MISE Office
Construction Services Contract

Tetra Tech International Development Pty Limited (ABN 63 007 889 081)

(**Tetra Tech**)

And

Contractor company name to be inserted (ABN / Company Number)

(**Contractor**)

Contract Reference: GS-14122

For the MISE Office

In Betio, Tarawa, Kiribati

Part of the Kiribati Australia Infrastructure Program (Te KAI)

Formal Instrument of Agreement

Betio, Tarawa (Site)

Tetra Tech International Development Pty Ltd
(ABN 63 007 889 081)
(**Principal**)

(ABN / Company Number)
[insert Contractor entity name and, if applicable, Australian Company Number]
(**Contractor**)

Agreement Reference: GS-14122

Details

Date DD MMMM YYYY

Parties

Name **Tetra Tech International Development Pty Ltd**

(ABN 63 007 889 081) of 422 King William Street, Adelaide, SA, 5000

Short form name '**Principal**'

Name **[insert Contractor entity name, Australian Company Number (if applicable)** and address**]**

Short form name '**Contractor**'

Background

The Principal carries on the business of a management consultant and international project manager. The Principal is engaged by the Department of Foreign Affairs and Trade ('**Client**') to manage and implement the Kiribati Australia Infrastructure Program (Te KAI) ('**Program**'). The Program is implemented on behalf of the Client pursuant to Official Order number 76408/2 'Australia-Kiribati Riin te Waaki (Infrastructure) Program (AusKInfra)' ('**Head Contract**').

i. The Principal wishes to engage the Contractor to complete minor works under the Contract on the terms and conditions described and set out in the Contract Documents.

ii. The Contractor has agreed to perform work under the Contract and deliver the Works in accordance with the Contract.

IT IS AGREED as follows:

1. Composition of Contract

This Contract means the agreement between the Principal and the Contractor which is constituted by this document (the Formal Instrument of Agreement) together with the other Contract Documents.

Words and phrases defined in the Contract have the same meaning in this Formal Instrument of Agreement as they have in the Contract.

2. Contract Documents

The documents listed below (**Contract Documents**) comprise the entire agreement between the parties:

a) this Formal Instrument of Agreement;

b) the Conditions of Contract which are at **Attachment 1** to this Formal Instrument of Agreement.

c) **Attachment 2** to this Formal Instrument of Agreement – which includes:

i. **Schedule 1 –** Contract Details

ii. **Schedule 2** – Contract Price

iii. **Schedule 3** – Project Requirements

iv. **Schedule 4** – Principal supplied materials and equipment

v. **Schedule 5** – Approved subcontractors

vi. **Schedule 6** – Client and Principal's Requirements

3. Performance of the Works

a) The Contractor must perform work under the Contract and the Works in accordance with the Contract.

b) The Contractor must, as between the Contractor and the Principal, bear all risks and costs (whether ascertainable at the date of this Contract or not) arising out of or in connection with the performance of work under the Contract and the Works, except to the extent expressly made the responsibility of the Principal under the Contract.

c) The Parties acknowledge and agree that the Works are subject to and must be performed in accordance with the Head Contract. Relevant requirements of the Client Head Contract are set out in the Contract Documents. The Principal may direct the Contractor to comply with other Client requirements from time-to-time.

4. Contract Sum

a) Subject to the terms of the Contract, the Principal must pay to the Contractor the contract sum of [AUD$ insert total contract sum] (plus any applicable Consumption Taxes) (Contract Sum), and any other subs that become payable under the Contract.

b) The Contract Sum includes the following provisional sum items (plus taxes):

i. Temporary Fencing: AUD $XX

ii. Permanent Fencing: AUD $XX

iii. As Provisional Sum Rate:

Transport of Materials: AUD $XX / return trip

5. Entire Agreement

The Contract Documents constitute the entire agreement between the Principal and the Contractor in connection with the carrying out of the work under the Contract and supersedes any previous agreements between them in relation to that subject matter.

6. Counterparts

This Contract may be executed in counterparts. All executed counterparts constitute one document.

EXECUTED as an agreement.

Executed by **Tetra Tech International Development Pty Ltd (ABN 63 007 889 081)**

In accordance with s127 of the *Corporations Act 2001 (Cth)*

Signature of director / authorised representative	Signature of director/company secretary / authorised representative (Delete as applicable)
Name (print)	Name (print)

Executed by **[insert Contractor entity name] (Contractor Business Reg No ##)**

Signature of Authorised Representative	Signature of Authorised Representative
Name (print)	Name (print)

TABLE OF CONTENTS

ATTACHMENT 1 – CONDITIONS OF CONTRACT 8
1 Interpretation and construction of Contract 8
2 Nature of Contract 13
3 Security 13
4 Notices and communications 14
5 Discrepancies 14
6 Assignment, novation and subcontracting 15
7 Legislative requirements 15
8 Protection 15
9 Care of the work and reinstatement of damage 16
10 Damage to persons and property other than WUC 16
11 Insurance of the Works 17
12 Public liability insurance 17
13 Insurance of employees 17
14 Insurance provisions 17
15 Superintendent's direction 18
16 Representatives 19
17 Site 19
18 Materials and work 19
19 Programming and suspension 20
20 Time and progress 20
21 Defects liability 21
22 Variations and pricing 22
23 Payment 22
24 Payment of workers and subcontractors 24
25 Default or insolvency 25
26 Notification of claims (CLAUSE NOT IN USE) 26
27 Dispute resolution 26
28 Industrial Relations (CLAUSE NOT IN USE) 27
29 Client funding and limitation of liability 27
30 Modern Slavery 27
31 Fraud 28
32 Anti-Corruption 28
33 Work Health and Safety 28
34 Publicity 29
35 Compliance with laws and policies 29
36 Notification to the Principal 29
37 Counter terrorism 30
38 Environment 30

39 Site conditions 30
ATTACHMENT 2 ..... Error! Bookmark not defined.
SCHEDULE 1 – CONTRACT DETAILS **32**
SCHEDULE 2 – CONTRACT PRICE **35**
SCHEDULE 3 – PROJECT RQUIREMENTS **36**
SCHEDULE 4 – PRINCIPAL / CLIENT SUPPLIED MATERIALS & EQUIPMENT **37**
SCHEDULE 5 – APPROVED SUBCONTRACTORS **38**
SCHEDULE 6 – CLIENT & PRINCIPAL'S REQUIREMENTS **39**

ATTACHMENT 1 – CONDITIONS OF CONTRACT

1 Interpretation and construction of Contract

In the *Contract,* except where the context otherwise requires:

certificate of practical completion has the meaning in subclause 20.4;

Claim means any cost, expense, loss, damage, action, suit, cause of action, proceeding, claim, demand or other liability (including any claim or demand for costs or expenses, including legal costs on a full indemnity basis), whether in contract, tort or otherwise, arising from any cause whatsoever and whether present, unascertained, immediate, future or contingent

Client means the entity or person listed in Schedule 1;

compensable cause means any act, default or omission of the *Principal* or its consultants, agents or other contractors (not being employed by the *Contractor)* which is not authorised or permitted under the Contract*;*

construction program has the meaning in clause 19;

Consumption Taxes means any applicable consumption, value-added or good and services tax or taxes, which for example in Australia is the goods and services tax (**GST**);

Contract means the agreement between the *Principal* and the Contractor comprising the Contract Documents set out in Clause 1.1 of the Formal Instrument of Agreement

contract sum means:

a) where the Principal accepted a lump sum, the lump sum;

a) where the Principal accepted rates, the sum of the products ascertained by multiplying the rates by the corresponding quantities in the schedule of rates; or

b) where the Principal accepted a lump sum and rates, the aggregate of the sums referred to in paragraphs (a) and (b),

excluding any additions or deductions which may be required to be made under the *Contract;*

Contractor means the person bound to carry out and complete *WUC*

Date for Practical Completion means the date stated in *Item* 7(a) or the last day of the period of time stated in *Item* 7(b), ***completion*** but if any *EOT* for *practical completion* is directed or otherwise allowed, it means the date resulting therefrom;

***date of* acceptance of tender** the date which appears on the written notice of acceptance of tender;

Date of Practical Completion means:

a) the date evidenced in a certificate of practical completion as the date upon which practical completion was reached; or

b) where another date is determined in any arbitration or litigation as the date upon which *practical completion* was reached, that other date;

defects has the meaning in clause 21 and includes omissions;

DFAT Consolidated List means the list of all persons and entities subject to targeted financial sanctions or travel bans under Australian sanctions laws available on DFAT's website: https://dfat.gov.au/international-relations/security/sanctions/Pages/consolidated-list.aspx

direction includes agreement, approval, assessment, authorisation, certificate, decision, demand, determination, explanation, instruction, notice, order, permission, rejection, request or requirement;

Dispute has the meaning in clause 27;

EOT ('extension of time') has the meaning in subclause 20.2;

Fraud means, in relation to *Works*, 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 and 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.

