.1 The Service Provider must effect and maintain the insurance policies set out in Schedule 2 (**Insurance Policies**) for the times and in the manner specified in this clause 16, except to the extent that a particular risk is insured against under other insurance effected in compliance with this clause 16.

16.2 For clarity, the terms of this clause 16 do not alter the allocation of risk or liability between the parties as provided for under any other clause of this Agreement.

16.3 The Service Provider must use reasonable best endeavours to ensure that its subcontractors are insured as required by this clause 16 as is appropriate (including with respect to the amount of insurance, types of insurance and period of insurance) given the nature of services or work to be performed by them, as if they were the Services Provider.

16.4 With the exception of statutory insurances, the insurance required under this clause 16 shall be effected with an insurer with a financial security rating of "A-" or better by Standard & Poors (or the equivalent rating with another recognised rating agency), or a reputable insurer approved by Tetra Tech International Development, acting reasonably.

16.5 The Insurance Policies must be in the name of the Service Provider and must be adequate to cover the Service Provider for its respective rights, interests and liabilities including any right, interest and liability arising out of or in connection with any subcontracted Services.

16.6 The Insurance Policies may only be cancelled or changed if:

Commented [SK5]: Drafting note - use Option 1 (long form) or Option 2 (short form)

Option 1 may be used where services being delivered:
 - carry a higher risk (financial, legal, or otherwise)
 -the services are complex in nature,
 -there will be a high degree of reliance on the services (and the services or activity that the services relate to carry a reasonable risk of financial loss or physical harm if something goes wrong)

Note that the risk for Tetra Tech is higher if, should the risk eventuate, the loss / liability / responsibility will be borne by Tetra Tech in the first instance.

- (a) the cancellation or change will not constitute a breach of this Agreement; and
 - (b) the Service Provider has provided at least 14 days' prior written notice to Tetra Tech International Development.
- 16.7 The obtaining of any insurance by the Service Provider in accordance with this clause 16 does not in any way reduce, limit or otherwise affect any obligations, liabilities or warranties of the Service Provider under any other provision of this Agreement or otherwise at Law.
- 16.8 The Service Provider must pay all premiums and all deductibles applicable to the Insurance Policies when due and promptly reinstate any insurance required under this clause 16 if it lapses or if cover is exhausted.
- 16.9 The Service Provider shall ensure that its Public and/or Professional Liability insurance contains an indemnity extension to cover the vicarious liability of Tetra Tech International Development for acts or omissions of the Service Provider.
- 16.10 The Service Provider must effect and/or maintain the Insurance Policies referred to in this clause 16 on or before the date of execution of this Agreement until, subject to clause 16.11, the end of the Term.
- 16.11 If is the wording of an Insurance Policy specified in Schedule 2 is constructed on a claims made basis, that insurance must be maintained without interruption until the earlier of:
- (a) 7 years after completion of the Services under this Agreement; or
 - (b) 7 years following earlier termination of this Agreement.
- 16.12 Before the date of execution of this Agreement, and within 14 days of request by Tetra Tech International Development, the Service Provider must give to Tetra Tech International Development certificates of insurance or such other proof of the currency and terms of the insurances required under this clause 16 that Tetra Tech International Development reasonably requires.
- 16.13 In respect of each insurance required under this clause 16, the Service Provider must:
- (a) promptly inform Tetra Tech International Development if it becomes aware of any actual, threatened or likely claims which could materially reduce the available limits of indemnity and shall reinstate or replace any depleted aggregate limit of indemnity resulting from claims that are unrelated to the Services, if requested to do so by Tetra Tech International Development; and
 - (b) not do or omit to do any act that would be grounds for an insurer to refuse to pay a claim made under any of the Insurance Policies.
- 16.14 If the Service Provider fails to effect and maintain the insurances in accordance with this clause 16, Tetra Tech International Development may (in addition to any other rights Tetra Tech International Development may have) at its sole discretion:
- (a) effect and maintain those insurance and Tetra Tech International Development may elect to recover the amount from the Service Provider under clause 13.8; or
 - (b) provide a notice of termination for default in accordance with clause 18; or
 - (c) at the Service Provider's sole cost, delay the commencement of the Services, suspend the performance of the Services, deny access to any relevant site and/or

Commented [SK6]: Drafting note: Vicarious liability for TTID for acts or omissions of service provider may not be possible for suppliers delivering professional services.***Accept deleting this clause***

Commented [SK7]: Drafting note:

For procurements using this Option 1 which are higher risk, it will generally be appropriate to require at least 7 years cover for claims made insurance.

For services relating to construction activities, 10 years may be appropriate.

This should be checked against the Head Contract, which may impose a longer period and require that Tetra Tech impose the same requirements on our subcontractors.

Commented [SK8]: TT Internal Note for future matters:

1.1.1 In respect of each insurance referred to in this clause 9, the Contractor shall:

- a. pay (or cause to be paid) all premiums and deductibles as and when they are due;
- b. not do anything or fail to do anything or (insofar as it is reasonably within its power) permit anything to occur which prejudices any insurance;
- c. if necessary, rectify anything which might prejudice any insurance;
- d. reinstate an insurance policy if it lapses;
- e. not cancel, materially adversely vary or allow an insurance policy to lapse without the prior written consent of the Commonwealth;
- f. promptly notify the Commonwealth of any event (including the issue of a notice of intention to cancel by the insurer to the policyholder) which may result in an insurance policy lapsing or being cancelled;
- g. promptly inform the Commonwealth if it becomes aware of any actual, threatened or likely claims (with the exception of claims or potential claims by the Commonwealth against the Contractor) which could materially reduce the available limits of indemnity or which may involve the Commonwealth, and shall reinstate or replace any depleted aggregate limit of indemnity resulting from claims that are unrelated to the work under the Contract, if requested to do so in writing by the Commonwealth;
- h. give full, true and particular information to the insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any policy or the payment of any claims under the insurance; and
- i. do everything reasonably required by the Commonwealth in order to allow the Commonwealth or any other person for whose benefit the policy is effected to claim and to collect or recover monies due under any insurance policy.

refuse any payment in respect of the Services, until such time as the Service Provider has fully complied with this clause 16.

- 16.15 The Insurance Policies are primary and not secondary to the indemnities in this Agreement. The parties acknowledge and agree that if a claim is made under an Insurance Policy, it is their intention that the insurer cannot require Tetra Tech International Development to exhaust any indemnities referred to in this Agreement before the insurer considers or meets the relevant claim.
- 16.16 In specifying insurance requirements in this Agreement Tetra Tech International Development accepts no liability for the completeness of the listed insurance requirements, the adequacy of the sum insured, limit of liability, scope of coverage, conditions or exclusions of those insurances in respect of how they may or may not respond to any loss, damage or liability. The Service Provider acknowledges and agrees that it is the Service Provider's responsibility to assess and consider the risks and scope of insurances required under this Agreement.
- 16.17 The Service Provider acknowledges and agrees that regardless of whether the Insurance Policies respond or not and why, the Service Provider is not released (in whole or in part) from any of the indemnities referred to in this Agreement, or generally.

16 INSURANCE (OPTION 2)

- 16.1 The Service Provider must (and must ensure that any of its subcontractors) effect and maintain the insurance policies set out in Schedule 2 (**Insurance Policies**) for the term of this Agreement, and if a required insurance is written on a claims made basis, the Service Provider must maintain such insurances without interruption until the earlier of:
- (a) 3 years after completion of the Services under this Agreement; or
 - (b) 3 years following earlier termination of this Agreement.
- 16.2 With the exception of statutory insurances, the insurance required under this clause 16 shall be effected with an insurer with a financial security rating of "A-" or better by Standard & Poors (or the equivalent rating with another recognised rating agency), or a reputable insurer approved by Tetra Tech International Development, acting reasonably.
- 16.3 If the Service Provider fails to effect and maintain the insurances in accordance with this clause 16, Tetra Tech International Development may (in addition to any other rights Tetra Tech International Development may have) at its sole discretion:
- (a) effect and maintain those insurances and Tetra Tech International Development may elect to recover the amounts paid for such insurances from the Service Provider under clause 13.8; or
 - (b) provide a notice of termination for default in accordance with clause 18; or
 - (c) at the Service Provider's sole cost, delay the commencement of the Services, suspend the performance of the Services, deny access to any relevant site and/or refuse any payment in respect of the Services, until such time as the Service Provider has fully complied with this clause 16.
- 16.4 Before the date of execution of this Agreement, and within 14 days of request by Tetra Tech International Development, the Service Provider must give to Tetra Tech International Development certificates of insurance or such other proof of the currency and terms of the

Commented [SK9]: Drafting note: For procurements using this Option 2 which are lower risk, it will generally be appropriate to require at least 3 years cover for claims made insurance.

