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TETRA TECH INTERNATIONAL DEVELOPMENT PTY LTD

(“TETRA TECH INTERNATIONAL DEVELOPMENT”)

- and I

< SERVICE PROVIDER NAME > []

(“SERVICE PROVIDER”)

GS – XXXXXXXX MASTER SERVICES AGREEMENT

for

Mekong-Australia Partnership Support Unit (MAP SU)

Technical Assistance Panel

Doc ID: COZ_TMP_MasterServicesAgreement

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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 > is managed by Tetra Tech International Development on behalf of the Client.
- B. Tetra Tech International Development and the Service Provider enter into this Agreement to set out the terms and conditions:
 - i. upon which Tetra Tech International Development may, from time-to-time, issue, and the Service Provider may accept, a Work Order for the provision of Service to Tetra Tech International Development; and
 - ii. that will govern the provision of Services under a Work Order.
- C. The Services provided under this Agreement will be delivered in the Partner Country, which is a jurisdiction outside of Australia. The Parties have agreed that Laws of the Partner Country that govern or impose Tax, work health and safety, and other obligations that affect the quality or safety of the Services, will apply. The Parties have also agreed that Laws of the Commonwealth of Australia will apply to give effect to and align with, Tetra Tech's obligations under its Head Contract with the Client.
- D. Unless otherwise stated expressly, the terms of this Agreement are to be construed and interpreted in accordance with Australian Laws.

THE PARTIES AGREE as follows:

RECITALS

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

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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, including Work Orders.
- 1.2. **Agreement Details** means the details set out in Schedule 1.
- 1.3. **Agreement Special Conditions** means the special conditions referred to in Schedule 1 of this Agreement (if any).
- 1.4. **Australian Laws** means the Laws of the Commonwealth of Australia and the Laws of the Governing Jurisdiction.
- 1.5. **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.
- 1.6. **Business Day** means any day that is not a Saturday or Sunday or a public holiday in South Australia.
- 1.7. **Client** means the entity or entities as described under Schedule 1.
- 1.8. **Client Policies** means the policies described under Schedule 6.
- 1.9. **Commencement Date** means the date specified in Schedule 1.
- 1.10. **Completion Date** means the date specified in Schedule 1.
- 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) financial, accounting, marketing and technical information and plans, client and supplier lists, fee rates, tender information, know-how, technology, operating procedures, price lists, data bases, source codes and methodologies, 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 Client); and

- (d) all copies, notes and records based on or incorporating the information referred to in clause 1.11(a), 1.11(b), and 1.11(c) 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).
- 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** has the meaning given to that term by section 50AA of the *Corporations Act 2001* (Cth) and shall apply to an entity or entities including a company, body corporate or trust, and Controlled has a corresponding meaning.
- 1.14. **COVID-19 Event** means an event or disruption which has a material adverse effect on performance of the Services, that occurs as a direct result of the COVID -19 pandemic, provided that the material adverse effect is one a contractor could not have avoided or overcome by the taking of all reasonable steps (including expending additional costs).
- 1.15. **Criminal Code Act List** means the list of organisations that are specified as a “terrorist organisation” by the regulations made under the *Criminal Code Act 1995* (Cth) (this list is currently available at <https://www.nationalsecurity.gov.au/what-australia-is-doing/terrorist-organisations/listed-terrorist-organisations>)
- 1.16. **Cyber Security Incident** means a single or series of unwanted or unexpected identified occurrences of a system, service or network state indicating a potential or actual breach of cyber security procedures, process or requirements and threatening security.
- 1.17. **Data** includes any information provided by either party from any source, or collected or created by the Contractor in connection with the Services, whether in magnetic, electronic, hardcopy or any other form.
- 1.18. **Default Event** means those events listed in clause 16.2.
- 1.19. **Deliverables** means the reports and any data or other material specified in a relevant Work Order required to be delivered throughout the supply of the Services.
- 1.20. **DFAT** means the Australian Government’s Department of Foreign Affairs and Trade.
- 1.21. **Direction or Direct** means any agreement, approval, assessment, authorisation, decision, determination, explanation, instruction, order, permission, rejection, request or requirement given or made by Tetra Tech International Development.
- 1.22. **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 22.1(i)a)(c) including delegates as the context permits, being the persons specified in Schedule 1 as at the date of this Agreement.
- 1.23. **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.

- 1.24. **Governing Jurisdiction** is the jurisdiction listed in clause 19.
- 1.25. **Government Agency** means any government, semi-governmental, judicial, quasi-judicial or administrative entity, department, commission, tribunal, agency or authority of the Partner Country having jurisdiction over any part of, or in connection with the Services.
- 1.26. **GST** means the tax imposed by the GST Law.
- 1.27. **GST Law** has the meaning attributed in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- 1.28. **Head Contract** means the Head Contract as specified in Schedule 1.
- 1.29. **Intellectual Property Rights** means all present and future rights conferred by law in or in relation to intellectual property, including:
- (a) patents, plant breeders' rights, copyright, rights in circuit layouts, trademarks, inventions, know-how and any right to have Confidential Information kept confidential, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields recognised in domestic law anywhere in the world, whether or not registrable, registered or patentable; and
 - (b) any application or right to apply for registration of any of the rights referred to in clause 11, but for the avoidance of doubt excludes Moral Rights and performers' rights.
- 1.30. **Laws includes:**
- (a) legislation, ordinances, regulations, by-laws, orders, awards, proclamations or other subordinate legislation;
 - (b) standards, codes and guidelines;
 - (c) principles of law or equity;
 - (d) directions or notices issued by any government authority; and
 - (e) requirements of a government authority to pay fees, taxes, levies, rates and charges in respect of those things referred to in paragraphs (a) to (d) above,
- for the jurisdiction of the Partner Country, as applicable or where context requires, as amended from time-to-time, and whether or not existing at Commencement Date.
- 1.31. **Legislative Requirements** means the relevant Laws of the Partner Country that applicable to the Services.
- 1.32. **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.
- 1.33. **Modern Slavery** includes any activity, practice or conduct that could constitute an offence in relation to slavery, forced labour, involuntary servitude, debt bondage, forced marriage, human trafficking and other slavery-like exploitation as prohibited under any laws, statutes, regulations and codes from time-to-time in force including but not limited to the Modern Slavery Laws.
- 1.34. **Modern Slavery Laws** includes:
- (a) the *Modern Slavery Act 2018* (Cth) and Divisions 270 and 271 of the *Criminal Code 1995* (Cth);

- (b) any other binding or non-binding guidelines issued by an entity or person so authorised under such laws and other laws, statutes, regulations and codes from time-to-time in force; and
 - (c) any other anti-Modern Slavery laws or regulations in force in Australia or otherwise applicable to Tetra Tech International Development or the Service Provider under the Laws of the Partner Country in force from time-to-time with respect to reporting on or addressing the risks of Modern Slavery, including business operations and supply chains.
- 1.35. **Moral Rights** means rights of integrity of authorship, rights of attribution of authorship, rights not to have authorship falsely attributed, and rights of a similar nature conferred by statute that may now exist or that may come to exist in relation to the work carried out in delivery or performing the Services.
- 1.36. **Non-Compliant Services** means any Services that do not meet their Purpose (as set out in a Work Order), are defective or partly or wholly unperformed by the relevant date for performance under the applicable Work Order.
- 1.37. **Notice** means written notice and notify has a corresponding meaning.
- 1.38. **Parties** means the Service Provider and Tetra Tech International Development, and Party means any one of them.
- 1.39. **Partner Country** means the country/countries in which the Services are to be delivered as specified in the Agreement Details in Schedule 1.
- 1.40. **Personnel** means:
- (d) the Service Provider and the Service Provider's employees, agents, contractors, the Service Provider's Representative and any other person employed or engaged by the Service Provider to perform any part of this Agreement;
 - (e) Tetra Tech International Development's officers, employees, agents, contractors and authorised representatives
- 1.41. **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.
- 1.42. **Prices** means:
- (a) where Tetra tech International Development has accepted a lump sum in a Work Order, the lump sum set out in the relevant Work Order, as adjusted under this agreement;
 - (b) where Tetra Tech International Development has accepted rates in a Work Order, the sum ascertained by calculating the products of the rates and the corresponding quantities; or
 - (c) where Tetra Tech International Development has accepted a lump sum and rates in a Work Order, the aggregate of the sums referred to in paragraphs 1.42(a) and 1.42(b).
- 1.43. **Related Body Corporate** has the meaning attributed to it in the *Corporations Act 2001* (Cth).
- 1.44. **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).
- 1.45. **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. Either Party may substitute and replace its Representative with reasonable written notice delivered to the other Party.