Governing Jurisdiction means the *jurisdiction* specified at *Item 10 of Schedule 1* as the *Governing Jurisdiction*

Governing Law means the *Contract* will be governed by the law of the *Governing Jurisdiction*, save for those *Legislative Requirements of the Partner Country* that the *Contractor* must comply with when carrying out the *Works.*

Head Contract means any *Contract* between the *Principal* and *Client* in connection with the *Works* and includes the contract listed in paragraph A of the Background to the Formal Instrument of Agreement, amongst other things;

Item means an *Item* listed in Schedule 1;

Inclement Weather means the existence of abnormal or severe climatic conditions during which it is not safe for employees, subcontractors or personnel exposed to those conditions to continue carrying out the Works.

Legislative Requirement includes, as in force from time to time:

a) legislation, ordinances, regulations, by-laws, orders, proclamations or other subordinate legislation;

b) standards, codes and guidelines;

c) directions or notices issued by any government authority; and

d) requirements of a government authority to pay fees, taxes, levies, rates and charges in respect of the Legislative Requirements referred to in (a) – (d) above,

issued or given by any authority for the *Governing Jurisdiction*, or the jurisdiction of the *Partner Country* or an authority of the *Commonwealth of Australia*, where applicable or where the context requires.

Modern Slavery includes any conduct which constitutes modern slavery under any *Modern Slavery Law*, including without limitation slavery, human trafficking, servitude, forced labour and forced marriage;

Modern Slavery Laws means the

a) *Modern Slavery Act 2018* (Cth), Divisions 270 and 271 of the *Criminal Code 1995* (Cth), and;

b) any other law of the Commonwealth of Australia or any State or Territory of Australia, and any other applicable laws, guidelines or regulations, pertaining to exploitative practices including slavery, servitude, forced labour, human trafficking, debt bondage, child labour and other slavery-like practices,

in force in Australia or in force in the Partner Country or otherwise applicable to the *Principal* or *Contractor* (or any relevant subcontractor) from time to time.

Partner Country means the country specified at *Item 11 of Schedule 1,* being the country in which the *Works* are to be performed.

Permanent Works Means all new permanent assets defined in Schedule 3 and its attachments, including the market building and its contents, renovation of the existing warehouse, plus external works on and adjacent to the site including the extension of the water main beneath the road and pedestrian crossings*;*

Practical Completion is that stage in the execution of the *Works when:*

a) the *Works* are complete except for minor omissions and minor *defects*:

   i. which in the opinion of the *Principal* do not prevent the *Works* from being reasonably capable of being used for their intended purpose; and

   ii. which the *Principal* determines the *Contractor* has reasonable grounds for not promptly rectifying; and

   iii. rectification of which will not prejudice the convenient use of the *Works*;

b) those tests which are required by the *Contract* to be carried out and passed before the *Works* reach *Practical Completion* have been successfully carried out and passed;

c) documents and other information required under the *Contract* which in the opinion of the *Principal*, are essential for the use, operation and maintenance of the *Works* have been supplied;

d) the *Contractor* has delivered to the *Principal*:

i. all original warranties;

ii. a copy of any relevant certificates required to be provided by the *Works* by any legislative requirement;

iii. any other certificates required by the *Contract* and all approvals, consents and permissions from all relevant authorities having jurisdiction or authority in respect of the *Site*;

e) the Contractor has thoroughly cleaned the area comprising the Works:

f) the Contractor has rectified any damage to any land or structure surrounding the Site caused by the Contractor in carrying out the work under the Contract;

Temporary Works Means any structures or systems that are not part of the final permanent building but are essential to support construction activities, including scaffolding, formwork and falsework, shoring, propping and temporary access roads;

Principal means the *Principal* stated in *Item* 1*;*

qualifying cause of delay means:

a) a breach of the Contract by the Principal (including its agents or employees);

b) the carrying out of variations arising out of a written direction from the Principal or Superintendent to undertake variations under the Contract;

c) a change in any legislative requirement which necessitates a material change:

i. to the Works;

ii. in respect of the provision of services by a municipal, public or other statutory authority in connection with the Works,

and which comes into effect after the date of the *Contract* and could not reasonably then have been anticipated by a competent *Contractor;*

but excludes such causes that occur or arise due to a breach or omission by the Contractor or, industrial conditions or inclement weather occurring after the date for practical completion;

site means the lands and other places to be made available and any other lands and places made available to the *Contractor* by the *Principal* for the purpose of the *Contract;*

Superintendent means the person stated in *Item* 5 as the Superintendent or other person from time to time appointed in writing by the *Principal* to be the Superintendent and notified as such in writing to the *Contractor* by the *Principal* and, so far as concerns the functions exercisable by a *Superintendent '*s representative, includes a Superintendent's representative;

substantial breach includes, but is not limited to:

a) failing to provide security or evidence of insurance;

b) comply with a direction of the Superintendent pursuant to subclause 18.2; or

i. use the materials or standards of work required by the Contract;

ii. wrongful suspension of work;

iii. substantial departure from a construction program without reasonable cause or the Superintendent's approval;

iv. where there is no construction program, failing to work at a reasonable rate of progress;

v. in respect of clause 24, knowingly providing documentary evidence containing an untrue statement;

vi. act or omission resulting in material breach or non-compliance with clauses **Error! Reference source not found.**, **Error! Reference source not found.**, 33, 34, 35 or 37;

vii. the Contractor gives notice under clause 36 or a circumstance of the kind listed in clause 36 exists in relation to the Contractor

WHS Legislation means all applicable laws, regulations and the like and the requirements of any authority (including in the jurisdiction in which the *Works* are to be performed) regulating matters of occupational health, safety or security;

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' available on the World Bank's website at: http://web.worldbank.org

Work includes the provision of materials (including Client or Principal supplied materials and equipment and material stored off site);

Works means the whole of the *work* to be carried out and completed in accordance with the *Contract* as described in Item 8 of Schedule 1 which by the *Contract* is to be handed over to the *Principal,* and includes:

a) the Permanent Works and Temporary Works (where applicable); and

b) variations provided for by the *Contract;*

WUC ***('work under the Contract')***	means the *work* which the *Contractor* is or may be required to carry out and complete under the *Contract* and includes variations, remedial work, construction plant and temporary works, Client or Principal supplied materials and equipment, and material stored off site and like words have the corresponding meaning

1.1 Contract language

The language for construction and interpretation of the Contract is English (Ruling Language). If there are versions of any part of the which are written in more than one language, the version which is the Ruling Language will prevail.

2 Nature of Contract

2.1 Performance and payment

The *Contractor* will carry out and complete *WUC* in accordance with the *Contract* and directions authorised by the *Contract*.

The *Principal* will pay the *Contractor*:

a) for *work* for which the *Principal* accepted a lump sum, the lump sum; and

b) for *work* for which the *Principal* accepted rates, the sum of the products ascertained by

c) multiplying the measured quantity of each section or item of *work* actually carried out under the *Contract* by the rate accepted by the *Principal* for the section or item,

adjusted by any additions or deductions made pursuant to the *Contract*.

2.2 Provisional sums

a) If the Contract includes a provision sum, the Contractor must not carry out work to which a provisional sum relates unless directed to do so by the Superintendent.

b) The Superintendent is under no obligation to direct that any work is carried out in relation to a provisional sum.

c) Where the work or item to which a provisional sum relates is performed or supplied by the Contractor, the work or item will be priced under clause 22.2. Where the contract sum includes allowance for a provisional sum, that amount is to be deducted from the contract sum and the cost of the work actually carried out (if any) priced under clause 22.2 added to the contract sum.

d) The amount payable to a subcontractor for materials or goods is to be treated as the net cost to the Contractor.