This should be checked against the Head Contract, which may impose a longer period and require that Tetra Tech impose the same requirements on our subcontractors.

insurances required under this clause 16 that Tetra Tech International Development reasonably requires.

17 FORCE MAJEURE

- 17.1 “**Force Majeure Event**” is limited to the following specific events or circumstances: earthquake, landslide, fire, explosion, war, invasion, act of foreign enemies, hostilities, civil war, rebellion, revolution, insurrection, military or usurped power, martial law or confiscation by order of any government or authority, ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, riot, civil disturbance, blockade or acts of terrorism, pandemic or epidemic which prevents a Party (“**the Affected Party**”) from complying with any of its obligations under this Agreement and which that the Affected Party:
- (a) did not cause or contribute to (by breach of this Agreement or otherwise);
 - (b) cannot reasonably control or influence; and
 - (c) where the Affected Party is the Service Provider, cannot be prevented or avoided or overcome, through prudent management processes, policies and precautions, including the use of alternative resources, the procuring of services from another source and work around plans.
- 17.2 If either party is prevented from performing any obligations under this Agreement by a Force Majeure Event, then provided that the Affected Party has complied with clause 17.3, such obligations will be suspended, and the Affected Party will have no liability to the other party for failure to perform them, to the extent their performance is prevented by the Force Majeure Event.
- 17.3 The Affected Party must:
- (a) notify the other Party immediately if a Force Majeure Event is preventing it, or is likely to prevent it, from complying with any of its obligations as soon as it becomes aware of the Force Majeure Event and provide full details of the Force Majeure Event including:
 - i. the obligations affected;
 - ii. the nature, extent and likely duration of the effect on those obligations; and
 - iii. the actions taken or proposed to be taken by the Affected Party to remedy, abate, mitigate or minimise the effects of the Force Majeure Event;
 - (b) use all reasonable diligence and means to remedy, abate, mitigate or minimise the effect of the Force Majeure Event;
 - (c) notify the other party in writing when resumption of performance can occur; and
 - (d) promptly resume performance (and give notice of such resumption) as soon as reasonably possible.
- 17.4 The Affected Party must bear its own costs incurred in connection with a Force Majeure Event and the other Party is not liable for (and the Affected Party may not make) any claim or demand relating to a Force Majeure Event.

18 TERMINATION

- 18.1 At any time after a Default Event occurs Tetra Tech International Development may terminate this Agreement with immediate effect by giving notice in writing to the Service Provider.
- 18.2 A Default Event will be taken to have occurred if any of the following events occurs:
- (a) the Service Provider fails to start providing the Services on the Commencement Date;
 - (b) the Service Provider fails to proceed at a rate likely to achieve completion of the Services by the Completion Date;
 - (c) the Service Provider fails to complete the Services by the Completion Date;
 - (d) the Service Provider ceases to provide the Services at any time during the Term (if any) specified in this Agreement;
 - (e) the Service Provider fails to:
 - i. effect and maintain insurance as required by clause 16; or
 - ii. provide Tetra Tech International Development with proof of appropriate insurance upon request by Tetra Tech International Development as required by clause 16;
 - (f) the Service Provider breaches any other provision of this Agreement (including these Conditions) and fails to remedy the breach within 30 days after receiving written notice requiring that to be done;
 - (g) any step is taken to enter into any arrangement between the Service Provider and the Service Provider's creditors;
 - (h) the Service Provider ceases to be able to pay the Service Provider's debts as they become due;
 - (i) the Service Provider ceases to carry on business; or
 - (j) any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator, a provisional liquidator or other like person of the whole or any part of the Service Provider's assets or business.
- 18.3 Where, before termination of this Agreement under this clause 18, Tetra Tech International Development has made payment to the Service Provider in advance of performance and completion of the Services but:
- (a) some or all of the Services were not performed or completed; or
 - (b) clause 4.9 applies,
- the Service Provider must on or before termination repay that amount to Tetra Tech International Development. If not so re-paid, the amount is recoverable by Tetra Tech International Development from the Service Provider as a debt.
- 18.4 If this Agreement is terminated under this clause 18:
- (a) the Parties are relieved from future performance without prejudice to any right of action that has accrued at the date of termination;
 - (b) rights to recover damages are not affected; and

- (c) the Service Provider indemnifies Tetra Tech International Development in respect of any additional cost Tetra Tech International Development may incur in purchasing similar services from alternative suppliers.

19 TERMINATION FOR CONVENIENCE

- 19.1 The Service Provider acknowledges that, if there is a policy or funding decision which impacts upon Australia's overseas development assistance budget and associated programs, the Customer has an unfettered discretion to, by notice to Tetra Tech International Development, terminate or reduce the scope of the Head Contract.
- 19.2 Without limiting Tetra Tech International Development's rights under this Agreement, at law or in equity, Tetra Tech International Development's rights under this clause 19.2 include the discretion to terminate immediately on notice or reduce the scope of this Agreement if the Customer determines that the continuation of this Agreement, or the continuation of a program or initiative for the purposes of which this Agreement was entered into, does not support the achievement of value for money by the Customer.
- 19.3 The Parties acknowledge and agree that such a determination by the Customer may be made in the absence of a breach of this Agreement by the Service Provider and due to circumstances beyond the Service Provider's and Tetra Tech International Development's control.
- 19.4 If Tetra Tech International Development terminates this Agreement under this clause 19, Tetra Tech International Development will only be liable to the Service Provider for the following loss or damage incurred as a direct consequence of termination of this Agreement to the extent that they can be reasonably substantiated and are unable to be avoided or mitigated:
 - (a) fees and any Reimbursable Costs, as payable under item 1 of Schedule 2 (Agreement Details) for Services provided before the effective date of termination (on a pro-rata basis, if applicable); and
 - (b) excluding all other loss or damage, including the cost of redundancies, the costs of terminating any subcontracts, loss of profits and all other forms of expectation loss.
- 19.5 Tetra Tech International Development is not obliged to make any further payments to the Service Provider (whether under this Agreement, at law or in equity) if Tetra Tech International Development exercises its rights in clause 19.2 except as expressly provided under this clause 19.

20 CONFIDENTIALITY AND DISCLOSURE

- 20.1 The Parties agree that all information obtained in connection with or incidental to the Services, including Confidential Information, is confidential as between the Parties.
- 20.2 Subject to clauses 20.5 and 20.5 and any mandatory disclosure obligations imposed by the law, neither Party will disclose any Confidential Information relating to this Agreement or the Services, without the prior written consent of the other Party.
- 20.3 The obligation in clause 20.2 will not be breached where:

- (a) relevant information is publicly available (other than through of a confidentiality or non-disclosure obligation);
 - (b) a Party is required by law or a stock exchange to disclose relevant information, provided that any such request is reported in writing to the other Party without delay and the text of the disclosure provided in writing as soon as practicable; or
 - (c) disclosure is required for legal proceedings,
- provided that where the disclosure of Confidential Information is permitted under this clause, the disclosing Party must use all reasonable endeavours to ensure that persons receiving the Confidential Information do not further disclose the information.

20.4 If a Party is required to disclose Confidential Information by law or for legal proceedings, the disclosing Party must provide reasonable notice to the other Party.

20.5 The Service Provider acknowledges and agrees that:

- (a) Tetra Tech International Development may disclose the terms of this agreement to the Customer, if requested to do so by the Customer;
- (b) the Customer may be required by law to disclose the Service Provider's name and details of the services it is being engaged to perform.