- 1.46. **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.
- 1.47. **Sanctions List** means the list of individuals, entities or organisations designated or listed by the United Nations Security Council, its committees or the Australian Government for targeted financial sanctions or similar measures (this list is currently available at <https://www.dfat.gov.au/international-relations/security/sanctions/consolidated-list>).
- 1.48. **Schedule of Prices** means the schedule of prices, rates and fees (if any) included at schedule 3.
- 1.49. **Scope of Services** means the scope of services that are covered by this Agreement as provided for in Schedule 2.
- 1.50. **Service Commencement Date** means the date provided in a Work Order upon which the Service Provider must commence providing the Services applicable to that Work Order.
- 1.51. **Service Provider** means the person, business or entity listed above that is contracted to perform the Services under this Agreement.
- 1.52. **Service Provider's Proposal** means a proposal that meets the requirements of clause 4.7
- 1.53. **Service Provider's Representative** means the person identified in Schedule 1.
- 1.54. **Services** means the services described within any Work Order, including the performance of all other activities required to be supplied or undertaken by the Service Provider in order for the Service Provider to fulfill its obligations under this Agreement, within the Scope of Services.
- 1.55. **Service Completion Date** means the date specified in a Work Order by which the Services the subject of the Work Order must be completed.
- 1.56. **Services Tax** means, as the context requires:
 - (a) the value added Tax or other Tax levied on consumption that, under a Taxation Law of the Partner Country, applies to the supply of the Services;
 - (b) the goods and services tax imposed by the GST Law.
- 1.57. **Site** has the meaning given to it in any relevant Work Order.
- 1.58. **Sovereign Nation** means a sovereign nation or an entity established by a sovereign nation.
- 1.59. **Specification** means any specifications for the Services under this Agreement.
- 1.60. **Specified Personnel** means any Service Provider Personnel specified in a Work Order to undertake any part of the Services the subject of a Work Order.
- 1.61. **Tax** means and includes all forms of taxation and statutory, governmental, supra-governmental, state, principal, local government or municipal impositions, duties, contributions, excises, deductions, levies, charges and withholdings, including without limitation, withholding payments, corporate income tax, withholding tax of any nature, sales tax, stamp tax, custom duties and service charges, levies, social insurance premiums, employees payroll and directors tax and related deductions and withholdings, and all penalties, fines, charges, costs and interest relating thereto in all jurisdictions.

- 1.62. **Taxation Laws** means all applicable Laws of the Partner Country that mandates, requires or otherwise governs the application of a Tax.
- 1.63. **Term** means the term of this Agreement which is the period specified in clause 3.1.
- 1.64. **Tetra Tech International Development** means Tetra Tech International Development Pty Ltd.
- 1.65. **Tetra Tech International Development Code of Conduct** means the Tetra Tech Vendor Code of Conduct and the Tetra Tech International Development Safeguarding Code of Conduct.
- 1.66. **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.
- 1.67. **Tetra Tech International Development's Representative** means the person specified in Schedule 1.
- 1.68. **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.
- 1.69. **Variation** means a change to the Services.
- 1.70. **WHS Legislation** means all applicable Laws and all applicable Requirements, including under Australian Laws (where applicable) and Laws in the jurisdiction of the Partner Country regulating matters of occupational health, safety or security.
- 1.71. **Withholding Payment** has the meaning given in Schedule 1 of the *Taxation Administration Act 1953* (Cth).
- 1.72. **Work Order** means an order given by Tetra Tech International Development to the Service Provider to provide specified Services that meets the minimal requirements of clause 4.3.
- 1.73. **Work Order Requirements** means Tetra Tech International Development's requirements for the Services described in the relevant Work Order.
- 1.74. **Work Order Special Conditions** means any special conditions specified in a Work Order (if any).
- 1.75. **Work Schedule** means the work schedule set out in the relevant Work Order (if any), and as updated under this Agreement.
- 1.76. **World Bank List** means a list of organisations maintained by the World Bank in its "Listing of Ineligible Forms" or "Listings of Forms, Letters of Reprimand" posted at: <http://web/worldbank.org>.

2 INTERPRETATION

- 2.1 In this Agreement (unless the context requires otherwise):
- (a) the singular includes the plural and the plural includes the singular;
 - (b) a reference to one gender includes every other gender;
 - (c) words referring to individuals include corporations, unincorporated associations, partnerships, trusts and joint ventures;
 - (d) a reference to a Party includes that Party's administrators, successors and permitted assigns;

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- (e) 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;
- (f) a reference to a clause, subclause, schedule or attachment is a reference to a clause, subclause, schedule or attachment of this Agreement;
- (g) a reference to a clause number includes its subclauses;
- (h) the word “or” is not exclusive;
- (i) other parts of speech and grammatical forms of a word or phrase defined in this Agreement have a corresponding meaning;
- (j) 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;
- (k) a reference to any legislation includes all delegated legislation made under it and any amendments, consolidations, replacements or re-enactments;
- (l) a reference to a document includes all amendments or supplements to, or replacements or novations of, that document;
- (m) a promise on the part of 2 or more persons binds them jointly and severally;
- (n) a reference to an asset includes property of any nature, a business, right, revenue and benefit;
- (o) headings are for convenience only and do not affect the interpretation of this Agreement;
- (p) 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
- (q) 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) Work Order Special Conditions;
- (b) Agreement Special Conditions;
- (c) these standard terms and conditions (excluding Schedule 1);
- (d) Schedule 1,
- (e) Work Order/s,

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 takes effect from the Commencement Date and expires upon the earlier of:

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- (a) the Completion Date; or
 - (b) the date this Agreement is terminated in accordance with clause 16 or clause 17.
- 3.2 The Service Provider grants to Tetra Tech International Development an option, by notice in writing, to extend the Completion Date of this Agreement for the Option Period specified in Schedule 1 (if any).
- 3.3 The Parties agree that, to the extent that any Services the subject of a Work Order have been performed by the Service Provider prior to the Commencement Date, the provisions of this Agreement and the requirements of the applicable Work Order will apply to those Services.
- 3.4 If a Work Order entered into prior to the expiration of the Term has a Work Order Completion Date that exceeds the expiration of the Term, the rights and obligations of the Parties in respect of that Work Order will continue to be governed by this Agreement until the earlier of:
- (a) the provision of the Services under the Work Order has been satisfactorily completed; and
 - (b) the Parties have discharged their obligations under this Agreement in relation to that Work Order (including payment), or
 - (c) the Parties agree to terminate the Work Order in accordance with clauses 16 or 17.

4 **WORK ORDERS**

Work Orders and Service Provider's Proposals

- 4.1 From time-to-time, at its sole and absolute discretion, Tetra Tech International Development may:
- (a) issue a Work Order to the Service Provider; or
 - (b) request that the Service Provider submit a Service Provider's Proposal.
- 4.2 The Service Provider may, at any time, submit to Tetra Tech International Development a Service Provider's Proposal.

Work Order Requirements

- 4.3 A Work Order will be in the format set out in Schedule 4 or such format that Tetra Tech International Development determines, and must specify:
- (a) the Services to be provided;
 - (b) the Service Commencement Date;
 - (c) the Service Completion Date;
 - (d) the Price to be paid for the Services; and
 - (e) a Payment Plan.
- 4.4 A Work Order may also include:
- (a) quality assurance requirements;
 - (b) a Work Schedule;
 - (c) Work Order Special Conditions; and

- (d) any other requirements, specifications or terms reasonably required by Tetra Tech International Development.
- 4.5 Unless otherwise agreed by Tetra Tech International Development, the Price specified in a Work Order will be calculated in accordance with the Schedule of Prices provided in Schedule 3.

Service Provider's Proposal Requirements

- 4.6 If Tetra Tech International Development requests a Service Provider's Proposal pursuant to clause 4.14.1(b), the Service Provider must:
 - (a) if it does not intend to submit a Service Provider's Proposal, so advise Tetra Tech International Development in writing within five (5) Business Days of receiving the request; or
 - (b) unless otherwise agreed by Tetra Tech International Development, submit a Service Provider's Proposal within ten (10) Business Days of receiving the request.
- 4.7 A Service Provider's Proposal:
 - (a) must be submitted in the format and include any information requested by Tetra Tech International Development; and
- 4.8 may include any other information the Service Provider deems necessary.