2.3 Quantities

Quantities in a schedule of rates are estimated quantities only. If the schedule of rates omits a package of work which should have been included, the item will be a deemed Variation.

3 Security

3.1 Provision

Security will be provided in accordance with Item 13. All delivered security, other than cash or retention moneys, will be held in accordance with the requirements of the Contract.

3.2 Recourse

The Principal may apply or (if applicable) convert into cash the Security provided by the Contractor under this Contract to satisfy any debt claimed by the Principal in good faith to be due and payable to the Principal by the Contractor in connection with the works or under this Contract.

3.3 Reduction and release

a) Upon the issue of the certificate of practical completion, the Principal's entitlement to security will be reduced to 50 per cent and the reduction will be released and returned within 14 days to the Contractor.

b) The Principal must release and return the balance of the security within 14 days of issue of the final certificate under clause 23.3.

3.4 Trusts and interest

Except where held by a government department or agency or a municipal, public or statutory authority, any portion of security (and interest earned thereon) which is cash or retention moneys, will be held in trust for the Contractor until the Principal or the Contractor is entitled to receive them. Interest earned on security not required to be held in trust will belong to the party holding that security.

3.5 Deed of guarantee, undertaking and substitution

If stated as required in Schedule 1, the Contractor will provide a deed of guarantee, undertaking and substitution in accordance with the requirements set out in Item 13 of Schedule 1.

4 Notices and communications

A notice (and other documents) or communication of consent or approval required by this Contract, is deemed to have been given and received:

a) if addressed or delivered to the relevant address in the *Contract* or last communicated in writing to the person giving the notice; and

b) on the earliest date of

c) if sent by post, on the 5th business day after the date of posting, or if to or from a place outside of Australia, on the 10th business day after the date of posting; or

d) if sent by electronic mail, on the next business day after sending or when the sender receives an automated message confirming delivery (whichever occurs first).

A party's address and electronic mail address is as set out in this Contract unless the party has notified a change of address or electronic mail address in which case the notice, consent, approval or other communication must be made to that address or electronic mail address.

5 Discrepancies

a) Figures will prevail over scaled dimensions in a discrepancy.

b) Any information shown or included, in whole or in part, on one Contract Document but not on another, is deemed to be included in the WUC.

c) Otherwise, if either party discovers any error in any document prepared for the purposes of carrying out WUC, that party will give the other party written notice of it.

d) The Principal will in its sole discretion give a direction to the Contractor as to the work to be done to resolve the error.

e) Subject to clause 5(f), if compliance with the direction causes the Contractor to incur more cost than otherwise would have been incurred had the direction not been given then, the difference in the cost will be added to or subtracted from the contract sum (as the case may be), subject to the Contractor

complying with clause 15.3 or clause 22 (whichever is applicable).

f) The Principal may determine that a difference in cost will not be added or subtracted to the contract sum where:

   i. clause 5a) or 5b) applies; or

   ii. the WUC subject of the direction is of a type or nature that an experienced and competent contractor performing the Works ought to have known to be necessary or reasonably expected and therefore ought to have assumed was included as part of the WUC.

6 Assignment, novation and subcontracting

6.1 Assignment

The Contractor must not assign or attempt to assign any rights under this Contract without the Principal's written consent.

6.2 Subcontracting

a) The *Contractor* may subcontract part of *WUC* but the *Contractor* will remain responsible for delivery of the WUC and any liability or obligation under the *Contract.* Where the Contractor subcontracts any part of the WUC, the work undertaken by the Contractor's personnel must be performed to the same standards as stated in this Contract.

b) The Contractor will not, as a result of any subcontracting arrangement, be relieved from the performance of any obligation under this Contract and will be liable for all acts and omissions of any subcontracted personnel as though they were the actions of the Contractor itself.

6.3 Novation

a) The Contractor acknowledges and agrees that if the Head Contract is terminated or reduced in scope by the Client, the Principal may give the Contractor notice that the Client:

   i. requires this Contract to be novated or assigned to the Client or its nominee; or

   ii. has elected to step into this Contract is substitution of the Principal, and

   if the Principal gives the Contractor a notice under this subclause, the Contractor must enter into all documents and do all things necessary to give effect to the novation, assignment or substitution and must continue to comply with its obligations under the Contract.

b) The Contractor, by entering into this Contract for the provision of the WUC, acknowledges that this Contract can be novated and it does not create any contractual relationship between the Client and the Contractor.

7 Legislative requirements

The *Contractor* will satisfy all legislative requirements except where otherwise provided for under the *Contract* or directed by the *Superintendent* to be satisfied by or on behalf of the *Principal*.

If a change in a legislative requirement necessitates a change to the *Works* and causes the *Contractor* to incur more or less cost than would otherwise have been incurred, the difference will be assessed by the *Superintendent* and added to or deducted from the *contract sum*.

8 Protection

a) Insofar as compliance with the requirements of the Contract permits, the Contractor will:

   i. take measures necessary to protect people and property and where the Contractor damages

property, promptly fix the damage and pay any compensation which the law requires;

ii. avoid unnecessary interference with the passage of people and vehicles; and

iii. prevent nuisance and unreasonable noise and disturbance.

b) If urgent action is necessary to protect *WUC,* other property or people and the *Contractor* fails to take the action, in addition to any other remedies of the *Principal,* the *Superintendent* may take the necessary action. If the action was action which the *Contractor* should have taken at the *Contractor's* cost, the *Superintendent* will certify the cost incurred as moneys due from the *Contractor* to the *Principal.*

9 Care of the work and reinstatement of damage

9.1 Care of WUC

Except as provided in subclause 9.3, the *Contractor* will be responsible for the care of:

a) the whole of *WUC* from and including the date of commencement of *WUC* to 4:00 pm on the *date of practical completion,* at which time the responsibility for the care of *the Works* (except to the extent provided in paragraph (b)) will pass to the *Principal;* and

b) outstanding *work* and items to be removed from the *site* by the *Contractor* after 4:00 pm on the *date for practical completion* until completion of outstanding *work* or compliance with the *Contractor's* obligations under clause 21.

9.2 Reinstatement

If loss or damage, other than to the extent caused by an excepted risk, occurs to *WUC* during the period of the *Contractor's* care, the *Contractor* will, at its cost, rectify such loss or damage.

9.3 Excepted risks

The excepted risks causing loss or damage, are:

a) any negligent act or omission of the *Superintendent,* the *Principal* or others for whom it is responsible;

b) any risk specifically excepted elsewhere in the *Contract;*

c) war, invasion, act of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power, martial law or confiscation by order of any Government or public authority;

d) ionizing radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel not caused by the *Contractor* or those for whom it is responsible;

e) use or occupation of any part of *WUC* by the *Principal* or others for whom it is responsible; and

f) defects in the design of *WUC,* other than design provided by the *Contractor.*

10 Damage to persons and property other than WUC

10.1 Indemnity by Contractor

a) The *Contractor* will indemnify the *Principal* against:

i. loss of or damage to the *Principal's* property. The limit of indemnity under this paragraph, in respect of such property, will be the amount stated in *Item* 15; and

ii. claims in respect of personal injury or death or loss of, or damage to, any other property,

arising out of or as a consequence of the carrying out of *WUC,* but the indemnity will be reduced

proportionally to the extent that the act or omission of the *Superintendent,* the *Principal* or others for whom it is responsible may have contributed to the injury, death, loss or damage.

b) This subclause will not apply to exclude any other right of the *Principal* to be indemnified by the *Contractor.*

11 Insurance of the Works

a) Before the Contractor commences WUC, the Contractor will insure all things referred to in subclause 9.1 against loss or damage resulting from any cause until the Contractor ceases to be responsible for their care under clause 9.1. Without limiting the obligation to insure, such insurance will cover the Contractor's liability under subclause 9.2 and things in storage off site and in transit to the site.

b) The insurance cover will be for an amount not less than the sum stated in Item 16.

c) Insurance will be in the joint names of the parties and will cover the parties and all subcontractors whenever engaged in WUC for their respective rights, interests and liabilities.