20A ACCESS TO DOCUMENTS AND INFORMATION (DFAT & CTH CONTRACTS)

20A.1 The parties acknowledge and agree that this Agreement is a Commonwealth Contract within the meaning of the *Freedom of Information Act 1982* (Cth) and:

- (a) if the Customer or Tetra Tech International Development have received a request for access to a document relating to performance of this Agreement that is in the possession of Tetra Tech International Development or the Service Provider, the Customer may be written notice require that access to such document/s be given.
- (b) if so requested, the Service Provider must produce or provide access to any such document/s promptly, at no additional cost.

20A.2 If complying with the notice will require the Service Provider to incur significant additional costs, the Service Provider may request that the additional costs be reimbursed. Tetra Tech International Development may, at its discretion, approve that such costs be reimbursed where:

- (a) the Customer has approved that the additional costs be reimbursed; or
- (b) Tetra Tech International Development considers it reasonable and appropriate that such costs be reimbursed.

20A.3 For the avoidance of doubt, if reimbursement is approved under this clause, the Customer or Tetra Tech International Development will determine the costs that are to be reimbursed which may be less than the amount sought by the Service Provider.

21 GOVERNING LAW AND JURISDICTION

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Template Version: 6

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Contractor:

Document Version: 0

This Agreement and any transactions contemplated under this Agreement are governed by and are to be construed in accordance with the laws of South Australia. Each Party to this Agreement unconditionally submits to the exclusive jurisdiction of the courts of South Australia.

22 PRIVACY

22.1 The Service Provider is a "Contracted Service Provider" within the meaning of the *Privacy Act 1988* (Cth) and, to the extent that it deals with personal information in the provision of Services, agrees to:

- (a) comply with the Australian Privacy Principles as they apply to Tetra Tech International Development, including:
 - i. to use or disclose personal information only for the purposes of this Agreement;
 - ii. take necessary steps to ensure adequate security measures are in place to protect personal information from misuse, interference and loss and from unauthorised access, modification or disclosure;
 - iii. comply with the requirements of Australian Privacy Principle 8 regarding the disclosure of personal information to an overseas recipient;
- (b) not do any act, or engage in any practice that would, if done in or engaged in by Tetra Tech International Development, breach the Australian Privacy Principles;
- (c) comply with any reasonable request or direction of Tetra Tech International Development or the Privacy Commissioner in relation to access to, or handling of, personal information;
- (d) immediately notify Tetra Tech International Development if it becomes aware of a breach or possible breach of any obligations referred to in this Clause, or the initiation of any action by the Privacy Commissioner relevant to this Agreement; and
- (e) investigate any complaint arising out of a breach or possible breach of any obligations referred to in this clause and notify Tetra Tech International Development of that investigation and outcome.

22.2 The Service Provider agrees to indemnify Tetra Tech International Development in respect of any loss, liability or expense suffered or incurred by Tetra Tech International Development which arises directly from a breach by the Service Provider of any obligations referred to in this clause.

23 TAXES

23.1 Unless otherwise indicated, the amount payable under this Agreement for each supply of Services under this Agreement is the value of that supply plus any GST imposed under the GST Act. Payment by Tetra Tech International Development to the Service Provider of the GST is subject to the Service Provider providing Tetra Tech International Development with a valid Tax Invoice issued in accordance with the relevant provisions of the GST Act and regulations.

- 23.2 The total amount of GST payable by the Service Provider and for which the Service Provider seeks payment from Tetra Tech International Development in respect of the supply must be shown as a separate item on the Service Provider's Tax Invoice.
- 23.3 If the GST payable for any taxable supply under this Agreement varies from the additional amount payable under clause 23.1 as a result of an adjustment event, any additional GST must be paid by the recipient, or any credit of GST must be refunded by the supplier, upon receipt of an adjustment note from the supplier.
- 23.4 Where the recipient is required to reimburse or indemnify the supplier under this Agreement, the supplier shall take into account any input tax credit to which it is entitled before increasing the amount of the reimbursement or indemnity on account of GST under this clause.
- 23.5 The Service Provider must pay all Taxes in connection with this Agreement (not including GST) and indemnifies and holds harmless Tetra Tech International Development against any such Taxes.
- 23.6 If Tetra Tech International Development is required to make a Withholding Payment from any amount payable to the Service Provider, the Tetra Tech International Development will pay the Service Provider the balance of the amount payable after deduction of the Withholding Payment.

24 DISPUTE RESOLUTION

- 24.1 If a dispute arises under this Agreement, prior to commencing any arbitration or court proceedings (other than for interlocutory relief or where an authority of the Commonwealth, a State or Territory is investigating a breach or suspected breach of the law by the Service Provider, or Tetra Tech International Development is exercising a right to terminate) the Parties must act in good faith and use their reasonable endeavours to resolve the dispute as follows:
- (a) the Party claiming that there is a dispute must give the other a written notice in accordance with clause 25 setting out the nature of the dispute;
 - (b) within 10 Business Days following notice, attempt to resolve the dispute through direct negotiation between the Service Provider Representative and Tetra Tech International Development Representative;
 - (c) if still unresolved, refer the dispute to each Party's Escalation Representatives, who must in good faith work to resolve the dispute within a further 10 Business Days or any other agreed period;
 - (d) if still unresolved, the Parties have 30 Business Days from the receipt of the notice to reach a resolution or to agree that the dispute is to be submitted to mediation or conciliation rather than litigation or arbitration; and
 - (e) if the dispute is not resolved in that time or there is no agreement to, or submission of the dispute to mediation or conciliation within a further 30 Business Days, then either Party may commence legal proceedings.
- 24.2 The Escalation Representative may delegate all or some of his or her powers in relation to resolving the dispute and, notwithstanding anything in this clause 24, the Escalation Representative of either Party may be substituted and replaced with reasonable written notice delivered to the other Party.

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24.3 Notwithstanding any existing dispute between the Parties, or that legal proceedings are pending or current, and subject to clause 13, each Party and its Personnel must continue to comply with their obligations under this Agreement.

25 NOTICES

25.1 A notice given under this Agreement:

- (a) must be in writing, signed by the Representative, or other authorised officer, marked for the attention of the person set out in Schedule 2, and sent to that person's relevant address, by prepaid ordinary post (airmail if posted to or from a place outside Australia), or by email to the person's email address; and
- (b) will be taken to be received on the date it is delivered (if hand-delivered to the Party), in the case of a pre-paid letter sent by ordinary mail, on the third Business Day after posting (or seventh if posted to or from a place outside of Australia), or in the case of email, when it is delivered to a system from which the addressee can retrieve it.

26 COUNTER-TERRORISM

26.1 The Service Provider must ensure that funds provided under this Agreement (whether through a subcontract or not) do not provide direct or indirect support or resources to:

- (a) organisations and/or individuals associated with terrorism, or
- (b) organisations and individuals for whom Australia has imposed sanctions under:
 - i. the Charter of the *United Nations Act 1945* (Cth) and regulations made under that Act;
 - ii. the *Autonomous Sanctions Act 2011* (Cth) and regulations made under that Act; or
 - iii. the World Bank List or a Relevant List.

27 MODERN SLAVERY

27.1 The Service Provider warrants and agrees that:

- (a) it has not engaged, and will not engage, in any Modern Slavery practices;
- (b) it complies with and will continue to comply with Modern Slavery Laws;
- (c) it has investigated the risk of Modern Slavery within its operations, and those of its supply chain;
- (d) it assesses and addresses risks regarding Modern Slavery, including implementing appropriate due diligence and, where required, remediation programs;
- (e) it will, as soon as possible, notify Tetra Tech International Development in writing of any confirmed instances of Modern Slavery arising directly or indirectly in relation to this Agreement or the Project and the actions undertaken by it to remedy the issue;
- (f) it has all the necessary processes, procedures, investigations and compliance systems in place to undertake the actions in clauses 27.1(a) to (e).

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- 27.2 The Service Provider must comply (and ensure that its subcontractors comply) with any requests made by Tetra Tech International Development to provide any assistance, information, documents or interview any person as required by the Tetra Tech International Development to enable Tetra Tech International Development to discharge any obligations arising under the Modern Slavery Laws.
- 27.3 The Service Provider indemnifies Tetra Tech International Development against all actions, claims, demands and proceedings against Tetra Tech International Development, and all losses, damages, costs, expenses and other liabilities suffered or incurred by Tetra Tech International Development, arising from any failure by the Service Provider to comply with its obligations under this clause 27.