No obligation to issue and non-exclusivity

- 4.9 Tetra Tech International Development has no obligation to issue any Work Order or a minimum number of Work Orders to the Service Provider, and the Service Provider has no right to make any claim for loss of profit or contract or any other losses for non-issue of a Work Order, including by reason of:
 - (a) Tetra Tech International Development entering into this Agreement;
 - (b) Tetra Tech International Development discussing possible terms of a Work Order or providing a draft or unsigned Work Order to the Supplier;
 - (c) Tetra Tech International Development making a request for a Service Provider's Proposal under clause 4.14.1(b); or
 - (d) the Supplier submitting a Service Provider's Proposal.
- 4.10 No provision of this Agreement will be deemed to create an exclusive agreement between the Parties and Tetra Tech International Development will always be entitled to invite tenders from and contract with any other party it deems fit, for the provision of like services.

Binding Work Orders

- 4.11 A Work Order is binding on both Parties when signed by both Parties.

SERVICES

Provision of Services

- 5.1 In providing Services the Service Provider must:

- (a) commence provision of the Services on the Service Commencement Date specified in a relevant Work Order;
- (b) supply the Services in accordance with the description of the Services in the relevant Work Order;
- (c) supply Deliverables (if any) specified in a Work Order in accordance with any specifications and requirements specified in the applicable Work Order;
- (d) comply with or meet any requirements, specifications or Work Order Special Conditions specified in a Work Order;
- (e) deliver the Services in accordance with any milestones, deadlines or other time requirements specified in a Work Order, including a Work Schedule (if any);
- (f) complete the Services by the Services Completion Date;
- (g) comply with any reasonable Direction given by or on behalf of Tetra Tech International Development from time-to-time;
- (h) comply with all policies, procedures and directives of Tetra Tech International Development so far as they are made known to the Service Provider;
- (i) comply with all applicable standards, Laws and regulations;
- (j) take all reasonable practical measures to ensure the Service Provider's own safety and the safety of the Service Provider's Personnel;
- (k) provide and use appropriate safety equipment and clothing and require employees of the Service Provider to use that equipment; and
- (l) provide all labour, materials, plant, utilities and equipment necessary to perform the Service Provider's obligations under the Agreement;

5.2 Tetra Tech International Development may inspect the performance and outcome of the Services at any time.

Delay

5.3 If the Supplier becomes aware that it may not be able to supply the Services in accordance with any milestones, deadlines or other time requirements (including a Work Schedule) specified in a Work Order, the Supplier must as soon as practicable, but no later than within twenty-four (24) hours, notify Tetra Tech International Development in writing of:

- (a) the cause and nature of the delay;
- (b) the steps it has taken, and will take, to mitigate the delay and the cost of the delay; and
- (c) the length of the delay.

Deliverables

5.4 Title in a Deliverable, or any part of a Deliverable, vests in Tetra Tech International Development upon its delivery to Tetra Tech International Development.

Suspension of Services

5.5 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.

5.6 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.

5.7 Any cost incurred by the Service Provider by reason of a suspension under clause 5.5 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.

- 5.8 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 5.7.

6 SERVICE PROVIDER NON-PERFORMANCE

Option 1

- 6.1 If the Services do not meet their Purpose (as set out in a Work Order) or are not in accordance with this Agreement, Tetra Tech International Development may by notice require the Service Provider to redo the Services at no additional cost to Tetra Tech International Development.

- 6.2 Where the Service Provider fails to:

- (a) remedy a defect in performance of the Services; or
- (b) redo the Services within the time specified in a notice given by Tetra Tech International Development under clause 6.1,

Tetra Tech International Development may, in its discretion, arrange for the performance of the necessary work on behalf of the Service Provider at the Service Provider's sole risk and expense and recover the cost and expenses from the Service Provider as a debt due and payable

Option 2

- 6.1 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 6.5.

- 6.2 The notice given under clause 6.1(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.

- 6.3 Without limiting clause 6.4, 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 6.5.

- 6.4 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 5(a) – **Error! Reference source not found.**; or
 - ii. meet the due date for the Services set out in the Work Order; or
- (b) cannot meet any essential specifications for the Services advised by Tetra Tech International Development (whether such specifications are set out in Schedule 2, a Work Order or in a Direction or Variation); or
- (c) has, or is unlikely to, comply with the Defect Notice,

then Tetra Tech International Development may exercise its right under clause 6.5.

6.5 If clauses 0, 6.3 or 6.4 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.

6.6 Where Tetra Tech International Development engages one or more Alternative Service Provider/s under clause 6.5:

- (a) Tetra Tech International Development must issue a notice advising the Service Provider that it will be exercising its right under clause 6.5 ("**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 16.3.

6.7 Any act, omission or conduct by Tetra Tech International Development pursuant to clause 6.5, does not and will not be deemed to:

- (a) prejudice Tetra Tech International Development's right of termination under clauses 16 or 17 or
- (b) constitute a waiver or an election by Tetra Tech International Development to terminate this Agreement.

7 SERVICE PROVIDER'S WARRANTIES AND REPRESENTATIONS

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).

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- 7.2 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 reasonably anticipated to be performed by it pursuant to the Scope of Services under 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 such Services.
- 7.3 The Service Provider warrants and represents that, at the date of this Agreement it is not aware of anything within its reasonable control which might or will adversely effect its ability to performance its obligations under this Agreement.
- 7.4 The Service Provider warrants and represents that:
- (a) 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;
 - (b) all third-party liabilities will be the sole responsibility of the Service Provider and Tetra Tech International Development will not incur any liability for these;
 - (c) it has obtained all licenses, consents, approvals, permissions and other authorities (public or private) necessary for the carrying on of its business in the places and in the manner in which such business is now carried on, all of which are valid and in effect;
 - (d) the Service Provider has conduct and is conducting its business in all aspects in accordance with the Laws or applicable laws and regulations of the jurisdiction in which the Service Provider is registered for tax purposes;
 - (e) it is the sole and unencumbered owner of any Intellectual Property Rights in any Pre-Existing Service Provider Material that is used or incorporated in the Services or the Service Provider has otherwise complied with requirements of clause 12.2 in relation to such use or incorporation of Pre-Existing Service Provider Material or Third Party Material in the Services.
- 7.5 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 as stated in Schedule 5 or any Code of Ethics for the Australian Government;
 - (b) act in a manner consistent with the policies, guidelines and other requirements set out in clauses 25, 26, 27, 28, 29, 30 and 34, to the extent relevant to the Services or performance of the Service Provider's obligations under this Agreement; and
 - (c) ensure that its Personnel (if any) 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 the Service Provider and Tetra Tech International Development or the Service Provider and the Client.
- 8.3 The Service Provider acknowledges that this Agreement (including this clause 8) does not give the Service Provider or the Service Provider's Personnel authority to bind Tetra Tech International Development.
- 8.4 The Service Provider must not and must ensure that the Service Provider's Personnel do not:
- (a) 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 or the Client;
 - (b) misrepresent the relationship between the Service Provider and Tetra Tech International Development and the Client; or
 - (c) engage in any misleading or deceptive conduct in relation to the Services.

9 PRICE

- 9.1 In consideration for the supply of the Services under this Agreement, Tetra Tech International Development will pay the Prices in accordance with a Payment Plan under the Work Order. The Parties may agree a Schedule of Prices in the form provided in Schedule 3 unless otherwise modified in a Work Order.
- 9.2 The Prices include all taxes, duties or government charges imposed or levied in Australia or overseas in connection with this Agreement.
- 9.3 The Prices 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.