12 Public liability insurance

Before commencing *WUC,* the *Contractor* will effect and maintain for the duration of the *Contract,* a public liability policy. The policy will:

a) be in the joint names of the parties;

b) cover the:

   i. respective rights and interests; and

   ii. liabilities to third parties,

   of the parties, the *Superintendent* and subcontractors from time to time, whenever engaged in *WUC;*

c) cover the parties' respective liability to each other for loss or damage to property (other than property required to be insured by clause 11) and the death of or injury to any person (other than liability which the law requires to be covered under a workers compensation insurance policy);

d) be endorsed to cover the use of any construction plant not covered under a comprehensive or third party motor vehicle insurance policy;

   i. provide insurance cover for an amount in respect of any one occurrence of not less than the sum stated in *Item 17*; and

   ii. be with an insurer and otherwise in terms both approved in writing by the *Principal* (which approvals will not be unreasonably withheld).

13 Insurance of employees

Before commencing *WUC,* the *Contractor* will insure against statutory and common law liability for death of or injury to persons employed by the *Contractor.* The insurance cover will be maintained until completion of all *WUC.*

Where permitted by law, such insurance will be extended to provide indemnity for the *Principal's* statutory liability to the *Contractor's* employees. The *Contractor* will ensure that all subcontractors have similarly insured their employees.

14 Insurance provisions

14.1 Proof of insurance

Before the *Contractor* commences *WUC* and whenever requested in writing by the *Principal,* the

Contractor will provide satisfactory evidence of that insurances required by the Contract (including any additional insurances specified at Item 18) are effected and maintained. Insurance will not limit liabilities or obligations under other provisions of the *Contract.*

14.2 Cross liability

Any insurance required to be effected in joint names in accordance with the *Contract* will include a cross liability clause in which the insurer agrees to waive all rights of subrogation or action against any of the persons constituting the insured and for the purpose of which the insurer accepts the term 'insured' as applying to each of the persons constituting the insured as if a separate policy of insurance had been issued to each of them (subject always to the overall sum insured not being increased thereby).

14.3 Insurance effected by the Principal

If the Principal is specified in Schedule 1 as the party to effect the insurances required under clause 11 (works insurance) clause 12 (public liability insurance), the Principal will effect in relation to WUC the policy of insurance that is required and maintain the policy and pay all premiums while the Contractor has an interest in the policy.

14.4 Insurances required by Partner Country

In addition to the insurances required under the Contract, the Contractor must effect and maintain with a reputable insurer until the end of the defects liability period any insurances as may be required under the laws of the Partner Country in relation to the Works.

15 Superintendent's direction

15.1 Directions of Superintendent

a) The Principal will ensure that at all times there is a Superintendent, and that the Superintendent fulfils all aspects of the role and functions reasonably and in good faith.

b) If the Superintendent gives a *direction* under the Contract, the *Contractor* will comply with the *direction*. No *direction* or response to a request for information by the *Superintendent* with respect to the *WUC* will amount to an acceptance or approval of any workmanship or materials or *WUC* which is not strictly in accordance with the *Contract.*

c) Except where the *Contract* otherwise provides, the *Superintendent* may give a *direction* verbally but will as soon as practicable confirm it in writing.

d) The *Superintendent* will have:

   i. access to the *Site* and the *WUC* when reasonably required to undertake its role and functions, ensuring it takes all reasonable and expected steps to ensure that the *Contractor* is not impeded in the performance of the *WUC*, and that the *Contractor* is informed in advance of the *Superintendent's* attendance; and

   ii. after reasonable notice to the *Contractor*, access to any place other than the *Site* where *WUC* is being carried out or materials are being prepare or stored, for the purposes of discharging the functions of the *Superintendent* under the *Contract.*

15.2 Time for Compliance

Where the *Superintendent* gives a *direction* under the *Contract*, the *Superintendent* may set a reasonable time in writing within which the *direction* must be complied with. The *Contractor* must comply with the written *direction* within the time specified or make a written request to extend the time required to comply with the direction.

15.3 Notice where Superintendent's Direction Considered a Variation

a) Despite any other provision of the *Contract*, if the *Contractor* considers that a *direction* of the *Superintendent* amounts to a *Variation*, the *Contractor* will, prior to carrying out any *works* to which the *direction* relates, notify the *Superintendent* in writing within 7 days that it considers that the *direction* amounts to a *Variation*. If the *Contractor* fails to give such written notice, the *Contractor* cannot claim later that the *direction* amounted to a *Variation* and the *Contractor* will not be entitled to make any *Claim* on the basis that the *Superintendent's direction* amounted to a *Variation*.

b) Where the *Contractor* gives notice in writing required by clause 15.3(a) and the *Superintendent* does not issue a written notice outlining a *Variation* under clause 22.1, the *Contractor* will not be barred from claiming that the *direction* amounts to a *Variation* and the question of whether the *direction* amounts to a *Variation* may be referred for dispute resolution under clause 27.

c) The *Contractor* will comply with the *direction* regardless of whether it considers that the *direction* amounts to a Variation.

16 Representatives

a) The *Superintendent* may appoint a *Superintendent's* representative to exercise delegated *Superintendent's* functions. The name and functions of each *Superintendent's* representative will be notified to the *Contractor* in writing.

b) If the Contractor appoints a representative, the Contractor must give the Principal written notice of the representative's name as soon as possible.

17 Site

a) The *Principal* will, on or before the expiry of the time stated in *Item 19*, give the *Contractor* possession of the *site* (or that part of the site that is required) for commencement of *WUC*.

b) Possession of the site will confer on the Contractor a right to only such use and control as is necessary to enable the Contractor to carry out WUC. The Contractor will at all reasonable times give the Superintendent and the Principal access to WUC.

c) The *Contractor* will keep the *site* and *WUC* clean and tidy and will regularly remove rubbish and surplus material.

18 Materials and work

18.1 Quality of material and work

Unless otherwise provided, the *Contractor* will use suitable new materials and proper and tradesman-like workmanship.

18.2 Defective work

a) If the Superintendent becomes aware of work done (including material provided) by the Contractor which does not comply with the Contract, the Superintendent will as soon as practicable give the Contractor written details of the issue.

b) If the subject work has not been rectified, the Superintendent may direct the Contractor to do any one or more of the following (including times for commencement and completion):

   i. remove the material from the *site*;

   ii. demolish the *work*;

   iii. reconstruct, replace or correct the *work*; and

   iv. not deliver it to the *site*.

c) If the *Contractor* fails to comply with such a direction and that failure has not been made good within 5 days after the Contractor receives written notice from the Superintendent that the Principal intends to have the subject work rectified by others, the Principal may have the work so rectified. The cost thereby incurred will be certified by the Superintendent as moneys due from the Contractor to the Principal.

d) The *Superintendent* may give a *direction* under this subclause at any time before the expiry of the defects liability period.

18.3 Warranties

a) The Contractor must use reasonable efforts to obtain all subcontractors' and suppliers' warranties and guarantees in respect of all works, goods or materials incorporated into the Works.

b) The Contractor must ensure that the Principal is assigned the benefit of any manufacturer's or supplier's warranty or guarantee that is provided by the manufacturer or supplier of any goods or materials incorporated into the Works and provide reasonable assistance and cooperation to enforce such warranty or guarantee if requested.

c) The provision of a warranty under this clause does not relieve, limit or exclude any of the Contractor's liabilities or obligations under the Contract.

19 Programming and suspension

a) Within 14 days after the date of the Formal Instrument of Agreement, the Contractor will submit a construction program consistent with any programming plans agreed to before the date of execution of this Contract and showing a logical sequencing of works to ensure Practical Completion is reached by the Date for Practical Completion.

b) The Contractor will not, without reasonable cause, depart from a construction program.

c) The *Superintendent* may direct the *Contractor* to suspend the carrying out of the whole or part of *WUC* for such time as the *Superintendent* thinks fit, if the *Superintendent* is of the opinion it is necessary.

d) If the suspension is due to an act or omission of the *Superintendent*, the *Principal* or others for whom it is responsible and the suspension causes the *Contractor* to incur more or less cost than would otherwise have been incurred but for the suspension, the difference will be assessed by the *Superintendent* and added to or deducted from the *contract sum*.