28 PREVENTING SEXUAL EXPLOITATION, ABUSE AND HARASSMENT

- 28.1 The Service Provider must either:
- (a) develop and implement a written policy and procedure that sets out how the Service Provider will work to prevent sexual exploitation, abuse and harassment ("PSEAH") policy that includes the requirements set out in clause 28.2,
 - (b) comply with and take all necessary steps to ensure it remains complaint and acts in accordance with the principles, minimum standards and reporting requirements that are set out in the DFAT PSEAH Policy, accessible at <http://www.dfat.gov.au/pseah>, to the extent relevant to the services the Service Provider is engaged to perform.
- 28.2 If 28.1(a) applies, the PSEAH Policy must:
- (c) set out procedures for reporting and investigating allegations of sexual exploitation, abuse and harassment ("SEAH"), managing risks of SEAH and communicating the expectations of the PSEAH Policy to all of the Service Provider's Personnel; and
 - (d) include the principles, minimum standards and reporting requirements that are materially the same as those set out in the DFAT PSEAH Policy, accessible at <http://www.dfat.gov.au/pseah>.
- 28.3 If the Service Provider is authorised to engage third party Personnel to perform the Services, the Service Provider will ensure that relevant agreements with such Personnel impose an obligation to comply and act in accordance with the DFAT PSEAH Policy or where applicable, the Service Provider's PSEAH Policy, to the extent relevant to any services or other services the Subcontractor is engaged to perform.

28 PREVENTING SEXUAL EXPLOITATION, ABUSE AND HARASSMENT (MFAT VERSION)

- 28.1 The Service Provider must, and must ensure that its Personnel and Subcontractors, at all times while providing the Services, comply with MFAT's policies, procedures, and guidelines on preventing sexual exploitation, abuse, and harassment ("PSEAH Policy") accessible at: <https://www.mfat.govt.nz/nz/aid-and-development/our-approach-to-aid/preventing-sexual-exploitation-abuse-and-harassment/>

- 28.2 Tetra Tech International Development, or the Customer may from time to time conduct a review of the Service Provider's compliance with the PSEAH Policy, and the Supplier agrees to participate cooperatively in any such review.
- 28.3 The Service Provider must notify Tetra Tech International Development of any alleged or actual incident of sexual exploitation, sexual abuse, sexual harassment (as those terms are defined in the PSEAH Policy) or any non-compliance with the PSEAH Policy itself by itself, its Personnel, or any relevant subcontractors within the timeframes as specified in the PSEAH Policy.

Commented [WB10]: Drafting Note:
Remove this clause if the Client is DFAT

29 CHILD PROTECTION

- 29.1 The Service Provider must develop and implement arrangements for effective safeguarding of children ("**Child Protection Framework**") that includes all relevant requirements set out in clause 29.2, to the extent relevant to the services the Service Provider is engaged to perform.
- 29.2 The Child Protection Framework must include systems, procedures and operational controls that provide for:
- (a) effective leadership to enable the safeguarding of children;
 - (b) provisions within employment contracts and agreements with subcontractor Personnel that prevent (or empower the Service Provider to prevent) a person from working with children if they present an unacceptable risk to children;
 - (c) appropriate disciplinary action to dismiss, suspend or transfer to other duties, any employee who breaches relevant requirements of the Child Protection Framework;
 - (d) recruitment screening processes for all Personnel that will, or are reasonably likely to, have contact with children when performing their role, with such screening processes including:
 - i. criminal record checks before engagement or where such checks are not available or unreliable, a legal declaration made by the relevant individual confirming that there are no convictions or charges pending for offences relevant to the safety of children, including violent or sexual offending against a child; serious or aggravated animal cruelty; recording images of or filming a child; intentional harmful conduct including poisoning and arson; and
 - ii. verbal referee checks,
 - (e) implement measures to prevent inappropriate, use of images and personal information of children from promotion, fundraising or education and which ensure the privacy and safeguarding of children.
- 29.3 The Service Provider will ensure that its agreements with all subcontractor Personnel impose an obligation on any subcontractor Personnel to comply with relevant requirements of the Service Provider's Child Protection Framework, to the extent relevant to any Services they are engaged to perform.

30 FRAUD

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- 30.1 The Service Provider must not, and must ensure that its Personnel do not, engage in any Fraud and must prevent and detect Fraud, including Fraud by its Personnel.
- 30.2 The Service Provider must ensure that its Personnel are responsible and accountable to the Service Provider for preventing and reporting any Fraud as part of their routine responsibilities.
- 30.3 If the Service Provider becomes aware of a Fraud (or a suspected Fraud), it must report the matter to Tetra Tech International Development in writing as soon as reasonably possible and in any event, within five (5) Business Days of becoming aware of such event. The written report to Tetra Tech International Development must be signed by a Service Provider authorised person and must include the following (where known):
- (a) name of any Personnel (including any subcontractors) involved;
 - (b) the allegation(s), including a chronological account of the facts giving rise to the allegation(s);
 - (c) the names of the suspected offender(s) (where known);
 - (d) details of witnesses;
 - (e) copies of relevant documents;
 - (f) references to any relevant legislation;
 - (g) a nominated contact officer;
 - (h) any other relevant information (e.g., political sensitivities, any other Party or agency that has been informed, involved or that can assist with investigations); and
 - (i) the current status of any inquiries commenced by the Service Provider.
- 30.4 Tetra Tech International Development reserves the right to appoint its own investigator, conduct its own investigation and/or report suspected Fraud to the appropriate law enforcement agencies or any other person or entity Tetra Tech International Development deems appropriate in Australia or in the Partner Country for investigation. If Tetra Tech International Development exercises its rights under this clause 30.4, the Service Provider must provide all reasonable assistance that may be required at its own expense.

31 ANTI – CORRUPTION

- 31.1 The Service Provider warrants that neither it nor its Personnel will make or cause to be made, receive or seek to receive any offer, gift or payment, or benefit of any kind, which could be construed as an illegal or corrupt act, either directly or indirectly to any Party, in relation to the execution of this Agreement.
- 31.2 Any breach of this clause 31 will entitle Tetra Tech International Development to issue a notice under clause 18 to terminate this Agreement immediately.

32 WORK HEALTH AND SAFETY

In carrying out the Services the Service Provider must:

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- (a) comply, and ensure that any subcontractor, subconsultant comply, with all WHS Legislation, codes of practice, standards and policies and other requirements of this Agreement in respect of work health and safety;
- (b) ensure so far as is reasonably practicable, the health and safety of workers engaged, or caused to be engaged by the Service Provider, and workers whose activities in carrying out work are influenced or directed by the Service Provider, while the workers are at work;
- (c) ensure so far as is reasonably practicable, that the health and safety of other persons is not put at risk;
- (d) comply with its duty under the WHS Legislation to consult with workers who carry out work for the Service Provider (or are likely to be) directly affected by a work health and safety matter;
- (e) comply with its duty under the WHS Legislation to consult, cooperate and coordinate activities with all other persons who have a work health and safety duty in relation to the same matter; and
- (f) allow Tetra Tech International Development or its agents to review, inspect, audit or otherwise observe the Service Provider's health and safety systems, work practices and procedures related to the Services at any time, at the Service Provider's cost, without Tetra Tech International Development incurring any liability or responsibility for such matters.

33 PUBLICITY

The Service Provider may not make media or other announcements or releases relating to this Agreement without Tetra Tech International Development's prior written approval except to the extent that the announcement or release is required to be made by law.