10 TERMS OF PAYMENT

Invoices

- 10.1 The Service Provider must submit correctly rendered invoices when due pursuant to this clause and any Work Order for the Services for which the invoice seeks payment.
- 10.2 An invoice will be correctly rendered if:
- (a) it complies with the requirements of this Agreement; and
 - (b) unless otherwise advised by Tetra Tech International Development in writing, it is accompanied by documentation substantiating the amount claimed.
- 10.3 All invoices must include a certification by a duly authorised representative:
- (a) that the invoice has been correctly calculated;
 - (b) that the Services included in it have been performed in accordance with this Agreement.
- 10.4 All invoices must be submitted to the Person or position identified in Schedule 1.
- 10.5 Unless this Agreement states otherwise, Tetra Tech International Development will pay for the Services within 30 days after:

- (a) completion of the Services; or
 - (b) receipt of a correctly rendered invoice for the Services,
- whichever occurs later.
- 10.6 Tetra Tech International Development has no obligation to pay for Non-Compliant Services.
- 10.7 A payment by Tetra Tech International Development to the Service Provider is not an admission of liability and does not affect any rights or remedies that Tetra Tech International Development may have under relevant Laws.
- 10.8 If Tetra Tech International Development makes a payment for Non-Compliant Services or pays an amount that is greater than the amount payable under this Agreement, the payment is deemed an overpayment and recoverable from the Service Provider.
- 10.9 Any overpayment may be offset against any amount subsequently due to the Service Provider or may be recovered in Court as a debt due and payable to Tetra Tech International Development.
- 10.10 The Service Provider agrees that any amount paid by Tetra Tech International Development under this Agreement can be taken to offset against any claims of underpayment at a later date.
- 10.11 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.

11 SUBCONTRACTING AND SPECIFIED PERSONNEL

Subcontracting

- 11.1 Unless specified otherwise in a Work Order, the Service Provider must not subcontract the performance of any part of the Services without Tetra Tech International Development's prior written approval and will make available to Tetra Tech International Development (if requested) details of all subcontractors engaged to perform any part of the Services.
- 11.2 If the Service Provider is granted permission to subcontract any part of the Services, the Service Provider must:
- (a) not subcontract the performance of any part of the Services to a person or entity which is:
 - i. listed on the Criminal Code Act list, the Sanctions List or on the World Bank List or a Relevant List;
 - ii. named as an employer currently not complying with the *Workplace Gender Equality Act 2012* (Cth); or
 - iii. who are subject to a judicial decision against them relating to employee entitlements, not including decisions under appeal, and have not paid the claim;
 - (b) inform the subcontractor that Tetra Tech International Development and the Client may publicly disclose the names of subcontractors engaged in the performance of the Services.
- 11.3 Where the Service Provider subcontracts any part of the Services:

- (a) the Service Provider remains responsible for delivery of the Services in accordance with the terms and conditions of this Agreement and the requirements of all applicable Work Orders;
 - (b) the work undertaken by any subcontractors must be performed to the same standards set out in this Agreement and all applicable Work Orders; and
 - (c) the Service Provider will not be relieved from the performance of any obligation under this Agreement and any applicable Work Order and will be liable for all acts and omissions of any subcontracted Personnel as though they were the actions of the Service Provider itself.
- 11.4 The Service Provider agrees to ensure that any contract entered into with a subcontractor in connection with the Services contains termination and reduction for convenience on terms equivalent to clauses 16 and 18 of this Agreement and imposes an obligation on the subcontractor to comply with clause 8.4, clause 18 and clauses 20 to 37 of this Agreement, and Schedule 5 of this Agreement as if the subcontractor were the Service Provider.

Specified Personnel

- 11.5 The Service provider agrees that Specified Personnel will perform work in relation to the Services in accordance with this Agreement.
- 11.6 If Specified Personnel are unable to perform the work as required under clause 11.5, the Service Provider agrees to Notify the Tetra Tech International Development immediately.
- 11.7 The Service Provider agrees, at the request of Tetra Tech International Development acting in its absolute discretion, to remove Personnel (including Specified Personnel) from work in relation to the Services;
- 11.8 If clause 11.6 or clause 11.7 applies, the Service Provider will provide replacement Personnel acceptable to Tetra Tech International Development at no additional cost and at the earliest opportunity.
- 11.9 The Service Provider must not engage a Current or Former Employee in any capacity in connection with the Services without Tetra Tech International Development's prior written approval.

Extension of provisions to subcontractors and Personnel

- 11.10 In these clauses 11.10 to 11.12:
- Requirement** means any obligations, condition, restriction or prohibition binding on the Service Provider under this Agreement.
- 11.11 Without limited clause 11.4, the Service provider agrees to ensure that:
- (a) its subcontractors and Personnel comply with all relevant Requirements; and
 - (b) any contract entered into in connection with the Contract imposes all relevant Requirements on the other party.
- 11.12 The Service Provider agrees to exercise any rights it may have against any of its subcontractors, Personnel or third parties in connection with a Requirement in accordance with any direction by Tetra Tech International Development.

12 INTELLECTUAL PROPERTY RIGHTS

- 12.1 This clause 12 does not affect the ownership of the Intellectual Property Rights in any Pre-Existing Service Provider Material or Third-Party Material.

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- 12.2 The Service Provider must obtain all necessary copyright and other Intellectual Property Rights permissions before using or incorporating any Pre-Existing Service Provider Material or Third-Party Material available in the Services.
- 12.3 All Intellectual Property Rights in the Contract Material vest in Tetra Tech International Development on creation.
- 12.4 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, irrevocable, world-wide, royalty free, non-exclusive licence that includes the right to 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.
- 12.5 The licence granted to Tetra Tech International Development under Clause 12.4(a) does not include a right to exploit the Pre-Existing Service Provider Material or Third-Party Material for commercial purposes.
- 12.6 The licence granted to the Service Provider under clause 12.4(b) does not include a right to exploit the Contract Material for commercial purposes.
- 12.7 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.

Moral Rights

- 12.8 In relation to Tetra Tech International Development's or the Client's use of Contract Material or any Pre-Existing Service Provider Material or Third-Party Material used pursuant to the licence granted under clause 12.4(a) will not infringe any Moral Rights.
- 12.9 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 Moral Rights arising out of Tetra Tech International Developments or the Client's use of Contract Material or any Pre-Existing Service Provider Material or Third-Party Material used pursuant to the licence granted under clause 12.4(a).

13 INDEMNITY

- 13.1 For the purposes of this clause 13, the following definitions apply:
- (a) **Indemnified Events** is defined in clauses 13.2(a) – (f);
 - (b) **Indemnified Persons** means Tetra Tech International Development and its Personnel; and

- (c) **Claims** means, subject to any exclusion or limitations set out in this clause 13, all costs, losses, damages, expenses (including legal expenses), penalties, fines and liabilities of any kind.
- 13.2 Subject to clauses 13.3 and 13.4, the Service Provider indemnifies the Indemnified Persons, from and against all Claims which may be asserted against or suffered by any of the Indemnified Persons and which relate to, result from or arise 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 clauses 7.2(b) – (e) of 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; or
 - (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;
 - (f) an infringement or alleged infringement of third party Intellectual Property Rights arising out of or as a consequence of an activity permitted (or purporting to be permitted) by or under a license or assignment of IP rights referred to in this Agreement,
- (together, **Indemnified Events**).
- 13.3 For the avoidance of doubt, the indemnity in clause 13.2 covers any Claim by a third party which relate to, result from, or arise in connection with, Indemnified Events including where such Claim is based on facts which, if substantiated, would constitute or prove the occurrence of the Indemnified Event.
- 13.4 The Service Provider's liability to indemnify Tetra Tech International Development under this clause 13 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.
- 13.5 This clause will survive termination of this Agreement.

14 INSURANCE

- 14.1 Unless otherwise indicated in the Work Order, the Service Provider must effect and maintain all insurance policies set out in Schedule 1, and must ensure its subcontractors effect and/or maintain the same insurance cover, from insurers with a financial security rating of "A-" or better by Standard & Poors (or the equivalent rating with another recognised rating agency), or an insurer approved by the Tetra Tech International Development, acting reasonably ("**Insurance Policies**").
- 14.2 The Service Provider must, upon request, provide Tetra Tech International Development with written evidence of the Service Provider having:

- (a) current insurance policies that meet the requirements set out in Schedule 1 and this clause;
 - (b) 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;
 - (c) 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
- 14.3 If the Service Provider fails to effect and maintain the policies listed in Schedule 1, without limiting the rights of Tetra Tech International Development, the Service Provider agrees to indemnify and reimburse Tetra Tech International Development for its related costs, expenses and losses which may be suffered or incurred.
- 14.4 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.
- 14.5 The Insurance Policies may only be cancelled or changed if:
- (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.
- 14.6 The obtaining of any insurance by the Service Provider in accordance with this clause 14 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.
- 14.7 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 14 if it lapses or if cover is exhausted.
- 14.8 Unless Tetra Tech International Development otherwise agrees expressly in writing, the Service Provider must 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.
- 14.9 Unless Tetra Tech International Development otherwise agrees expressly in writing, the Service Provider must effect and/or maintain the Insurance Policies referred to in this clause 14 on or before the date of execution of this Agreement until, subject to clause 14.10, the end of the Term.
- 14.10 If professional indemnity insurance is specified in Schedule 1 as required, that insurance must be maintained without interruption for a period of 6 years after the end of the Term.
- 14.11 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 and such other proof of compliance with the provisions of this clause 14 as Tetra Tech International Development may reasonably require.
- 14.12 The Service Provider must comply with the terms of the Insurance Policies, and the Service Provider must 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.