20 Time and progress

20.1 Progress

The *Contractor* will ensure that the *Works* reach *Practical Completion* by the *Date for Practical Completion*.

20.1.1 Notice of delay

A party becoming aware of anything which will probably cause delay to *WUC* will promptly and in any event within 3 working days of becoming aware of the probable cause, give the other party written notice of that *cause* and the estimated delay.

20.2 Claim

If the Contractor:

a) is or will be delayed in reaching practical completion by a qualifying cause of delay; and

b) gives the Superintendent, within 5 working days of when the Contractor should reasonably have become aware of that causation occurring, a detailed written claim for an EOT;

c) the written claim provided under clause 20.2(b) details the *work* or measures undertaken by the *Contractor* to mitigate the delay,

the Contractor will be entitled to such EOT for carrying out WUC (including reaching practical completion) as the Superintendent assesses.

20.3 Extension of time

a) Subject to the provisions of this clause 20.3, an extension of the *date for practical completion* will only be granted where the *Contractor* experiences a *qualifying cause of delay* which results in an actual delay or delays to an activity which is critical to the maintenance of the rate of progress of the execution of the *WUC* necessary to achieve the completion of the *Works* and the *Contractor* has complied with all requirements of clause 20.

b) Notwithstanding that the *Contractor* is not entitled to or has not claimed an *EOT*, the *Superintendent* may at any time and from time to time in its absolute discretion before issuing the final certificate direct an *EOT* and price any EOT under clause 22.2.

c) The Contractor acknowledges and agrees that the program for the Works includes the number of days set out in Item 29 for Inclement Weather. In order to be entitled to an EOT for Inclement Weather, the Contractor must:

   i. keep an accurate register of Inclement Weather events which records the nature of the Inclement Weather, its duration and activities implemented;

   ii. submit the Inclement Weather register required under the above subclause to the Superintendent with any claim for an EOT.

20.4 Practical completion

a) The Contractor will give the Superintendent at least 14 days written notice of the date upon which the Contractor anticipates that the WUC will reach a state of completion equivalent to Practical Completion.

b) When the Contractor is of the opinion that the WUC has reached a state of completion equivalent to Practical Completion, the Contractor must make a written request for the Superintendent to inspect the WUC with a view to issuing a Certificate of Practical Completion.

c) Within 14 days after receiving the request, the Superintendent will inspect the WUC with representatives of the Principal and Contractor to determine whether Practical Completion has been achieved.

d) When the Superintendent is of the opinion that Practical Completion has been reached, the Superintendent may issue a Certificate of Practical Completion, whether or not the Contractor has made a request for the same.

20.5 Liquidated damages

a) If WUC docs not reach practical completion by the date for practical completion, the Superintendent may certify, as due and payable to the Principal, liquidated damages in Item 21(a) for every day after the date for practical completion to and including the earliest of the date of practical completion or termination of the Contract or the Principal taking WUC out of the hands of the Contractor.

b) If an EOT is directed after the Contractor has paid liquidated damages, the Principal will repay to the Contractor such of those liquidated damages as represent the days the subject of the EOT.

c) The Principal hereby waives that part of liquidated damages exceeding the Item 21(b) amount.

20.6 Delay damages

For every day the subject of an EOT for a compensable cause and for which the Contractor gives the Superintendent a claim for delay damages, damages certified by the Superintendent in accordance with item 14 will be due and payable to the Contractor.

21 Defects liability

a) The defects liability period stated in *Item 23* will commence on the *date of practical completion* at 4.00 pm.

b) As soon as possible after the *date of practical completion*, the *Contractor* will remedy all *defects* identified by the Superintendent at the *date of practical completion*. The *Contractor* will carry out work to remedy *defects* at times and in a manner causing as little inconvenience to the occupants or users of *the Works* as is reasonably possible.

c) During the defects liability period, the Superintendent may give the Contractor a direction to remedy a defect. The *direction* will identify the *defect* and state dates to start and complete work to remedy the defect.

d) If the Contractor fails to comply with the direction or work to remedy the defect is not commenced or completed by the stated dates, the *Principal* may have the defect remedied by others but without prejudice to any other rights and remedies the *Principal* may have. The cost incurred will be certified by the *Superintendent* as a debt due to the *Principal* which may be deducted from payments.

22 Variations and pricing

22.1 Directing variations

a) The Superintendent, before the date of practical completion, may direct the Contractor to vary WUC or execute additional *work* but such variation will be of a character and extent contemplated by, and capable of being carried out under, the provisions of the *Contract*.

b) Where the Superintendent has directed a variation which omits part of the WUC the Principal may, without incurring any obligation of cost or other liability to the Contractor, have the omitted work performed by other contractors. Where this occurs the Superintendent may, acting reasonably, direct that the *date for practical completion* be brought forward to reflect the reduced scope of works.

22.2 Pricing

The *Superintendent* will, as soon as possible, price each variation or matter that requires or permits pricing under the Contract using the following order of precedence:

a) prior agreement;

b) applicable rates or prices in the *Contract*;

c) rates or prices in a schedule of rates or schedule of prices, even though not *Contract* documents, to the extent that it is reasonable to use them; and

d) either:

   i. reasonable rates or prices, which will be deemed to include a reasonable amount for profit and overheads; or

   ii. direct costs actually incurred by the Contractor, plus a margin set out in item 23A for profit, onsite overheads and offsite overheads,

whichever is the lower amount, and any deductions will include a reasonable amount for profit but not overheads. The price determined by the Superintendent will be added to or deducted from the *contract sum*. The Contractor must provide all information reasonably requested by the Superintendent to assist the assessment of price.

23 Payment

23.1 Progress Claims

a) The *Contractor* will claim payment progressively in accordance with *Item 24*. It will be a precondition to the Contractor's entitlement to payment that the Contractor must have in place all the insurances and security required by the contract and, if reasonably required, provide evidence of such.

b) Each progress claim will be given in writing to the Superintendent and will include:

i. evidence of the amount due to the Contractor;

ii. details of the value of WUC done and may include details of other moneys then due to the Contractor pursuant to provisions of the Contract;

iii. information of the kind or in the format, specified by the Principal or the Superintendent (if any) acting reasonably; and

iv. such information as the Principal may reasonably require.

c) For the purposes of clause 23.1b), the Contractor must include the following information and details in any progress payment claim:

i. the Contractor's assessment as to the value of WUC executed to the date of the progress claim including variations completed or partly completed to the date of the progress claim;

ii. any amounts due to subcontractors or consultants;

iii. any additional amounts to which the Contractor is entitled under the Contract which may have become payable since the submission of the last claim by the Contractor;

iv. the total of all amounts which the Superintendent has previously certified as payable pursuant to the Contract;

v. any Consumption Taxes which the Contractor considers to be applicable in respect of work under the Contract which has been performed as at the time of submitting the progress claim; and

vi. the information required to be provided under clause 24.1.

23.2 Certificates

a) The Superintendent will, within 14 days after receiving such a progress claim, issue to the *Contractor*:

i. a progress certificate evidencing the Superintendent's opinion of the moneys due from the Principal to the Contractor pursuant to the relevant progress claim and reasons for any difference ('progress certificate'); and

ii. a certificate evidencing the Superintendent's assessment of retention moneys and moneys due from the Contractor to the Principal pursuant to the Contract.

b) If the Contractor does not make a progress claim in accordance with clause 23, the Superintendent may issue a progress certificate with details of the calculations and will issue the certificate in subparagraph 23.2a)(ii).

c) The Principal will, subject to clause 24, pay to the Contractor the amount shown in the progress certificate after setting off the face value of the certificate given by the Principal under subparagraph 23.2a)(ii) and any other amounts that the Principal is entitled to set off and deduct at law, by the later of:

i. the date which is 14 days after the Principal receives a progress certificate;

ii. the Contractor providing to the Principal evidence to the satisfaction of the Principal that the Contractor has taken out the required insurance in accordance with the requirements of the Contract.

d) Neither a progress certificate nor a payment of moneys will be evidence that the subject WUC has been carried out satisfactorily. Payment other than final payment will be payment on account only.