34 NOVATION, ASSIGNMENT AND SUBCONTRACTING

- 34.1 Under the Head Contract between the Customer and Tetra Tech International Development, the Customer has the right of substitution to further novate this Agreement to another managing contractor. The Service Provider, by entering into this Agreement for the provision of the Services, acknowledges that this Agreement can be novated and it does not create any contractual relationship between the Customer and the Service Provider.
- 34.2 The Service Provider is permitted to subcontract any part of the Services but remains responsible for delivery of the Services.
- 34.3 Where the Service Provider subcontracts any part of the Services, the work undertaken by the Service Provider's Personnel must be performed to the same standards as stated in this Agreement.
- 34.4 The Service Provider will not, as a result of any subcontracting arrangement, be relieved from the performance of any obligation under this Agreement and will be liable for all acts and omissions of any subcontracted Personnel as though they were the actions of the Service Provider itself.
- 34.5 The Service Provider acknowledges and agrees that, unless the context in which the right of obligation is stated in this Contract requires otherwise, nothing in this Contract is intended to

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confer any enforceable rights or benefits on any person (other than the Customer or Tetra Tech International Development) accessing Services provided under this Contract,

35 PERFORMANCE ASSESSMENT AND VALUE FOR MONEY

35.1 In this clause 35:

(a) "VfM" means "value for money" as defined in the Commonwealth Procurement Rules available online at:

<https://www.finance.gov.au/government/procurement/commonwealth-procurement-rules>

(b) "VfM Principles" means "value for money principles", being the principles to guide decision making and which are subject to assessment by the Customer, the details of which are that are set out online at:

35.2 The Service Provider acknowledges and agrees that the Customer may issue a Service Provider performance assessment in relation to this Agreement.

35.3 The Service Provider agrees that the Customer or Tetra Tech International Development may issue:

(a) a Service Provider performance assessment; or

(b) Service Provider key personnel performance assessments, in relation to the Agreement; or

(c) request for a documents or information demonstrating compliance with VfM Principles applicable to the Services.

35.4 The Service Provider will sign and return the Service Provider performance assessment together with any response within 15 days of receipt and will ensure that the Service Provider personnel performance assessments together with any response any personnel wishes to include are signed and returned within 15 days of receipt.

35.5 The Service Provider will produce the documents and/or information set out in the request issued under clause 35.3(c) within 15 days of receipt.

36 COMPLIANCE WITH CUSTOMER AND TETRA TECH INTERNATIONAL DEVELOPMENT POLICIES AND PROCEDURES

36.1 The Service Provider and its Personnel must have regard to and comply with, relevant and applicable laws, guidelines, regulations and policies, including those in Australia and in the Partner Country.

36.2 The Service Provider must ensure that it and its Personnel comply with DFAT and Commonwealth Government policies and guidelines applicable to the Services, including the policies, procedures and guidelines listed in Schedule 4.

Commented [WB11]: We should update this language to be "Client" right? @Simon K

37 NOTIFICATION TO TETRA TECH INTERNATIONAL DEVELOPMENT

37.1 The Service Provider must immediately notify Tetra Tech International Development if the Service Provider, including its Personnel is:

- (a) subject to a change in Control of its legal entity;
- (b) on the DFAT Consolidated List, the Criminal Code Act List, the World Bank List or a Relevant List;
- (c) subject to any proceedings or informal process that could lead to listing on the DFAT Consolidated List, the Criminal Code Act List, the World Bank List or a Relevant List;
- (d) temporarily suspended from tendering for World Bank contracts by the World Bank, pending the outcome of a sanctions process;
- (e) temporarily suspended from tendering by a donor of development funding; and/or
- (f) the subject of an investigation (whether formal or informal) by the World Bank or another donor of development funding.

Commented [SK12]: Term not defined

Commented [SK13]: Term not defined

37.2 The Service Provider must inform Tetra Tech International Development immediately if the Service Provider becomes aware of any issue that may affect its performance of, or compliance, with this Agreement.

EXECUTED as an Agreement

SIGNED for and on behalf of Tetra Tech International Development Pty Ltd by:

Name (print)

Name of witness (Print)

Signature

Signature

Date:

Date:

SIGNED for and on behalf of < Service Provider > as the authorised representative by:

Authorised signatory name (print)

Name of witness (Print)

Signature

Date:

Signature

Date:

SCHEDULE 1
SCOPE OF SERVICES

1. SCOPE OF SERVICES

< Enter text here >

2. SPECIAL CONDITIONS

SCHEDULE 2

AGREEMENT DETAILS

SERVICE PROVIDER:	
PROJECT:	
COMMENCEMENT DATE:	
COMPLETION DATE:	
LOCATION:	
PARTNER COUNTRY:	
CUSTOMER:	
HEAD CONTRACT:	Title:
	Date of execution:

1. PRICES

The total amount payable for the Services will not exceed the sum of up to: [AUD XXXXX] excluding GST (AUD: XXXXX inclusive of GST). Tetra Tech International Development is not liable for any costs or expenditure incurred by the Service Provider in excess of this amount, unless previously approved by Tetra Tech International Development via a contract Variation Directed by Tetra Tech International Development.

2. MILESTONE PAYMENTS

Tetra Tech International Development will pay the Service Provider the Prices for the Services in instalments known as milestone payments as described in this schedule ("**Milestone Payments**").

Where a Milestone Payment is to follow acceptance of a report, Tetra Tech International Development is not obliged to make full payment until all of the outputs to be achieved by the Service Provider in the period covered by the report have been achieved to its satisfaction.

The Milestone Payments will be payable to the Service Provider progressively, on Tetra Tech International Development's acceptance of the satisfactory completion of identified outputs and a correctly rendered invoice.

Milestone Payments will be paid within 30 days of acceptance by Tetra Tech International Development of the milestones being completed to its satisfaction as summarised below:

3. MILESTONES:

Milestone Number	Description of Milestone	Milestone Payment Amount AUD (Ex- GST)	Due Date	Means of Verification/ Acceptance
1				Written acceptance by nominated Tetra Tech International Development Representative
2				Written acceptance by nominated Tetra Tech International Development Representative
3				Written acceptance by nominated Tetra Tech International Development Representative
4				Written acceptance by nominated Tetra Tech International Development Representative

4. CLAIMS FOR PAYMENT

The Service Provider claims for payment must be submitted when due pursuant to this schedule in a form identifiable with the Services.

All claims for payment must include a certification by a duly authorised representative:

- i. that the invoice has been correctly calculated;
- ii. that the services included in it have been performed in accordance with this Agreement.

All claims for payment must be made to:

< XXXXX >

Senior Project Manager

Tetra Tech International Development Pty Ltd

33 Richmond Road Keswick SA 5035

Email: < xxx@tetrattech.com >

Tetra Tech International Development need not pay an amount that is disputed in good faith by Tetra Tech International Development until the dispute is resolved.

Subject to the provisions of the Agreement, on receipt of a correctly rendered invoice, Tetra Tech will pay the invoiced amount to the Service Provider's Nominated Account as detailed below:

Bank:

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Address:

Account Name:

BSB:

Account Number:

SWIFT Code:

5. INSURANCE REQUIREMENTS

- a. Public Liability insurance with a limit of at least AUD XX million, for each and every occurrence and in the aggregate for all occurrences in any 12 month policy period, which covers the Service Provider and the Service Provider's Personnel for their respective liabilities caused by, arising out of, or in connection with the negligent performance of any obligation or the exercise of any right under the Agreement, including <<<<< loss of, or damage to, or loss of use of any real or personal tangible property (including Client property) in the care, custody or control of the Service Provider or its Personnel and/or >>>>> any personal injury to, illness or death or any person arising from the performance of the Services or any obligation or the exercise of any right under the Agreement. [The following sentence is optional and should be used where the acquired items will not be used outside of Australia.] This insurance shall have a territorial limit which includes Australia. [The following sentence is optional and should be used where the acquired items may be used outside of Australia.] This insurance shall have a worldwide territorial limit.
- b. Motor Vehicle third party property damage insurance.
- c. Lawful and adequate Workers' workers' Compensation insurance or registrations as required by law:

OPTION 1 – where workers engaged by Service Provider will be performing work outside Australia:

- i. in respect of the Service Provider's liability to its employees engage in the performance of any obligation or the exercise of any right under the Agreement. Where permitted under the relevant statutory workers' compensation scheme, the insurance or registrations will extend to cover the liability of Tetra Tech International Development as principal for the acts or omissions of the Service Provider or its Personnel. These requirements do not apply to the extent and for such time as the Service Provider is an exempt employer in the relevant jurisdiction; and
- ii. where there is no workers compensation legislation in force in the Partner Country or common law claims can be brought outside the statutory workers' compensation scheme referred to above, the Service Provider must arrange:
- iii. adequate personal accident and illness insurance (accidental death and weekly benefits) for any of its Personnel not otherwise covered; and

Commented [SK14]: Delete highlighted text if the service provider will not have any Tetra Tech or client property in its care, custody or control.