- 14.13 If the Service Provider fails to comply with this clause 14, Tetra Tech International Development may (in addition to any other rights Tetra Tech International Development may have) at its sole discretion and 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 14.
- 14.14 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.
- 14.15 Tetra Tech International Development, in specifying levels of insurance in this Agreement, accepts no liability for the completeness of their listing, 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.
- 14.16 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.
- 14.17 The Service Provider acknowledges 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.

15 FORCE MAJEURE

- 15.1 **"Force Majeure Event"** is limited to the following specific events or circumstances: flood, 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.
- 15.2 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 15.3 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.
- 15.3 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:

- (1) the obligations affected;
 - (2) the nature, extent and likely duration of the effect on those obligations; and
 - (3) 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.
- 15.4 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.

16 TERMINATION

- 16.1 At any time after a Default Event occurs Tetra Tech International Development may terminate this Agreement or a Work Order with immediate effect by giving notice in writing to the Service Provider.
- 16.2 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 Service Commencement Date;
 - (b) the Service Provider fails to complete the Services by the end of the Service Completion Date set out in a Work Order;
 - (c) the Service Provider ceases to provide the Services at any time during the Term (if any) specified in this Agreement;
 - (d) the Service Provider fails to:
 - (i) provide and pay for appropriate insurance as required by clause 14; or
 - (ii) provide Tetra Tech International Development with proof of appropriate insurance upon request by Tetra Tech International Development as required by clause 14;
 - (e) the Service Provider breaches any other material 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;
 - (f) any step is taken to enter into any arrangement between the Service Provider and the Service Provider's creditors;
 - (g) the Service Provider ceases to be able to pay the Service Provider's debts as they become due;
 - (h) the Service Provider ceases to carry on business;
 - (i) the Service Provider fails to comply with its obligations and the requirements set out in clauses 25, 26, 27, 28, 29 or 32; 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.
- 16.3 Where, before termination of this Agreement under this clause, 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 6.5 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.
- 16.4 If this Agreement or a Work Order is terminated under this clause 16:
- (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.

17 TERMINATION OR REDUCTION IN SCOPE FOR CONVENIENCE

Termination by the Service Provider

- 17.1 The Service Provider may terminate this Agreement by giving Notice to Tetra Tech International Development that:
- (a) an invoice rendered in accordance with clause 10 has not been paid within the period specified in clause 10.5 and
 - (b) the amount outstanding be paid within 30 days of the date that such Notice is received by Tetra Tech International Development,
- and if the amount outstanding is not paid to the Service Provider within the period referred to in clause 17.1(b), the Service Provider may terminate this Agreement by giving 30 days Notice. In the case of any other breach of this Agreement by Tetra Tech International Development, the Service Provider may only terminate this Agreement by giving 90 calendar days notice.

Termination or reduction in scope by Tetra Tech International Development

- 17.2 The Service Provider acknowledges that Tetra Tech International Development has a Head Contract with the Client under which, *inter alia*, the Client has a right, at any time and at its absolute discretion, to terminate or reduce the scope of the Head Contract or any services ordered under the Head Contract, including the Services the subject of this Agreement. The Service Provider acknowledges that such a determination by the Client 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.
- 17.3 Upon receiving notice from the Client of a decision referred to above in clause 19.1, Tetra Tech International Development may by notice and at its absolute discretion, terminate or

reduce the scope of this Agreement or a Work Order. Before giving a notice under this clause Tetra Tech International Development may discuss with the Service Provider in good faith the timing for termination or extent of the reduction, having regard to the Client's decision and context for delivery of the Services.

- 17.4 The Service Provider agrees, upon receipt of a notice of termination or reduction of scope:
- (a) to stop or reduce work as required by the notice;
 - (b) to take all reasonable steps to minimise loss resulting from that termination or reduction of scope; and
 - (c) to continue work on any part of the Services not affected by the notice.
- 17.5 Unless Tetra Tech International Development agrees otherwise, where notice of termination is issued to the Service Provider, Tetra Tech International Development is only liable for the fees and any Reimbursable Costs payable under a Work Order for Services provided before the effective date of termination ("**Early Termination Costs**") that can be reasonably substantiated and which were unable to be avoided or mitigated.
- 17.6 Subject to any requirement at law, the calculation of any Early Termination Costs that Tetra Tech International Development may be liable to pay the Service Provider must:
- (a) be pro rata, where applicable;
 - (b) be limited to the Early Termination Costs incurred as a direct consequence of termination of this Agreement;
 - (c) exclude the cost of redundancies and costs of terminating subcontracts;
 - (d) exclude loss of profits and all other forms of expectation loss;
 - (e) not include cost, loss or damage of any kind whatsoever, save for such cost, loss or damage that is agreed to be an Early Termination Cost.
- 17.7 Tetra Tech International Development is not liable to pay amounts under this clause which would, when added to any prices, allowances, costs, and reimbursable expenses already paid to the Service Provider under the relevant Work Order, exceed the Prices for that Work Order.
- 17.8 Tetra Tech International Development's liability to pay the Prices will be reduced proportionately to any reduction of the Services that is notified to the Service Provider under this clause.
- 17.9 Notwithstanding anything to the contrary in this Agreement, the Service Provider is not entitled to compensation for loss of prospective profits or any other special, economic or consequential loss that results, or may arise in connection with termination or reduction in scope.

18 CONFIDENTIALITY

- 18.1 Subject to clauses 18.2, 18.4, 18.5 and any Law requiring the disclosing of information or documents, the Parties agree all information obtained in connection with or incidental to the Services, including Confidential Information, are confidential as between the Parties and neither Party will without the prior written consent of the other disclose any of the Confidential Material to any third Party.
- 18.2 Neither Party, nor their Personnel may disclose, use or make public the Confidential Information of the other Party (or Confidential Information disclosed by or on behalf of the

other) unless required by a Law, necessary for legal proceedings, provided with the written consent of the relevant Party, or required to manage this Agreement. If the Confidential Information is required to be disclosed under this clause 18.2, a Party must use all reasonable endeavours to ensure that persons receiving the Confidential Information do not further disclose the information.

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

18.4 In this clause 18.4, 'document' and 'Commonwealth contract' have the same meaning as in the *Freedom of Information Act 1982* (Cth):

- (a) the Service Provider acknowledges that this contract is a Commonwealth contract;
- (b) where the Client and/or Tetra Tech International Development has received a request for access to a document created by, or in the possession of, the Service Provider or any contractor engaged by the Service Provider that relates to performance of this Agreement, Tetra Tech International Development may at any time by written notice require the Service Provider to provide the document to Tetra Tech International Development and the Service Provider must, at no additional cost, promptly comply with the notice;
- (c) the Service Provider must include in any subcontract relating to the performance of this Agreement, provisions that will enable the Service Provider to comply with its obligations under this clause.

18.5 The Service Provider authorises the Client to publish details of the name of Service Provider and the nature of the Services that the Service Provider is subcontracted to perform.

19 GOVERNING LAW AND JURISDICTION

19.1 Unless otherwise expressly provided, this Agreement (and any transactions contemplated under this Agreement) are to be governed by and construed and interpreted in accordance with the laws of South Australia.

19.2 Each Party to this Agreement unconditionally submits to the exclusive jurisdiction of the courts of South Australia.

20 PRIVACY

20.1 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.
- 20.2 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.