23.3 Final payment claim and certificate

a) Within 28 days after the expiry of the defects liability period, the Contractor will provide the Superintendent with a final payment claim and endorsed 'Final Payment Claim'.

b) In addition to claims for payment required to be included in a payment claim under clause 23.1, the Contractor will include in the Final Payment Claim all claims for moneys which the Contractor considers to be due from the Principal arising out of any alleged breach of the Contract. All such claims, whether under clause 23.1 or this clause 23.3, which have not already been barred, will be barred after the expiration of the period for lodging a Final Payment Claim.

c) Within 14 days of receipt of the final payment claim or, where the Contractor fails to provide such claim,

the expiration of 28 days after the end of the last defects liability period applicable under clause 21, the Superintendent will issue to the Contractor a final payment certificate endorsed 'final certificate'. The Superintendent will certify in the certificate the amount which, in the Superintendent's reasonable opinion, is finally due from the Principal to the Contractor or from the Contractor to the Principal arising out of the Contract or any alleged breach thereof.

d) Unless either party, either before the final certificate has been issued or not later than 21 days after the issue thereof, serves a notice of dispute under clause 27, the final certificate will be evidence that the WUC have been completed in accordance with the terms of the Contract and that any necessary effect has been given to all the terms of the Contract which require additions or deductions to be made to the contract sum, except in the case of:

   i. any defect (including a latent defect or omission) in the WUC or any part thereof which could not have been detected through an inspection of the works at the end of the defects liability period, or which would not have been disclosed upon an inspection at the time of the issue of the final certificate;

   ii. any accidental or erroneous inclusion or exclusion of any work, plant materials or figures in any computation or an arithmetical error in any computation; or

   iii. fraud or dishonesty or fraudulent concealment relating to WUC or any part thereof or to any matter dealt with in the said Certificate.

e) Within 14 days after the issue of a final certificate, the Principal will release to the Contractor any Security then held by the Principal.

23.4 Interest

Interest in Item 25 will be due and payable after the date of default in payment.

23.5 Other moneys due

The Principal may elect that moneys due and owing from the Contractor otherwise than in connection with the subject matter of the Contract also be due to the Principal pursuant to the Contract.

23.6 Set off and recourse for unpaid amounts

a) The Principal may deduct from moneys due to the Contractor any money due from the Contractor to the Principal otherwise than under the Contract and if those moneys are insufficient, the Principal may, subject to clause 3.2, have recourse to security under the Contract.

b) Where the Contractor fails to pay the Principal an amount due and payable under the Contract, the Principal may, in keeping with clause 3.2, have recourse to security under the Contract and any deficiency remaining may be recovered by the other party as a debt due and payable.

24 Payment of workers and subcontractors

24.1 Workers and subcontractors

a) The Contractor will give in respect of a progress claim, documentary evidence of the payment of moneys due and payable to:

   i. workers of the Contractor and of the subcontractors; and

   ii. subcontractors,

   in respect of WUC the subject of that claim.

b) If the Contractor is unable to give such documentary evidence, the Contractor will give other documentary evidence of the moneys so due and payable to workers and subcontractors.

c) Documentary evidence, except where the Contract otherwise provides, shall be to the Superintendent's

reasonable satisfaction.

24.2 Withholding payment

a) Subject to the next paragraph, the Principal may withhold moneys certified due and payable in respect of the progress claim until the Contractor complies with subclause 24.1.

b) The Principal will not withhold payment of such moneys in excess of the moneys evidenced pursuant to subclause 24.1 as due and payable to workers and subcontractors.

25 Default or insolvency

25.1 Preservation of other rights

If a party breaches (including repudiates) the *Contract*, nothing in this clause will prejudice the right of the other party to recover damages or exercise any other right or remedy.

25.2 Contractor's default

a) If the *Contractor* commits a substantial breach of the *Contract*, the *Principal* may give the *Contractor* a written notice to show cause by a specified date why the Principal should not exercise its rights under clause 25.3.

b) If the Contractor:

   i. fails to hold a current licence required to perform the Work; or

   ii. becomes Insolvent, bankrupt, or being a company goes into liquidation, or is involved in any action or proceedings which has as an object or may result in its bankruptcy or liquidation; or

   iii. enters into a debt agreement, a deed of assignment or deed of arrangement, or, if a company, enters into a deed of company arrangement with creditors, or an administrator or controller is appointed; or

   iv. has a receiver, a receiver and manager appointed or a mortgagee goes into possession of any of its assets,

   the Principal may, without notice to show cause, exercise a right under clause 25.3

25.3 Principal's rights

If the Contractor fails to show reasonable cause by the stated date and time, the Principal may by written notice to the Contractor:

a) take out of the Contractor's hands the whole or part of the work remaining to be completed and suspend payment until it becomes due and payable pursuant to subclause 25.5; or

b) terminate the Contract.

25.4 Take out

The *Principal* will complete *work* taken out of the *Contractor's* hands and may:

a) use materials, equipment and other things intended for *WUC*; and

b) without payment of compensation to the *Contractor*:

   i. take possession of, and use, such of the construction plant and other things on or in the vicinity of the site as were used by the Contractor; and

   ii. contract with such of the Contractor's subcontractors and consultants,

   as are reasonably required by the *Principal* to facilitate completion of *WUC*.

If the Principal takes possession of construction plant or other things, the Principal will reasonably maintain them and, subject to subclause 25.5, on completion of the work, will return such of them as are surplus.

The Superintendent will keep records of the cost of completing the work.

25.5 Adjustment on completion of work taken out

a) When work taken out of the Contractor's hands has been completed, the Superintendent will assess the cost incurred and will certify as moneys due and payable the difference between that cost (showing the calculations) and the amount which would otherwise have been paid to the Contractor if the work had been completed by the Contractor.

b) If the Contractor is indebted to the Principal, the Principal may retain construction plant or other things taken under subclause 25.4 until the debt is satisfied. If after reasonable notice, the Contractor fails to pay the debt, the Principal may sell the construction plant or other things and apply the proceeds to the the debt and the costs of sale. Any excess will be paid to the Contractor.

26 Notification of claims (CLAUSE NOT IN USE)

27 Dispute resolution

27.1 Notice of dispute

a) Subject to subclause 27.4, the parties agree to endeavour to settle any difference or dispute arising out of or in relation to this Contract ('Dispute') in accordance with this clause before recourse to legal proceedings.

b) A party claiming that a Dispute has arisen must notify the other party in writing, giving details of the Dispute (the 'Notice').

c) Within 7 days of the Notice being received by the other party ('Date of Notice'), each party must nominate in writing to the other party a representative authorised to settle the Dispute on its behalf.

d) Notwithstanding the existence of a Dispute, each party will continue to perform its obligations under this Agreement.

27.2 Conference

a) Within 14 days of the Date of Notice, the nominated representatives shall communicate in person or by telephone, and shall endeavour to settle the Dispute.

b) If the Dispute has not been resolved within 28 days of the Date of Notice then either party may refer the Dispute to mediation in accordance with the Mediation Rules in the Mediation Location.

27.3 Mediation

a) If the Dispute is not resolved by mediation within 60 days of the Date of Notice or date of appointment of the mediator (whichever is later), either party may commence legal proceedings in respect of the Dispute.

b) Costs of the mediation will be split equally between the parties or as otherwise agreed.

27.4 Summary relief

Nothing herein will prejudice the right of a party to institute proceedings to enforce payment due under the Contract or to seek injunctive or urgent declaratory relief.

28 Industrial Relations (CLAUSE NOT IN USE)

29 Client funding and limitation of liability

a) The parties acknowledge and agree that notwithstanding any other term of this Contract, that some or all of the funding for the contract sum is to be provided by the Client under the Head Contract.

b) The Contractor acknowledges that under the Head Contract the client has a right, at any time and at its absolute discretion, to terminate or reduce the scope of the Head Contract and this may reduce funding available to the Principal under the Head Contract which relates in whole or in part to the WUC. In such circumstances (and without limiting any other rights or remedies available to the Principal under this Contract or the Client under the Head Contract), the Principal may by notice in writing terminate this Contract or reduce the whole or part of the WUC as determined by the Principal (acting reasonably) after discussions with the Contractor as contemplated in the following subparagraph.

c) Where the Principal receives a notice from the Client of a decision as contemplated by the preceding subparagraph, the Principal will notify the Contractor and the Contractor will discuss with the Principal, in good faith, the timing for termination or extent of the reduction of the WUC having regard to the Client's decision and status of the Works.

d) If the Principal terminates this Contract under this clause 29, the Principal will only be liable to the Contractor for the following loss or damage incurred as a direct consequence of termination of this Contract to the extent that they can be reasonably substantiated and are unable to be avoided or mitigated and are recoverable from the Client:

   i. reimbursable costs, for Works provided before the effective date of termination (on a pro-rata basis, if applicable).

   but excluding all other loss or damage, including the cost of redundancies, the costs of terminating any subcontracts, loss of profits and all other forms of expectation loss.

e) The Principal is not obliged to make any further payments to the Contractor (whether under this Contract, at law or in equity) if the Principal exercises its rights in this clause 29 except as expressly provided under this clause 29.