- A. employer's liability insurance with a limit of indemnity not less than the amount customarily effected by prudent insureds in each relevant jurisdiction, covering any work related injury, damage, expense, loss or liability suffered or incurred by any person engaged by the Service Provider in the work under the Agreement. Where possible at law, such insurance should extend to cover the liability of Tetra Tech International Development for the acts or omissions of the Service Provider or its Personnel.

OPTION 2 – where workers engaged by Service Provider will be performing work within Australia:

- i. fully insures the Service Provider for any amount it becomes liable to pay under any statute relating to workers' or accident compensation or for employer's liability at common law;
- ii. is effected in the Partner Country as well as every state or territory in Australia where its Personnel employees normally reside or in which their contract of employment was made; and
- iii. where possible at law, extends to indemnify Tetra Tech International Development as principle for Tetra Tech International Development's liability to persons engaged by the Service Provider;

d. Adequate property insurance covering any material created under this Agreement, supplies and the reinstatement of data while in the care, custody or control of the Service Provider for its full replacement value;

OPTION 1

e. Adequate Professional Indemnity insurance to cover the Service Provider's obligations under this Agreement. The Service Provider must maintain the necessary insurance for the term of this Agreement and until the expiration of 7 years after the end of the Term;

OPTION 2

e. professional indemnity insurance with a limit of indemnity of not less than AUDXXXX million for any one claim and in the aggregate for all claims in any 12 month policy period, and including a right of reinstatement, which covers the liability of the Service Provider at general law arising from a negligent breach of duty owed in a professional capacity. Such insurance shall have a retroactive date of no later than the earlier of the commencement of the Services. **Such insurance shall also:**

- i. extend to cover claims related to software and IT risks;
- ii. extend to cover claims for unintentional breaches of IP rights; and
- iii. have worldwide territorial and jurisdictional limits.

f. Adequate medical and dental insurance for its Personnel who are engaged outside their country of permanent residence; and

g. Adequate insurance for medical evacuation and evacuation resulting from an insured event for all its Personnel.

REPRESENTATIVES

Tetra Tech International Development's Representative	Service Provider's Representative
Name:	Name:
Position:	Position:
Telephone:	Telephone:
Email:	Email:

ESCALATION REPRESENTATIVES – in the event of a dispute

Tetra Tech International Development's Escalation Representative	Service Provider's Escalation Representative
Name:	Name:
Position:	Position:
Telephone:	Telephone:
Email:	Email:

SCHEDULE 3
SERVICE PROVIDER'S PROPOSAL

Insert Service Provider's proposal or attach to agreement and insert the following:

REFER TO ATTACHED << DOCUMENT/S / PICTURE/S >> attached to this agreement.

SCHEDULE 4

CUSTOMER & TETRA TECH INTERNATIONAL DEVELOPMENT POLICIES & PROCEDURES

1. The Service Provider and its Personnel must have regard to and comply with, relevant and applicable laws, guidelines, regulations and policies, including those in Australia and in the Partner Country.
2. The Service Provider must ensure that it and its Personnel comply with DFAT and Commonwealth Government policies and guidelines applicable to the Services, including where relevant:
 - (a) *Right to Freedom From Slavery and Forced Labour*, accessible on the Attorney-General's Department website at: <https://www.ag.gov.au/rights-and-protections/human-rights-and-anti-discrimination/human-rights-scrutiny/public-sector-guidance-sheets/right-freedom-slavery-and-forced-labour>
 - (b) *Counterterrorism Policy and Development Approaches to Countering Violent Extremism: Policy Framework and Guidance Note*, accessible online on the DFAT website at: <https://www.dfat.gov.au/aid/topics/development-issues/Pages/development-approaches-to-countering-violent-extremism>
 - (c) *Child Protection Policy* and in particular, the child protection compliance standards at Attachment 1 of DFAT's *Child Protection Policy*, accessible on the DFAT website at <https://www.dfat.gov.au/about-us/publications/pages/child-protection-policy>;
 - (d) *Preventing Sexual Exploitation, Abuse and Harassment Policy*, accessible on the DFAT website at: <https://www.dfat.gov.au/international-relations/themes/preventing-sexual-exploitation-abuse-and-harassment>
 - (e) *Disability Inclusive Development Guidance Note*, accessible on the DFAT website at: *Disability Inclusive Development Guidance Note (dfat.gov.au)*, and the Accessibility Design Guide: Universal Design Principles for Australia's Aid Program, accessible on the DFAT website at: <https://www.dfat.gov.au/about-us/publications/Pages/accessibility-design-guide-universal-design-principles-for-australia-s-aid-program>. Note that this requires where applicable, the involvement of people with disabilities, increasing inclusion related to a range of disabilities, and ensuring universal accommodation and accessible information.
 - (f) *Foreign Bribery Guidelines*, accessible online on the Attorney General's website at: <https://www.ag.gov.au/crime/foreign-bribery>
 - (g) *Fraud Control Policy and Fraud Control Toolkit for Funding Recipients*, accessible on the DFAT website at: <https://www.dfat.gov.au/about-us/publications/Pages/fraud-control-toolkit-for-funding-recipients>
 - (h) *Promoting Opportunities For All – Gender Equality and Women's Empowerment*, accessible on the DFAT website at <http://www.dfat.gov.au/about-us/publications/Pages/promoting-opportunities-for-all-gender-equality-and-women-s-empowerment.aspx>;
 - (i) *Family Planning and the Aid Program: Guiding Principles*, accessible on the DFAT website at: <http://dfat.gov.au/about-us/publications/Pages/family-planning-and-the-aid-program-guiding-principles.aspx>;
 - (j) *Environmental and Social Safeguards Policy*, accessible on the DFAT website at: <https://www.dfat.gov.au/aid/topics/aid-risk-management/Pages/environmental-and-social-safeguards>, and the environmental management and protection actions in the *Environment Management Guide for Australia's Aid Program (2012)* accessible online at: https://acfid.asn.au/sites/site.acfid/files/resource_document/Environment-management-guide-2012-summary-AusAid.pdf

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- (k) DFAT's *Environmental Management System* outlined in the *DFAT Environment Protection Policy (2014)* accessible on the DFAT website at: www.dfat.gov.au. Note that this requires, where relevant to the Services:
 - A. assessing and managing all actual or potential environmental impacts, both direct and indirect, to avoid or mitigate negative impacts and promote positive impacts;
 - B. reporting regularly on any such impacts as required or directed by Tetra Tech International Development or DFAT; and
 - C. comply with all relevant environmental laws and regulations of the jurisdiction of the Principal Place of Services.
 - (l) *Commonwealth Procurement Rules* and Guidelines which require supplier practices to be efficient, effective, economic and ethical, accessible on the Department of Finance website at: <https://www.finance.gov.au/government/procurement/commonwealth-procurement-rules>.
3. The Service Provider must abide by any policies and procedures that Tetra Tech International Development requires, as varied from time to time.

MFAT POLICIES

- 1. The Service Provider and its Personnel must have regard to and comply with relevant and applicable laws, guidelines, regulations and policies, including those in Australia, New Zealand, and in the Partner Country.
- 2. The Service Provider must ensure that it and its Personnel comply with MFAT and New Zealand Government policies and guidelines as they are applicable to the Services, including:
 - (a) MFAT's Supplier Code of Conduct accessible at: <https://www.mfat.govt.nz/en/aid-and-development/working-with-the-aid-programme/>;
 - (b) MFAT's Technical Advisor Code of Conduct accessible at: <https://www.mfat.govt.nz/en/aid-and-development/working-with-the-aid-programme/>;
 - (c) MFAT's NZ Aid Programme PSEAH Policy accessible at: <https://www.mfat.govt.nz/en/aid-and-development/working-with-the-aid-programme/>; and
 - (d) The New Zealand Government Procurement Supplier Code of Conduct accessible at: <https://www.procurement.govt.nz/assets/procurement-property/documents/supplier-code-of-conduct.pdf>
- 3. The Service Provider must abide by any policies and procedures that Tetra Tech International Development requires as varied from time to time.

Commented [WB15]: Drafting Note: Remove this clause if the Client is DFAT

The Service Provider confirms that it has read and understood the above Customer Policies and that the requirements of the Customer Policies must be complied with, where relevant to the Services.