21 TAXES

- 21.1 Unless otherwise indicated, the amount payable under this Agreement for each supply of Services under this Agreement is the value of that supply plus the value of the applicable Services Tax. Payment by Tetra Tech International Development to the Service Provider of the Services Tax 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 applicable Services Tax, Taxation Laws and associated Laws.
- 21.2 The total amount of the Services Tax payable by the Service Provider and for which the Service Provider seeks payment from Tetra Tech International Development must be shown as a separate item on the Service Provider's tax invoice.
- 21.3 If the Services Tax payable for any taxable supply under this Agreement varies from the additional amount payable under clause 21.1 as a result of an adjustment event, any additional Services Tax must be paid by the Service Provider, or any credit of Services Tax must be refunded by the Service Provider, upon receipt of an adjustment note.
- 21.4 Where Tetra Tech International Development is required to reimburse or indemnify the Service Provider under this Agreement, the Service Provider 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 Services Tax under this clause.
- 21.5 Subject to clause 21.1 and to the extent permitted by Laws, the Service Provider must pay all Taxes in connection with this Agreement and indemnifies and holds harmless Tetra Tech International Development against any such Taxes.
- 21.6 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.

22 DISPUTE RESOLUTION

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- 22.1 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 of Australia, or the authority of a State or Territory of Australia is investigating a breach or suspected breach of a 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 23 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;
- 22.2 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
- 22.3 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.
- 22.4 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 22, the Escalation Representative of either Party may be substituted and replaced with reasonable written notice delivered to the other Party.
- 22.5 Notwithstanding any existing dispute between the Parties, or that legal proceedings are pending or current, and subject to clause 10, each Party and its Personnel must continue to comply with their obligations under this Agreement.

23 NOTICES

- 23.1 A notice under this Agreement is only effective if it is writing, and dealt with as follows:
- (a) *if given by the Service Provider to Tetra Tech International Development* - addressed to Tetra Tech International Development's Representative at the address specified in Schedule 1; or
 - (b) *if given by Tetra Tech International Development to the Service Provider*- given by Tetra Tech International Development's Representative (or any Tetra Tech International Development employee with superior authority to the Tetra Tech International Development Representative) and addressed (and marked for attention) as specified in Schedule 1 or as otherwise notified by the Service Provider.
- 23.2 A notice is to be:
- (a) signed by the person giving the notice and delivered by hand;
 - (b) signed by the person giving the notice and sent by pre-paid post; or
 - (c) transmitted electronically by the person giving the notice by electronic mail.

When effective

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- 23.3 A notice is deemed to be effected:
- (a) *if delivered by hand* – upon delivery to the relevant address;
 - (b) *if sent by post* – upon delivery to the relevant address; and
 - (c) *if transmitted electronically*- upon actual receipt by the addressee.
- 23.4 A notice received after 5.00pm, or on a day after that is not a Business Day in the place of receipt, is deemed to be effective on the next Business Day in that place.

24 CONFLICT OF INTEREST

- 24.1 In this clause:

Conflict means any matter, circumstance, interest or activity affecting the Service provider or its Personnel which may, or may appear to, impair the ability of the Service Provider to provide the Services to the Tetra Tech International Development or the Client diligently and independently.

- 24.2 The Service Provider Warrants that, to the best of its knowledge after making diligent inquiry, at the Commencement Date, no Conflict exists or is likely to arise in the performance of the Services.
- 24.3 If during the period of this Agreement, a Conflict arises, or appears likely to arise, the Service Provider agrees:
- (a) to notify Tetra Tech International Development immediately;
 - (b) to make full disclosure of all relevant information relating to the Conflict; and
 - (c) to take any steps Tetra Tech International Development reasonably requires to resolve or otherwise deal with the Conflict.

25 CHILD PROTECTION

- 25.1 The Contractor must develop and implement arrangements for the effective safeguarding of children and young persons ('Child Protection Framework') that includes the requirements set out in clause 25.2, to the extent relevant to the Services the Contractor is to be engaged to perform.
- 25.2 The Child Protection Framework must include systems that provide for:
- (a) effective leadership to enable the safeguarding of children;
 - (b) provisions within its employment contracts and agreements with Subcontractors that prevent (or empower the Contractor 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 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..
- 25.3 The Contractor will ensure that its agreements with all subcontractor Personnel impose an obligation 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.
- 25.4 This clause 25 survives termination.

26 PREVENTING SEXUAL EXPLOITATION, ABUSE AND HARASSMENT

- 26.1 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 26.2,
 - (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 Tetra Tech International Development PSEAH Policy, accessible at <http://tetrattech.com>,

to the extent relevant to the services the Service Provider is engaged to perform.
- 26.2 If clause 26.1(a) applies, the PSEAH Policy must:
 - (a) 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 Contractor's Personnel; and
 - (b) 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>.
- 26.3 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.
- 26.4 the Service Provider must report to Tetra Tech International Development:
 - (a) any suspected or alleged case of sexual exploitation, abuse and harassment that related to the performance of the Services within 48 hours of becoming aware of the case;
 - (b) any alleged incidents of non-compliance with the DFAT PSEAH Policy within five (5) Business Days; and
 - (c) any suspected or alleged instances of child abuse, exploitation or harm arising in connection with official duties or business immediately.
- 26.5 In reporting to Tetra Tech International Development as required pursuant to clause 26.4, the Service Provider must comply with the *Privacy Act 1988* (Cth) and the privacy provisions of the Sexual Exploitations, Abuse and Harassment (SEAH) Incident Notification From, and Child Protections Policy, available on DFAT's website.

26.6 This clause survives termination.

27 COUNTER-TERRORISM

27.1 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.

27.2 This clause survives termination.

28 MODERN SLAVERY

28.1 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 to prevent Modern Slavery practices;
- (e) it will ensure that no recruitment fees or related costs are charged to, or otherwise borne by, any worker it engages, including any entities it engages where such entities are individuals;
- (f) it will not destroy or exclusively possess (without informed consent), whether permanent or otherwise, the travel or identity documents of its directors, officers, employees or engaged entities, where such entities are individuals;
- (g) 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 connection with this Agreement or the Services and the actions undertaken by it to remedy the issue;
- (h) it has all the necessary processes, procedures, investigations and compliance systems in place to undertake the actions in clauses 28.1(a) to (i); and
- (i) it will include provisions equivalent to those in clauses 28.1(a) to (h) in its contracts with its subcontractors, to the extent relevant to the services to be performed by the subcontractor.

28.2 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 Tetra Tech International

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Development to enable Tetra Tech International Development to discharge any obligations arising under the Modern Slavery Laws.

- 28.3 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 28.
- 28.4 This clause survives termination.

29 FRAUD

- 29.1 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.
- 29.2 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.
- 29.3 If the Service Provider becomes aware of a 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.
- 29.4 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 29.4, the Service Provider must provide all reasonable assistance that may be required at its own expense
- 29.5 This clause survives termination.

30 ANTI – CORRUPTION

- 30.1 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.
- 30.2 Any breach of this clause 30 will entitle Tetra Tech International Development to issue a notice under clause 16 to terminate this Agreement immediately.
- 30.3 This clause 30 survives termination.

31 WORK HEALTH AND SAFETY

- 31.1 In carrying out the Services the Service Provider must:
- (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.

32 PUBLICITY

- 32.1 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.
- 32.2 This clause 32 survives termination of this Agreement.

33 NOVATION AND ASSIGNMENT

- 33.1 Under the Head Contract between the Client and Tetra Tech International Development, the Client may have 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 may be novated and it does not create any contractual relationship between the Client and the Service Provider.

- 33.2 The Service Provider agrees that Tetra Tech International Development may, without requiring any further agreement or consent from the Service Provider, at any time and at its sole and absolute discretion, assign or novate this Agreement (which includes Work Orders) or any right, benefit or interest in and under this Agreement to:
- (a) a Tetra Tech International Development Related Body Corporate;
 - (b) the Client; or
 - (c) an entity that is, or is proposed to be, a contractor engaged by the Client.
- 33.3 For the purposes of giving effect to clause 33.2, the Service Provider irrevocably and unconditionally appoints TTID as its agent and attorney, and TTID accepts such appointment, to sign any document or documents for and on behalf of the Supplier that may reasonably be required to effect a novation of this Agreement, including without limitation a novation deed or agreement.
- 33.4 The Service Provider acknowledges and agrees that:
- (a) Tetra Tech International Development may sign such a novation deed or agreement and any other documents required to give effect to a novation of this Agreement without seeking any further instructions or consent from the Service Provider;
 - (b) by entering into this Agreement, the Service Provider has acknowledged and accepted that Tetra Tech International Development can assign or novate this Agreement in accordance with this clause 33 without the Service Provider's consent; and
 - (c) novation of this Agreement to a Sovereign Nation or an entity that is, or proposes to be, a contractor engaged by the Client or the Sovereign Nation, does not create any contractual relationship between the Service Provider and the Client or the Sovereign Nation.
- 33.5 The Service Provider must not assign, novate, pledge, or make any other disposition of this Agreement or any part of this Agreement or a Work Order, or any of the rights, claims, or obligations under this Agreement or a Work Order except with the prior written authorization of Tetra Tech International Development. Any such unauthorized assignment, transfer, pledge or other disposition, or any attempt to do so, will not be binding on Tetra Tech International Development.