30 Modern Slavery

a) The Contractor warrants and agrees that:

   i. it has not engaged, and will not engage, in any Modern Slavery practices;

   ii. it complies with and will continue to comply with Modern Slavery Laws;

   iii. it has investigated the risk of Modern Slavery within its operations, and those of its supply chain;

   iv. it assesses and addresses risks regarding Modern Slavery, including implementing appropriate due diligence and, where required, remediation programs;

   v. 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;

   vi. it will not destroy or exclusively possess (without informed consent), whether permanently or otherwise, the travel or identity documents of its directors, officers, employees or engaged entities, where such entities are individuals;

   vii. it will, as soon as possible, notify the Principal in writing of any confirmed instances of Modern Slavery arising directly or indirectly in relation to this Contract or the Works and the actions undertaken by it to remedy the issue;

   viii. it has all the necessary processes, procedures, investigations and compliance systems in place to undertake the actions in the preceding subparagraphs;

   ix. it will include provisions equivalent to those above in this subclause in its contracts with its subcontractors, to the extent relevant to the services to be performed by the subcontractor.

b) The Contractor must comply (and ensure that its subcontractors comply) with any requests made by the

Principal to provide any assistance, information, documents or interview any person as required by the Principal to enable the Principal to discharge any obligations arising under the Modern Slavery Laws.

c) The Contractor indemnifies the Principal against all actions, Claims, demands and proceedings against the Principal, and all losses, damages, costs, expenses and other liabilities suffered or incurred by the Principal, arising from any failure by the Contractor to comply with its obligations under this clause 30.

31 Fraud

a) The Contractor must not, and must ensure that any of its consultants, agents or other contractors (not being employed by the Contractor) do not, engage in any Fraud and must prevent and detect Fraud, including Fraud by any of its consultants, agents or other contractors (not being employed by the Contractor).

b) The Contractor must ensure that its consultants, agents or other contractors (not being employed by the Contractor) are responsible and accountable to the Contractor for preventing and reporting any Fraud as part of their routine responsibilities.

c) If the Contractor becomes aware of a Fraud, it must report the matter to the Principal in writing as soon as reasonably possible and in any event, within 5 days of becoming aware of such event. The written report to the Principal must be signed by a Contractor authorised person and must include the following (where known):

   i. name of any personnel (including any subcontractors) involved;

   ii. the allegation(s), including a chronological account of the facts giving rise to the allegation(s);

   iii. the names of the suspected offender(s) (where known);

   iv. details of witnesses;

   v. copies of relevant documents;

   vi. references to any relevant legislation;

   vii. a nominated contact officer;

   viii. 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

d) the current status of any inquiries commenced by the Contractor.

32 Anti-Corruption

a) The Contractor warrants that neither it nor its consultants, agents or other contractors (not being employed by the Contractor) 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 Contract.

b) Any breach of this clause 32 will entitle the Principal to issue a notice under clause 25.3 to terminate this Contract immediately.

33 Work Health and Safety

In carrying out the WUC the Contractor 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 Contract 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 Contractor, and workers whose activities in carrying out work are influenced or directed by the Contractor, 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 Contractor (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 the Superintendent, Principal or its agents to review, inspect, audit or otherwise observe the Contractor's health and safety systems, work practices and procedures related to the Works at any time, at the Contractor's cost, without the Principal incurring any liability or responsibility for such matters.

34 Publicity

The Contractor may not make media or other announcements or releases relating to this Contract without the Principal's prior written approval except to the extent that the announcement or release is required to be made by law.

35 Compliance with laws and policies

a) The Contractor and its personnel must have regard to and comply with applicable laws, guidelines, regulations and policies of the Partner Country and any other jurisdiction in which any part of the Works are performed.

b) The Contract and its personnel will ensure it is and will comply with the Client and Principal's policies, procedures and requirements detailed at Scheduled 6.

c) In performing any part of the Works in the Partner Country or any other country, the Contractor and its personnel must observe all laws and respect all religions and customs of that country and must not engage in any political activity.

d) The Contractor must sign the acknowledgement at Schedule 6 to confirm that it has received, is aware of and will comply with the Tetra Tech Vendor Code of Conduct and Tetra Tech International Development Safeguarding Code of Conduct. The acknowledgement is to be signed at the same time as the Formal Instrument of Agreement.

36 Notification to the Principal

The Contractor must immediately notify the Principal if the Contractor, including its personnel is:

a) aware of any suspected or alleged case of child exploitation, abuse or harm arising in connection with the WUC

b) subject to a change in control of its legal entity;

c) on the DFAT Consolidated List, the Criminal Code Act List, the World Bank List or 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) (Relevant List);

d) subject to any proceedings or informal process that could lead to listing on the DFAT Consolidated List, the Criminal Code Act List, the World Bank List or a Relevant List;

e) temporarily suspended from tendering for World Bank contracts by the World Bank, pending the outcome of a sanctions process;

f) temporarily suspended from tendering by a donor of development funding other than the World Bank; and/or

g) the subject of an investigation (whether formal or informal) by the World Bank or another donor of development funding;

h) aware of any issue that may affect its performance of, or compliance, with this Contract.

37 Counter terrorism

The Contractor must ensure that funds provided under this Contract (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:

c) the Charter of the United Nations Act 1945 (Cth) and regulations made under that Act;

d) the Autonomous Sanctions Act 2011 (Cth) and regulations made under that Act; or

e) the World Bank List or a Relevant List.

38 Environment

The Contractor must:

a) comply with all environmental obligations imposed on the Contractor under a Legislative Requirement of the Partner Country;

b) if requested by the Principal, report to the Principal on all matters relating to the performance or non-performance of the Contractor's environmental obligations referred to above.

If the Contractor fails to comply with any of its environmental obligations, the Principal may take whatever action is necessary to remedy such failure and if it does so any cost, loss or expense incurred by the Principal will be a debt due by the Contractor to the Principal.

39 Site conditions

The Contractor acknowledges and agrees that:

a) Before the date of execution of the Contract it has:

   i. examined the site and its surroundings and done everything possible to inform itself full as to the site conditions which may affect its performance of the work under the Contract;

   ii. informed itself completely of the nature of the work and materials required to carry out the work under the Contract and the means of access to and facilities at the site, and transport facilities for deliveries to and from the site;

   iii. informed itself of all requirements of all authorities in relation to the work under the Contract generally and in relation to measures necessary to protect the environment from any adverse effect or damage arising from carrying out the work under the Contract;

   iv. obtained all appropriate professional and technical advice on the matters and circumstances referred to above in this clause before submitting its tender; and

b) the Contract Sum includes an amount to compensate the Contractor for all risks associated with the site conditions.