SIGNED for and on behalf of < **Service Provider** > by:

Authorised signatory name (print) Name

Position: Date:

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SCHEDULE 4

Tetra Tech International Development

Code of Conduct and Client Service Standards

Purpose

The purpose of a Code of Conduct and Client Service Standards is to provide a framework for decisions and actions in relation to our employees' conduct both in employment and as Tetra Tech International Development representatives in front of our clients. It underpins our commitment to a duty of care to all Employees, stakeholders and clients receiving our services. The document explains the principles covering appropriate conduct in a variety of contexts and outlines the minimum standard of behaviour and client service expected from Employees.

It is important for Tetra Tech International Development staff and team members to understand that its clients are contracting and paying Tetra Tech International Development to be a professional, responsive, and proficient contractor. In this context, Tetra Tech International Development staff and team members are not to approach clients for solutions or additional inputs for every problem, rather they should be able to identify and quickly address and solve problems in activity management.

Scope

This policy applies to all Employees of Tetra Tech International Development and all of its subsidiaries and related entities.

This policy applies in respect of conduct which relates to or is connected with, in any way, work with a Tetra Tech International Development company, or in connection with a Tetra Tech International Development Group Company provided benefit. This includes, but is not limited to, Employees who are:

- On Company premises
- While on duty in any place where Employees of any Tetra Tech International Development company are working
- Representing a Tetra Tech International Development company
- At a work function organised by a Tetra Tech International Development company
- Travelling for business related purposes.

Definitions

"Company Premises" means any place or thing used by any Tetra Tech International Development company in the course of conducting its business (whether or not owned by or within the exclusive control of a Tetra Tech International Development company) including, but not limited to:

- (a) vehicles
- (b) offices
- (c) car parks
- (d) client worksites
- (e) demountables
- (f) workshops

- (g) warehouses
- (h) kitchens.

“Employees” means Employees as well as other non-Employees (such as independent and sub-contractors) who perform work for a Tetra Tech International Development Group Company.

Responsibilities

Managers and Supervisors

Managers and supervisors are responsible and accountable for:

- Undertaking their duties and behaving in a manner that is consistent with the provisions of the Code of Conduct and Client Service Standards
- The effective implementation, promotion and support of the Code of Conduct and Client Service Standards in their areas of responsibility
- Ensuring Employees under their control understand and follow the provisions outlined in the Code of Conduct and Client Service Standards.

Employees

All Employees are responsible for:

- Undertaking their duties in a manner that is consistent with the provisions of the Code of Conduct and Client Service Standards
- Reporting suspected corrupt conduct
- Reporting any departure from the Code of Conduct and Client Service Standards by themselves or others.

Code of Conduct

Tetra Tech International Development is a complex organisation, which involves a diversity of relationships. These relationships may be defined by differences in power, status, cultural diversity, organisational structures, contracting relationships, differing country laws, labour laws, international relationships and or national governments. It is essential in such a community that all Employees recognise and respect not only their own rights and responsibilities but also the rights and responsibilities of other members of the community and those of Tetra Tech International Development.

Tetra Tech International Development also recognises that many of their professional employees are also bound by codes of conduct or ethics defined by learned or professional societies or groups. It is recognised that these codes are not always in harmony. It is an obligation of an Employee to weigh the importance of these codes in each particular set of circumstances and notify an appropriate officer of Tetra Tech International Development where such conflict may arise.

Personal and Professional Behaviour

You should not behave in a way which has the intent or effect of offending or embarrassing other Employees or the public in a manner contrary to legislative requirements.

When carrying out your duties, you will:

- Obey any lawful direction from a person who has the authority to give the direction. If you have a dispute about carrying out a direction you may appeal to your senior manager.

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- Behave honestly and with integrity. You will avoid behaviour that could suggest that you are not following these principles. This will include a duty to report other Employees who are behaving dishonestly.
- Make sure that you carry out your work efficiently, economically and effectively as you are able and that the standard of your work reflects favourably on yourself and the company.
- Follow the policies of the company in all aspects of work to achieve outcomes that are socially responsible and sustainable.
- Treat Employees, clients and stakeholders with respect.
- Maintain individuals' rights to privacy and undertake to keep personal information in confidence.
- Do not use, possess or distribute pornographic or offensive materials.
- Comply with all national and international laws.
- When representing the Company in public forums:
 - Employees at all levels represent the Company in the course of their employment including when travelling on Company business, attending functions on behalf of the Company or internal Company meetings, conferences, training programs, seminars or any other function.
 - Your behaviour in all these circumstances reflects on the Company and its image. As such, you should act in an appropriate business-like manner that will in no way harm the image of the Company or infringe any other Company policy including the Discrimination Free Workplace Policy.
 - Where any Company function or meeting is held that involves the availability of alcohol, steps should be taken to ensure that it is not abused. You should be aware that being work-related, behaviour in those situations can be subject to disciplinary procedures.

Conflict of Interest

Potential for conflict of interest arises when it is likely that you could be influenced, or it could be perceived that you are influenced by a personal interest when carrying out your duties. Conflicts of interest that lead to biased decision making may constitute corrupt conduct.

Some situations that may give rise to a conflict of interest include situations where you have:

- Financial interests in a matter the company deals with or you are aware that your friends or relatives have a financial interest in the matter
- Directorships/Management of outside organisations
- Membership of Boards of outside organisations
- Personal relationships with the people the company is dealing with which go beyond the level of a professional working relationship
- Secondary employment, business, commercial, or other activities outside of the workplace which impacts on clients and/or Employees of the company
- Involvement in party political activities
- Access to information that can be used for personal gain.

You may often be the only person aware of potential for conflict. Therefore, it is your responsibility to avoid any financial or other interest that could compromise your ability to perform your duties impartially. It is also your responsibility to report any potential or actual conflicts of interest to your manager.

If you are uncertain whether a conflict exists, you should discuss that matter with your manager and attempt to resolve any conflicts that may exist.

You must not submit or accept any bribe, or other improper inducement. Any advances of this nature are to be reported to senior management. If you are dealing with, or having access to, sensitive information, you should be particularly alert to inappropriate attempts to influence you.

Outside employment/other external business activities

If you work full time for the company and you wish to engage in paid employment/other business activities (including participation in family company) outside your official duties, you are required to seek the approval of your manager and Human Resources. The approval should not be unreasonably withheld. However, if there is any real or potential conflict of interest the duties of your position with the company must come first.

If you work for the company on a part time or casual basis, you are required to advise your manager and Human Resources of any real or potential conflict of interest between your employment for the company and any other employment.

The company can request the details of any other employment in the event of allegations of conflict of interest.

Public Comment

Individuals have a right to give their opinions on political and social issues in their private capacity as members of the community.

Employees must not make official comment on matters relating to the company unless they are:

- Authorised to do so by the Managing Director and CEO
- Giving evidence in court
- Otherwise authorised or required to by law.

Employees cannot release the contents of unpublished or privileged knowledge unless they have the authority to do so.

Use of Company Resources

Employees must ensure responsible management and security in the use of Tetra Tech International Development resources and any resources managed by them for or on behalf of others.

Requests to use company resources outside core business time should be referred to management (or person authorised to handle such matters), for approval.

If Employees are authorised to use company resources outside core business times, they must take responsibility for maintaining, replacing, and safeguarding the property and following any special directions or conditions which apply. Company resources can include equipment, typing facilities, photocopiers, computers, tools, motor vehicles etc.

Employees using company resources **without** obtaining prior approval could face disciplinary and/or criminal action. Company resources are not to be used for any private commercial purposes (e.g. for 'profit' purposes) under any circumstances.

Security of Information

Employees are to make sure that confidential and sensitive information in any form (e.g. documents, computers files) cannot be accessed by unauthorised persons. Sensitive material should be securely stored overnight or when unattended.

Employees must ensure that confidential information is only discussed with people who are authorised to have access to it. It is considered a serious area of misconduct to deliberately release confidential documents or information to unauthorised persons and may incur disciplinary action.

Intellectual Property / Copyright

The term 'intellectual property' includes the rights relating to scientific discoveries, industrial designs, trademarks, service marks, commercial names and designations, and inventions.