34 COMPLIANCE WITH CLIENT AND TETRA TECH INTERNATIONAL DEVELOPMENT REQUIREMENTS

- 34.1 The Service Provider and its Personnel must have regard to and comply with:
- (a) the Agreement Special Conditions referred to in Schedule 1 (if any); and
 - (b) relevant and applicable laws, guidelines, regulations and policies, including those in Australia and in the Partner Country.
- 34.2 The Service Provider must ensure that it and its Personnel comply with Tetra Tech International Development Code of Conduct set out in Schedule 5. The Service Provider will sign the Tetra Tech International Development Code of Conduct.
- 34.3 The Service Provider will acknowledge and sign the Tetra Tech International Development Code of Conduct and the Additional CClient and Tetra Tech International Development Requirements set out in Schedule 6.

35 NOTIFICATION TO TETRA TECH INTERNATIONAL DEVELOPMENT

- 35.1 The Service Provider must ensure it is not and 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 World Bank List or a Relevant List;
 - (c) subject to any proceedings or informal process that could lead to listing on 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 other than the World Bank; and/or
 - (f) the subject of an investigation (whether formal or informal) by the World Bank or another donor of development funding.
- 35.2 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.
- 35.3 In this Agreement:
- (a) **“World Bank List”** means a list of organisations maintained by the World Bank in its “Listing of Ineligible Firms” or “Listings of Firms, Letters of Reprimand” posted at: <http://web.worldbank.org>;
 - (b) **“Relevant List”** any list similar to the World Bank List, including but not limited to:
 - (i) the lists of terrorist organisations made under Division 102 of the Criminal Code Act 1995 (Cth) and the Charter of the United Nations Act 1945 (Cth) posted at: <https://www.nationalsecurity.gov.au>;
 - (ii) the Asian Development Bank Sanctions List, posted at: inadbg4.adb.org/oga0009p.nsf; and
 - (iii) the DFAT Consolidated List of sanctions, posted at: <https://www.dfat.gov.au/international-relations/security/sanctions/consolidated-list>

36 ADDITIONAL CLIENT REQUIREMENTS

- 36.1 The Service Provider acknowledges and agrees that the requirements and obligations set out in Schedule 6 under “Additional Client Requirements”
- 36.2 The Service Provider authorises the Client to publish details of the name of Service Provider and the nature of the Services that the Service Provider is subcontracted to perform.

37 GENERAL PROVISIONS

Non-compete

- 37.1 During the term of this Agreement, the Service Provider must not seek to contract, or bid for, any work the subject matter of the Head Contract between Tetra Tech International Development and the Client to which this Agreement pertains.

Further Assurance

- 37.2 Each Party must take all steps, execute all documents and do everything reasonably required by the other party to give effect to the transactions contemplated by this Agreement.

Waiver

- 37.3 A failure or delay by a party to exercise any right or remedy it holds under this Agreement does not operate as a waiver of that right.
- 37.4 A right under this Agreement may only be waived in writing by the party entitled to the right.

Amendments

- 37.5 Except to the extent expressly permitted by the terms of this Agreement, this Agreement may only be amended by another written agreement executed by authorized officers of both parties.

Survival of indemnities

- 37.6 Each indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations of the Service Provider, and survives expiration or termination of this Agreement. It is not necessary for Tetra Tech International Development to incur expense or make payment before enforcing a right of indemnity conferred by this Agreement.

Entire Agreement

- 37.7 This Agreement contains the entire agreement of the parties as to its subject matter.
- 37.8 Unless otherwise explicitly incorporated by reference, this Agreement superseded all previous proposals, verbal or written arrangements or agreements, and any other communications by one or both Parties relating to this Agreement.
- 37.9 This Agreement sets out the only representations and warranties relied upon by the Parties when entering into this Agreement.
- 37.10 The original of this Agreement has been written and signed in English. If this Agreement is translated into another language, the English version will govern and prevail.

Electronic Signature and Counterparts

- 37.11 The Parties agree that this Agreement may be executed by electronic signature and that this method of signature is conclusive of the Parties' intention to be bound by this Agreement as if physical signing had occurred.
- 37.12 This Agreement and any amendment made pursuant to clause 38.5, will be validly executed if signed in any number of counterparts and the counterparts taken together will constitute one Agreement or amendment (as the case may be).

Survival of General Provisions

- 37.13 This clause survives termination.

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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		Signature
Date:		Date:

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SCHEDULE 1

AGREEMENT DETAILS

SERVICE PROVIDER:	
PROJECT:	
COMMENCEMENT DATE:	
COMPLETION DATE:	
OPTION PERIOD	
INVOICES	
PARTNER COUNTRY:	
CLIENT:	
HEAD CONTRACT:	Title:
	Date of execution:

1. CLAIMS FOR PAYMENT

The Service Provider claims for payment must be submitted when due pursuant to this Agreement 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.

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:

Address:

Account Name:

BSB:

Account Number:

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2. INSURANCE REQUIREMENTS

[Unless otherwise indicated in the Work Order, the Service Providers must effect and maintain the following insurance policies:

- (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 performance of the Services or any obligation or the exercise of any right under the Agreement. 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 in respect of the Service Provider's liability to its employees engaged in the performance of any obligation or the exercise of any right under the Agreement.

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:

- (i) adequate personal accident and illness insurance (accidental death and weekly benefits) for any of its Personnel not otherwise covered; and
 - (ii) 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 to carry out work under the Agreement. Where possible at law, such insurance should extent to cover the liability of Tetra Tech International Development for the acts or omissions of the Service Provider or its Personnel.
- (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;
- (e) adequate Professional Indemnity insurance to cover the Service Provider's obligations under this Agreement, with a limit of indemnity not less than the amount specified in the Work Order (or if no limit is specified, AUD5 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 liability of the Service Provider at general law arising from negligent breach of duty owed in a professional capacity by reason of any act or omission of the Service Provider or Personnel. Such insurance must:
 - (iii) have a definition of the covered "professional services" broad enough to include all professional services, activities and duties to be provided or performed by the Service Provider;
 - (iv) extend to cover claims relating to cybersecurity and IT risks; and

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(v) extend to cover unintentional breaches of intellectual property rights.

The Service Provider must maintain the Professional Indemnity insurance for the term of this Agreement and until the expiration of 6 years after the end of the Term;]

- (f) Adequate medical insurance (including medical evacuation and evacuation resulting from an insured event for the Services Provider's Personnel) for persons engaged to carry out and aspect of the Services outside their country of permanent residence.

3. SPECIAL CONDITIONS

1 SECURITY AND CYBER SECURITY

In this clause:

"Cyber Security Incident" means a single or series of unwanted or unexpected identified occurrences of a system, service or network state indicating a potential or actual breach of cyber security procedures, process or requirements and threatening security;

"Data" includes any information provided by either party from any source, or collected or created by the Contractor in connection with the Services, whether in magnetic, electronic, hardcopy or any other form.

- 1.1 The Service Provider is responsible for the security of Personnel and must ensure that both the Service Provider and its Personnel comply with this clause.
- 1.2 In performing its obligations and exercising its rights under this Agreement, the Service Provider warrants and represents that it will:
- (a) maintain adequate and effective administrative, technical and physical measures, controls, tools, systems, policies and procedures in accordance with good cyber security industry practice; and
 - (b) comply with any Direction from Tetra Tech International Development regarding cyber security practices that relate to the Services, including relevant requirements of the Special Conditions (if any).
- 1.3 The Service Provider must take reasonable and prudent steps consistent with good industry practice to reduce the risk of a Security Incident or Cyber Attack on the Service Provider's information technology systems that accesses, transmits or stores any Confidential Information or any other Data/Records connected with this Contract, including but not limited to, Contract Material, or Personal Information.
- 1.4 At Tetra Tech International Development's request in a notice, the Service Provider must provide details of the Service Provider's security measures in place to reduce the risk of a Security Incident or Cyber Attack on the Service Provider's information technology systems.
- 1.5 If the Service Provider becomes aware of a Security Incident or Cyber Attack on the Service Provider's information technology systems, the Service Provider must immediately notify:
- (a) Tetra Tech International Development (and, if this notification is not done by notice, by notice within one (1) Business Day); and
 - (b) if required by Tetra Tech International Development, advise the Australian Cyber Security Centre (ACSC) and/or other relevant body.

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1.6 The Service Provider must:

- (a) notify Tetra Tech International Development immediately on becoming aware of any security incident, Cyber Security Incident or security breach and comply with all Tetra Tech International Development directions to rectify the security issue, which may include notifying the Australian Cyber Security Centre or any other relevant body; and
- (b) participate in security reviews of its procedures at least annually as requested by Tetra Tech International Development and participate in any security audit in relation to the Contract, providing full co-operation to Tetra Tech International Development or its independent auditors, including the Australian National Audit Office.

2 PERFORMANCE ASSESSMENT

2.1 In this clause:

- (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>
“**VfM Principles**” means “value for money principles”, being the principles to guide decision making and which are subject to assessment by the Client, the details of which are that are set out online at: <https://www.dfat.gov.au/aid/who-we-work-with/value-for-money-principles/Pages/value-for-money-principles>

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

2.3 The Service Provider agrees that the Client 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.

2.4 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.

2.5 The Service Provider will produce the documents and/or information set out in the request within 15 days of receipt.

4. REPRESENTATIVES

Tetra Tech International Development's Representative	Service Provider's Representative
Name:	Name:

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Document Version:

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 2

SCOPE OF SERVICES

1 Purpose

- 1.1 The purpose of the Scope of Services (SOS) is to set out the potential delivery of < technical advisory services > to be provided by the Service Provider.
- 1.2 The detailed requirements for specific projects will be outlined in the Service Order issued under this agreement.

2 Background

- 2.1 Tetra Tech International Development has been engaged by DFAT to provide client-side project management and/or Head Contractor Services.
- 2.2 As part of the Services, the Service Provider may be requested to directly deliver additional technical services to support the unique and specific needs of a project. The additional services may include, but are not limited to, design development, feasibility studies, business case development and environmental impact assessments. These additional services would be outlined in the Service Request for specific projects. *Update for services and activities to be performed under this agreement*

3 Service Requirements

- 3.1 Broadly, the Service Provider will be required to:
 - (a) provide technical advice related to:
 - (i) Project-based land tenure, access and acquisition.
 - (ii) Land administration and management issues as applied across the whole project life cycle.
 - (b) provide technical advice and inputs as required on environmental and social safeguarding processes and requirements.
 - (c) provide other technical advice across relevant support services where the Service Provider can add value, including:
 - (i) Due diligence
 - (ii) Gender, Equity, Diversity and Social Inclusion
 - (iii) Community Engagement

SCHEDULE 3

Schedule of Prices

Prices for the Services are as agreed by Tetra Tech International Development in the relevant Work Order.

Option to include specific schedule of prices below – if pricing is to be provided in this schedule, it should set out

- *a detailed breakdown of the Price if some or all of the Services are being provided on a lump sum basis; and*
- *where applicable, any rates relating to out of scope work or additional work i.e. maintenance, personnel costs for travel time etc should be included under a separate heading “Schedule of Rates”.*

If rates and prices are included only for the purpose of valuing variations, this must be made clear.

If rates and prices are to be subject to an annual price review process, the process for pricing review should also be identified in this schedule.

1. Schedule of Prices and Rates

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SCHEDULE 4

Form of Work Order

MASTER SERVICES AGREEMENT (MSA) - WORK ORDER

The Service Provider has offered under the Master Services Agreement listed at Item 1 below (the “**Agreement**”, “**MSA**”) to provide the Services to Tetra Tech International Development (“**Tetra Tech**”). Tetra Tech accepts this offer on the terms and conditions set out in the MSA and issues this Work Order in accordance with clause 4 of the MSA.

Subject to clause 2 of the MSA, if there is an inconsistency between this Work Order and any other provisions of the MSA, the MSA will prevail to the extent of any inconsistency.

Contractor: [insert name and details]

Contractor Representative: [insert name and details]

Documents enclosed with this Work Order

Document	See document marked as
<input type="checkbox"/> Contractor's Proposal	Attachment XX
<input type="checkbox"/> Client Tasking Note	Attachment YY
<input type="checkbox"/> ToR / SoS	Attachment ZZ
<input type="checkbox"/> Other:	Attachment WW

1 Contract Reference

<<< >>> Master Services Agreement

[GS – <number> <title> <date> (“**MSA**”, the “**Agreement**”)]

3 Client / Customer

[insert]

4 Work Order No.

[Number]

5 Site / Partner Organisation

[insert]

6 Services

☐ See attached Client Tasking Note / Concept Note / Terms of Reference

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Contractor:

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7 Amount due for this Work Order

AUD\$ xx,xxxx

The amount specified above is calculated in accordance with fixed prices/rates in ☒ Schedule of Prices. ☐ Service Provider's Proposal

8 Reimbursable Costs

☐ Reimbursable Costs (including Tax) of any kind will **not** be reimbursed to the Service Provider. Tetra Tech may its discretion authorise the Service Provider to incur and be reimbursed for out of pocket expenses

☐ **Yes.** The following Reimbursable Costs may be paid:

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

9 Liability Cap

<<<< >>> times the Prices

If nothing specified, the Liability Cap set out in the Agreement applies.

10 Service Commencement Date

The Services will commence to be provided on [DATE]

11 Time for Performance

The Time for Performance is [*insert*]

12 Quality Assurance

[Insert details of the QA approach specified by the Service Provider in its proposal]

13 Work Schedule

Clause 5 of the Agreement [does / does not] apply.

The Contractor must comply with the following work schedule (if any):

[Identify or attach the work schedule to be complied with (if any), including the Time for Performance.]

14 Payment Plan

Delete whichever option is not appropriate.

Option 1 - Monthly Progress Payments

On the [**insert date**] of each month (or as otherwise agreed by Tetra Tech International Development) the

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15 Special Conditions

Service Provider must submit claims for payment to Tetra Tech International Development's Representative.

Option 2 - Milestone Payments

Within **[insert days]** of completion of each milestone set out in the milestone payment schedule below, the Service Provider must submit an invoice to Tetra Tech International Development's Representative for the relevant amount payable on achievement of the milestone.

[insert milestone payment schedule]

Update as required:

Example: *All Personnel specified in the Service Provider's Proposal must sign a Deed of Confidentiality / Non-disclosure Agreement*

EXECUTED as a CONTRACT

SIGNED for and on behalf of Tetra Tech International Development by its authorised representative:

	Date:	
Signature	Position:	
Name (print)		

SIGNED for and on behalf of the Service Provider by its authorised representative:

Date:

Signature

Position:

Name (print)

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[GS - <number> <title> <date>]

Contractor:

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SCHEDULE 5

Tetra Tech International Development Code of Conduct

Purpose

The purpose of the Tetra Tech International Development Code of Conduct (which is made up of both the Tetra Tech Inc. Vendor Code of Conduct and Tetra Tech International Development Safeguarding Code of Conduct) is to provide a framework for decisions and actions in relation to our suppliers' conduct both in delivering services and as Tetra Tech International Development representatives in dealing with clients, stakeholders and partners.

It underpins our commitment to a duty of care to all stakeholders and clients receiving our services. The documents explain the principles covering appropriate conduct in a variety of contexts and outlines the minimum standard of behaviour and client service expected.

It is important for Tetra Tech International Development suppliers to understand that clients are contracting and paying Tetra Tech International Development to be a professional, responsive, and proficient contractor and that this extends to suppliers working with our organisation.

The Service Provider acknowledges that it has received the Tetra Tech International Development Code of Conduct, being the documents listed in Table 1 which are enclosed with this Agreement

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

Signature:	
Name:	
Position:	
Program:	
Date:	

Schedule 4 Attachments listed in Table 1

Table 1

Document number	Document name
N/A	Tetra Tech Vendor Code of Conduct
N/A	Tetra Tech International Development Safeguarding Code of Conduct

SCHEDULE 6

Additional Client and Tetra Tech International Development Requirements

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 \(dfat.gov.au\)](https://www.dfat.gov.au/about-us/publications/Pages/accessibility-design-guide-universal-design-principles-for-australia-s-aid-program), 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
 - (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.