ATTACHMENT 2

This Attachment 2 to the Formal Instrument of Agreement includes:

Schedule 1 – Contract Details

Schedule 2 – Contract Price

Schedule 3 – Project Requirements

Schedule 4 – Principal supplied materials and equipment

Schedule 5 – Approved subcontractors

Schedule 6 – Client and Principal's Requirements

SCHEDULE 1 – CONTRACT DETAILS

Item no.	Defined term	Term details
1.	The Principal (clause 1)	Tetra Tech International Development Pty Ltd (ACN 007 889 081) 422 King William Street Adelaide SA 5000 Australia
2.	Principal's Representative (clause 1)	Name: TBC Position: Mobile no: Email:
	Client (clause 1)	Department of Foreign and Affairs & Trade (DFAT) (Australian Commonwealth Government)
3.	The Contractor (clause 1)	Company Name: XXX Company registration number: XXX Company Address: XXX
4.	Contractor's Representative (clause 1)	Name: XXX Position: XXX Mobile no: XXX Email: XXX
5.	Superintendent (clause 1)	Name: TBC Position: Mobile no: Email:
6.	Commencement Date (clause 1)	XXX If left blank, the Date of Contract being date that this Contract is executed by the last party to do so
7.	Date for Practical Completion (clause 1) or Period of time for Practical Completion (clause 1)	TTID to insert and delete one of the options below ..... day of ..... 20.... Or .....days* / weeks* after *date of acceptance of tender*
8.	The Works (clause 1)	*Provide suitably qualified and technically experienced personnel, labour, supervision, tools, materials (for temporary works) and consumables, equipment, preparation, construction, installation, compliance, quality assurance, testing, commissioning, reporting and hand-over of the building, its contents and external services including services connections as defined in* Schedule 3 and its attachments.
9.	Site (clause 1)	Betio, Tarawa
10.	Governing Jurisdiction (clause 1)	South Australia
11.	Partner Country	Kiribati

Item no.	Defined term	Term details
	(clause 1)	
12.	Contract Sum (clause 1)	*The Contract Sum is a combination of a Lump Sum amount of AUD $XXX,000 and a Schedule of Rates*
13.	Contractor's security a) Form (clause 3)	Retention moneys
	Contractor's security b) Amount or maximum percentage of contract sum (clause 3)	5% of the contract sum
	Contractor's security c) If retention moneys, percentage of each payment certificate (clause 3)	10% until the limit in Item 13(b)
	Contractor's security (d) Time for provision (except for retention moneys) (clause 3)	Not applicable for retention moneys
	Reduction and release (clause 3.3)	Upon the issue of the certificate of practical completion, the Principal's entitlement to security will be reduced to 50% thereof and the reduction will be released and returned within 14 days to the Contractor.
	Deed of guarantee, undertaking and substitution (clause 3.5)	Deed of guarantee, undertaking and substitution is required ☐ Yes ☒ No
14.	Service of notices (clause 4)	Principal: TBC Superintendent: TBC Contractor: XXX
15.	Amount of limit of indemnity for damage to other property of the Principal (subclause 10.1(a))	The amount of the public liability insurance cover in Item 17
16.	Contract works insurance cover to be effected by (clause 14.3)	Works insurance must be effected by ☐ Principal ☒ Contractor
	Amount of contract works insurance cover (clause 11)	Works insurance to the value of the contract plus 20%
17.	Public liability insurance cover to be effected by (clause 14.3)	Public liability insurance must be effected by ☐ Principal ☒ Contractor
	The amount of public liability insurance cover in	$1,000,000

Item no.	Defined term	Term details
	respect of any one occurrence will not be less than (clause 12)	
18.	Insurance provisions (clause 14)	Employee insurance in accordance with statutory requirements applicable in Kiribati. Motor Vehicle insurance for road registered vehicles supplied by the Contractor – Third Party liability
19.	The time for giving possession of the site to the Contractor (clause 17)	Within .....XXX..... days after the Commencement Date If nothing stated, 30 days
20.	Time frame for submitting construction program (clause 19)	As set out in clause 19, within 14 days after the date of the Formal Instrument of Agreement, the Contractor will submit a construction program with programming plan as agreed prior to the execution of this Contract and the scope of work and any technical specifications.
21.	Liquidated Damages (subclause 20.5) a) Rate b) Limit	Rate: $500 per day Limit: 10% of the *contract sum*
22	Delay Damages, rate (subclause 20.6)	As assessed by the *Superintendent*
23	Defects Liability Period (clause 21)	12 months
23A	Pricing amount for profit and overheads (subclause 22.2)	TBC
24	Time for progress claims (subclause 23.1)	On the 25th day of each month
25	The rate of interest on overdue payments (subclause 23.4)	18% per annum
26	Mediation (subclause 27.2) a) Mediation Rules b) Meditation Location	Mediation rules will be determined by the Principal with advice from the Australia Department of Foreign Affairs post in Kiribati. Suva, Fiji or Adelaide, Australia as the Principal may determine in its sole discretion by notice to the Contractor.
27	WHS Legislation (clause 1)	Kiribati
28	Working hours (clause 1)	Per Environmental License conditions
29	Time allocated for Inclement Weather delays	10 days

SCHEDULE 2 – CONTRACT PRICE

Refer Part D – Financial Proposal for breakdown to be included within Schedule 2 of the Contract upon Award.

SCHEDULE 3 – PROJECT REQUIREMENTS

Refer RFT Part B – Scope of Works. Schedule 3 will be updated upon Contract Award to directly include Scope of Works and Performance Requirements sections, plus Design Drawings, Technical Specifications and other attachments as included in RFT Part B – Scope of Works.

SCHEDULE 4 – PRINCIPAL / CLIENT SUPPLIED MATERIALS & EQUIPMENT

Tetra Tech will supply all permanent materials for the MISE Office, excepting fresh water for concreting.

SCHEDULE 5 – APPROVED SUBCONTRACTORS

Schedule 5 will be updated or removed during contract negotiation.

Approved Subcontractors

Item No	Company name of Approved Subcontractor and company registration number, eg. ACN / ABN, TIN	Subcontract works
1.0	*Example*	*Civil and earthworks*
2.0	*Example*	*Plumbing*

SCHEDULE 6 – CLIENT & PRINCIPAL'S REQUIREMENTS

1. Client policies, procedures and guidelines

The Contractor must ensure that it and its personnel comply with Australian Government's Department of Foreign Affairs and Trade (DFAT) policies and guidance as identified on the DFAT website: https://www.dfat.gov.au/aid/australias-development-program, including:

a) without limiting the Principal's policies and procedures listed in the Contract or this Schedule, the child protection compliance standards in the *Child Protection Policy for the DFAT – Australian Aid Program*, http://dfat.gov.au/international-relations/themes/child-protection/Pages/child-protection.aspx. This includes having measures to protect children from both intentional and unintentional harm.

b) the *Preventing Sexual Exploitation, Abuse and Harassment Policy* accessible at http://www.dfat.gov.au/pseah;

c) disability inclusion principles and actions in the *Development for All 2015-2020: Strategy for strengthening disability-inclusive development in Australia's aid program*, https://www.dfat.gov.au/about-us/publications/Pages/development-for-all-2015-2020

d) environmental management and protection actions in the *Environment Management Guide for Australia's Aid Program (2012)* for the DFAT – Australian Aid Program and the *DFAT Environment Protection Policy (2014)* accessible on the DFAT website at: www.dfat.gov.au and

e) the Displacement and Resettlement of People in Development Activities Policy;

f) the Gender Equality and Women's Empowerment Policy 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;

g) the *Fraud Control Policy* accessible on the DFAT website at: https://www.dfat.gov.au/about-us/publications/Pages/fraud-control-toolkit-for-funding-recipients;

h) the 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.

2. Principal policy and procedures

The Contractor must sign the acknowledgement to confirm that it has received, is aware of and will comply with the:

a) Tetra Tech Incorporated *Vendor Code of Conduct*;

Tetra Tech International Development *Safeguarding Code of Conduct*;

Tetra Tech International Development Preventing Sexual Exploitation, Abuse and Harassment Policy; and

Tetra Tech International Development *Child Protection Policy*.

3. Performance Assessment

a) The Contractor acknowledges and agrees that the Client or the Principal may issue:

   i. a Contractor performance assessment; or

   ii. Contractor key personnel performance assessments,

   in relation to this Contract, and that such assessments may focus specifically on the Works or the Head Contract and the Works (among other things) carried out in connection with the Head Contract.

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

The Contractor acknowledges and agrees that the Principal may carry out its own performance assessment of the Contractor and/or the Contractor's key personnel independently of any performance assessments carried out by the Client.

4. Other Requirements

a) N/A

The Contractor acknowledges that it has received the documents listed above at [2] (Principal Policies and Procedures) which are enclosed with this Contract.

The Contractor will ensure that it and its personnel comply with the relevant requirements set out in these documents which are applicable to them as an independent contractor of Tetra Tech International Development Pty Ltd.

Signature:	
Name:	
Position:	
Date:	