Tetra Tech International Development is the owner of intellectual property created by Employees in the course of employment unless a specific prior agreement has been made. Employees must clarify the intellectual property position before making any use of that property.

Discrimination, Harassment and Workplace Bullying

Employees must not harass, discriminate against, or support others who harass and discriminate against colleagues or members of the public on the grounds of sex, pregnancy, marital status, age, race (including their colour, nationality, descent, ethnic or religious background), physical or intellectual impairment, homosexuality, or transgender. Employees also must not participate in any form of workplace bullying or support others who do so.

Any employee who uses any of Tetra Tech International Development's resources to perpetrate harassment or domestic violence (e.g. use of work phones, use of cars, use of workspaces etc.) will be subjected to disciplinary processes, which may include termination of their employment.

Managers must make sure that the workplace is free from all forms of harassment, unlawful discrimination, and workplace bullying. They should understand and apply the principles of Equal Employment Opportunity and ensure that the Employee they supervise are informed of these principles and are made aware of the Grievance Handling procedures.

In addition, Tetra Tech International Development does not condone any form of domestic violence and is committed to ensuring the Employees are provided with information, training, and support on how to effectively address domestic violence.

Sexual exploitation and abuse

Employees are obliged to create and maintain an environment which prevents sexual exploitation, abuse, and harassment.

To protect all stakeholders in all situations, Employees while on duty and off duty, must never:

- Sexually exploit or sexually abuse any individual
- Engage in any sexual activity with a child or children regardless of the age of majority or age of consent locally. Mistaken belief in the age of a child is not a defence.
- Act in ways that may place a child at risk of abuse, including not giving due consideration to assessing and reducing potential risks to children as a result of implementing activities. Behaviours and actions that are prohibited include, but are not limited to, using inappropriate language or behaviour when dealing with a child or children, bullying, and harassing a child verbally or physically, physical punishment, exposing a child to pornography including on-line grooming and trafficking. Whenever possible avoid being alone with a child.
- Consume, purchase, sell, possess, and distribute any forms of child pornography.
- Exchange money, employment, goods, or services for sex, including sexual favours or other forms of humiliating, degrading or exploitative behaviour. This includes the buying of or profiting from sexual services as well as exchange of assistance that is due to right holders for sexual favours.
- Exploit the vulnerability of any target group in the context of development, humanitarian, and advocacy work, especially women and children, or allow any person/s to be put into compromising situations. Never abuse a position to withhold development or humanitarian assistance or give preferential treatment; in order to solicit sexual favours, gifts, payments of any kind, or advantage.
- Engage in sexual relationships with members of crisis-affected populations given their increased vulnerability and since such relationships are based on inherently unequal power dynamics and undermine the credibility and integrity of aid work.

Child Protection

For the purposes of this Code of Conduct and Client Service Standards, a child is any person under the age of 18 years.

The onus is on all Employees to use common sense and avoid actions or behaviours that could be construed as child exploitation and abuse when working for Tetra Tech International Development.

When carrying out your duties, you will:

- Treat children with respect regardless of race, colour, gender, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status
- Not use language or behaviour towards children that is inappropriate, harassing, abusive, sexually provocative, demeaning or culturally inappropriate
- Not engage children under the age of 18 in any form of sexual intercourse or sexual activity, including paying for sexual services or acts
- Wherever possible, ensure that another adult is present when working in the proximity of children
- Not invite unaccompanied children into your home, unless they are at immediate risk of injury or in physical danger
- Not sleep close to unsupervised children unless absolutely necessary, in which case you will obtain your supervisor's permission, and ensure that another adult is present if possible
- Use any computers, mobile phones, video cameras, cameras, or social media appropriately, and never to exploit or harass children or to access child exploitation material through any medium
- Not use physical punishment on children
- Not hire children for domestic or other labour, which is inappropriate given their age or developmental stage, which interferes with their time available for education and recreational activities, or which places them at significant risk of injury
- Comply with all relevant Australian and local legislation, including labour laws in relation to child labour
- Immediately report concerns or allegations of child exploitation and abuse and policy non-compliance in accordance with appropriate procedures
- Immediately disclose all charges, convictions, and other outcomes of an offence, which occurred before or occurs during your association with Tetra Tech International Development that relate to child exploitation and abuse.

When photographing or filming a child or using children's images for work related purposes, you will:

- Assess and endeavour to comply with local traditions or restrictions for reproducing personal images before photographing or filming a child
- Obtain informed consent from the child and parent or guardian of the child before photographing or filming a child and in doing so, you must explain how the photograph or film will be used
- Ensure photographs, films, videos, and DVDs present children in a dignified and respectful manner and not in a vulnerable or submissive manner. Children should be adequately clothed and not in poses that could be seen as sexually suggestive
- Ensure images are honest representations of the context and the facts
- Ensure file labels, meta data or text descriptions do not reveal identifying information about a child when sending images electronically or publishing images in any form.

Breaches of this child protection Code of Conduct and Client Service Standards may result in disciplinary and/or criminal action.

Corrupt Conduct

Corrupt conduct commonly involves the dishonest or partial use of power or position that results in one person/group being advantaged over another. Corruption can take many forms including, but not limited to:

- Official misconduct
- Bribery and blackmail
- Unauthorised use of confidential information
- Fraud
- Theft.

Any form of corrupt conduct will not be tolerated by the company. Action up to and including termination of this agreement will be taken in the event of any Employee participating in corrupt conduct. Conduct that constitutes a criminal offence will be referred to the appropriate authority.

Occupational Health & Safety

It is the responsibility of all Employees to act in accordance with the occupational health and safety legislation, regulations and policies and their respective organisations and use security and safety equipment provided.

Specifically, all Employees are responsible for safety in their work area by:

- Following the safety and security directives of management
- Advising management of areas where there is a potential problem in safety and reporting suspicious occurrences
- Minimising risks in the workplace.

Conduct of Current / Former Employees

Employees should not misuse their position to obtain opportunities for future employment.

Employees should not allow themselves or their work to be influenced by plans for, or offers of employment outside of Tetra Tech International Development. If they do there is a conflict of interest and their integrity and that of Tetra Tech International Development is at risk.

Former Employees should not use or take advantage of confidential information obtained in the course of their official duties that may lead to gain or profit, until it has become publicly available.

Client Service Standards

All Tetra Tech International Development staff and team members are committed to the following Client Service Standards:

- Implement activities professionally, with a focus on quality, developmental impact and long-term sustainability and with proper regard to cross-cutting development policies, such as gender and the environment, and the whole-of-government approach to development.
- Maintain productive relationships with their counterpart Government and activity stakeholders. This includes a genuine focus on transferring skills to counterparts and promoting counterparts' longer term 'ownership' throughout the delivery of the activity.
- Focus on achieving results and outcomes in a manner that is always accountable and demonstrates probity, procedural fairness, and value for money.
- Take responsibility for progress of activities, consulting actively with the client and their counterpart on

important problems and issues.

- Use experience and judgement to identify substantive problems in advance and then approach the client (and where appropriate the counterpart) with well-considered, well costed, options and recommendations.
- Demonstrate value adding, innovation, analytical rigour and quality assurance in project or activity management. This includes ensuring quality, clarity and accuracy of reporting, invoicing, and financial management.
- Promote high standards of personal conduct/behaviour, teamwork, and respect at all times. Lapses in these areas undermine relationships with counterparts, undermine activity effectiveness and reflect poorly on the client.
- Never make decisions that are the proper preserve of foreign governments and/or the funding agency, which alter the substance of the activity or create 'surprises' for the client or the counterpart.

Breaches of the Code of Conduct and Client Service Standards

Employees should note that breaches of certain sections of this Code of Conduct and Client Service Standards may be punishable under laws and legislation.

Breaches of this Code of Conduct and Client Service Standards may lead to termination of this agreement or other action.

The Service Provider acknowledges that it has read and understood the above Code of Conduct and Client Service Standards.

The Service Provider will ensure that it and its Personnel (where applicable) comply with the Code of Conduct and Client Service Standards requirements, as applicable to them as employees of an independent contractor of Tetra Tech International Development Pty Ltd.

Signature:	
Name:	
Position:	
Program:	
Date:	

Acknowledged by Tetra Tech International Development

Signature:	
Date:	

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Contractor: