

PART D – DRAFT CONDITIONS OF CONTRACT

COFFEY INTERNATIONAL DEVELOPMENT PTY LTD

(“COFFEY INTERNATIONAL DEVELOPMENT”)

- and -

< CONTRACTOR >

SERVICES AGREEMENT

for

< NAME OF PROGRAM AND SERVICES REQUIRED >

SERVICES AGREEMENT

THIS AGREEMENT is made < COFFEY WILL INSERT DATE >

BETWEEN: **COFFEY INTERNATIONAL DEVELOPMENT PTY LTD**
ABN 63 007 889 081 of 33 Richmond Road Keswick SA 5035,
("COFFEY INTERNATIONAL DEVELOPMENT")

AND < **SERVICE PROVIDER** >
ABN of < address >

RECITALS

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

THE PARTIES AGREE as follows:

1. RECITALS

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

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 "Acceptance Date" means the date the Services are accepted by Coffey;
- 1.2 "Agreement" means this agreement and all schedules, annexures and other documents as may be incorporated by reference.
- 1.3 "Business Day" means any day that is not a Saturday or Sunday or a public holiday in South Australia;
- 1.4 "Coffey" means Coffey International Development Pty Ltd (Coffey International)
- 1.5 "Commencement Date" means the date specified in Schedule 2, when the supply of Services begins;
- 1.6 "Completion Date" means the date specified in Schedule 2;
- 1.7 "Confidential Information" means:
 - All confidential information including, but not limited to:
 - 1.7.1 the terms of this Agreement;
 - 1.7.2 trade secrets and
 - 1.7.3 confidential know-how; and financial, accounting, marketing and technical information and plans, customer and supplier lists, fee rates, tender information. know-how, technology, operating procedures, price lists, data bases, source codes and methodologies, of which the Contractor becomes aware of or generates (both before and after the day this Agreement is signed) in the course of, or in connection with, the Contractor's engagement with any Coffey Group Member (including confidential

information belonging to any third party including the Commonwealth of Australia represented by the Australian Department of Foreign Affairs and Trade); and

- 1.7.4 all copies, notes and records based on or incorporating the information referred to in clause 1.7.1, **Error! Reference source not found.** 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 Contractor).
- 1.8 "Contract Material" means all material created or required to be developed or created as part of, or for the purpose of performing, the Services, including documents, equipment, information and data stored by any means.
- 1.9 "Contractor" means the Service Provider, contracted to perform the Services under this Agreement;
- 1.10 "DFAT" means the Australian Government's Department of Foreign Affairs and Trade;
- 1.11 "Deliverables" means the reports and any data or other material specified in Schedule 1 required to be delivered throughout the supply of the Services;
- 1.12 "End Date" means the date this Agreement will expire which date is specified in the Schedule or the date this Agreement is terminated pursuant to clause 17 whichever is earlier.
- 1.13 "FOI Law" means the Freedom of Information Act (Cth) 1982 and any similar legislation.
- 1.14 "GST" means the tax imposed by the GST Law;
- 1.15 "GST Law" has the meaning attributed in the A New Tax System (Goods and Services Tax) Act 1999 (Cth);
- 1.16 "GST Rate" has the meaning attributed in the GST Law;
- 1.17 "Intellectual Property Rights" means all intellectual property rights, including:
- 1.17.1 patents, plant breeders' rights, copyright, rights in circuit layouts, registered designs, trademarks, know-how and any right to have Confidential Information kept confidential; and
- 1.17.2 any application or right to apply for registration of any of the rights referred to in clause 13,
but for the avoidance of doubt excludes moral rights and performers' rights;
- 1.18 "Laws" means all Acts of Parliament of the Commonwealth of Australia and of the State of South Australia, and the requirements of all ordinances, regulations, by-laws, orders, and proclamations;
- 1.19 "notice" means written notice. "notify" has a corresponding meaning.
- 1.20 "Personnel" means any subcontractor Service Providers, employees, agents and any other person employed or engaged by the Service Provider to perform this Agreement, and includes the Service Provider's Representative;
- 1.21 "Prices" means the prices set out in or determined in accordance with Schedule 2;
- 1.22 "Principal's Representative" means the person identified in Schedule 2;
- 1.23 "Representative" means either of the persons nominated as the Service Provider's Representative and Coffey's Representative;
- 1.24 "Services" means the services specified in Schedule 1;
- 1.25 "Service Provider" means the Service Provider, contracted to perform the Services under this Agreement;
- 1.26 "Service Provider's Representative" means the person identified in Schedule 2;
- 1.27 "Specification" means the specifications for the Services in Schedule 1;

1.28 “Term” means the term of this Agreement which commences on the Commencement Date and ends on the End Date.

2 INTERPRETATION

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

2.1.1 the singular includes the plural;

2.1.2 the plural includes the singular; and

2.1.3 a gender includes every other gender.

2.1.4 words referring to individuals include corporations, unincorporated associations, partnerships, trusts and joint ventures;

2.1.5 a reference to a party includes that party’s administrators, successors and permitted assigns;

2.1.6 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;

2.1.7 a reference to a clause, subclause, schedule or attachment is a reference to a clause, subclause, schedule or attachment of this Agreement;

2.1.8 the words “clause” or “schedule” refer to a clause or schedule to this Agreement;

2.1.9 a reference to a clause number includes its sub-clauses;

2.1.10 the word “or” is not exclusive;

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 shall take priority in the following order:

2.2.1 the special conditions (if any) in Schedule 1;

2.2.2 these standard terms and conditions (excluding Schedule 2); and

2.2.3 Schedule 2.

3. TERM

3.1 This Agreement starts on the Commencement Date and ends on the Completion Date unless terminated earlier (“Term”).

3.2 Coffey may extend the Term for the period specified in Schedule 2 by giving written notice to the Service Provider within the period specified in Schedule 2.

4. SERVICES

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

4.2. The Service Provider must either complete the Services by the Completion Date or provide the services at all agreed times during the Term, as specified in the Services Agreement.

4.3. The Services must:

4.3.1. be free from defects in performance;

4.3.2. meet their purpose; and

4.3.3. be complete and in accordance with the description in the Services Agreement.

4.4. Coffey may inspect the performance and outcome of the Services at any time.

4.5 Coffey may at any time give written notice to the Service Provider proposing a Variation (“Variation Proposal”) to the scope of the Services (“Varied Services”).

4.6 Coffey and the Service Provider must agree in writing to the price for the Varied Services as contained in Coffey’s Variation Proposal.

- 4.7 The Variation Proposal does not take effect unless and until the parties reach a written agreement contemplated in clause 4.7, and the Service Provider must still perform the Services as required under this Agreement.
- 4.8 Unless the Services Agreement states otherwise, the Services may be provided by the Service Provider either personally or through the employment/subcontracting of other persons.
- 4.9. The Service Provider warrants that it will exercise skill, care and diligence to a high standard in providing the Services.
- 4.10. In providing the Services the Service Provider must:
- 4.10.1. comply with any reasonable directions given by or on behalf of Coffey from time to time;
 - 4.10.2. comply with all policies procedures and directives of Coffey so far as they are made known to the Service Provider;
 - 4.10.3. comply with all applicable standards, laws and regulations;
 - 4.10.4. take all reasonable practical measures to ensure the Service Provider's own safety and the safety of the Service Provider's employees;
 - 4.10.5. provide and use appropriate safety equipment and clothing and require employees of the Service Provider to use that equipment;
 - 4.10.6. provide all labour, materials, plant and equipment necessary to perform the Service Provider's obligations under the Agreement;
 - 4.10.7. provide Coffey on request with written evidence of Work Cover and prescribed payments taxation registration (if applicable).
- 4.11. If the Services do not meet their purpose or are not in accordance with the Services Agreement, Coffey may by notice require the Service Provider to redo the Services at no additional cost to Coffey.
- 4.12. Where the Service Provider fails to:
- 4.12.1. remedy a defect in performance of the Services; or
 - 4.12.2. redo the Services; within the time specified in a notice given by Coffey under clause 4.11, Coffey may arrange for the performance of the necessary work and recover the cost from the Service Provider.

5. DELIVERABLES

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

6. SERVICE PROVIDER'S WARRANTIES

- 6.1 The Service Provider warrants that the Services will:
- 6.1.1 be provided in full, with due care and skill;
 - 6.1.2 be performed by the Service Provider and/or its Personnel; and
 - 6.1.3 be performed to the Specification.

7. SERVICE PROVIDER'S RELATIONSHIP, RESOURCES AND CONDUCT

- 7.1 The Service Provider must:
- 7.1.1 conduct itself in a manner that does not invite, directly or indirectly, Coffey's officers, employees or agents to behave unethically, to prefer private interests over Coffey's interests or to otherwise contravene the Code of Ethics for the Australian Government, and .
 - 7.1.2 ensure that its Personnel observe and comply with the provisions of this Agreement.
- 7.2 The Service Provider is able to subcontract or delegate work to others but remains responsible for the agreed contract outcomes.

- 7.3 The Service Provider is liable to Coffey for the acts and omissions of any subcontracted Service Provider as if they were the acts or omissions of the Service Provider.
- 7.4 The Service Provider must not assign or attempt to assign any rights under the Services Agreement without Coffey written consent.
- 7.5 Nothing in the Services Agreement (including these Conditions) constitutes a relationship of employer and employee, principal and agent, or partnership between Coffey and the Service Provider.
- 7.6 The Service Provider acknowledges that the Services Agreement (including these Conditions) do not give the Service Provider or the Service Provider's employees authority to bind Coffey.
- 7.7 The Service Provider must not, and must ensure that the Service Provider's employees do not, directly or indirectly assume or create or attempt to assume or create any obligation on behalf of or in the name of Coffey.
- 7.8 The Service Provider agrees that any amount paid by Coffey under this agreement can be taken to offset against any claims of underpayment at a later date.

8. SERVICE PROVIDER'S REPRESENTATIONS

- 8.1 The Service Provider represents that prior to entering this Agreement it has made such enquiries and examined such information as it considers necessary to satisfy itself:
 - 8.1.1 as to the nature, scope extent and degree of difficulty of the services to be performed by it pursuant to this Agreement; and
 - 8.1.2 as to the availability of suitably qualified and experienced personnel, and all other facilities and information which it is required to provide for the purpose of supplying the Services.

9. NO MINIMUM PURCHASE

Coffey is under no obligation to purchase a minimum quantity of Services from the Service Provider during the Term.

10 NON-EXCLUSIVITY

- 10.1 This Agreement is entered into on a non-exclusive basis.
- 10.2 Coffey may purchase other services similar to the Services in this Agreement from other providers.

11. PRICE

- 11.1 In consideration for the supply of the Services, Coffey will pay the Price.
- 11.2 The Prices include all taxes, duties or government charges imposed or levied in Australia or overseas in connection with this Agreement.
- 11.3 The Prices include all costs of compliance with the Service Provider's obligations under this Agreement. No other costs or expenses are payable by Coffey.

12. TERMS OF PAYMENT

- 12.1 The Service Provider must submit to Coffey correctly rendered invoices.
- 12.2 An invoice will be correctly rendered if:
 - 12.2.1. it complies with the requirements of the Services Agreement;
 - 12.2.2. (if appropriate and required by Coffey), it is accompanied by documentation substantiating the amount claimed.
- 12.3. Unless the Services Agreement states otherwise, Coffey will pay for the Services within 30 days after:

- 12.3.1. completion of the Services; or
- 12.3.2. receipt of a correctly rendered invoice for the Services; whichever is later.

13. INTELLECTUAL PROPERTY RIGHTS

- 13.1 The Service Provider must not infringe the Intellectual Property Rights of any person in performing its obligations under this Agreement.
- 13.2 All intellectual property created under the Services Agreement and relating to the Services is, from the time of creation of the right, owned by Coffey.
- 13.3 The Service Provider indemnifies Coffey, 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 Coffey receipt or enjoyment of the Services.

14. INDEMNITY

- 14.1 The Service Provider indemnifies, and undertakes to keep indemnified, Coffey and its employees, from and against any costs, losses, damages, expenses (including legal expenses), liabilities or other outgoings of whatever kind suffered or incurred by Coffey arising out of or in respect of:
 - 14.1.1 any negligence, wrongful act or omission or breach of duty by the Service Provider or any of its Personnel;
 - 14.1.2 any breach of a warranty given under this Agreement; or
 - 14.1.3 any Event of Default or breach by the Service Provider of any of the provisions of this Agreement.
- 14.2 The Service Provider's liability to indemnify Coffey under clause 14 will be reduced proportionately to the extent that the loss or liability indemnified was contributed to by negligence by Coffey.
- 14.3 This clause will survive termination of this Agreement.

15 INSURANCE

- 15.1 The Service Provider must effect and maintain all insurance policies set out in Schedule 2.
- 15.2 The policies referred to in Schedule 2 must be in the name of the Service Provider and must cover the Service Provider and all subcontracted Service Providers for their respective rights, interests and liabilities.
- 15.3 Coffey, 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.
- 15.4 The Service Provider acknowledges and agrees that it is the Service Provider's responsibility to assess and consider the risks and scope of insurances required under this Agreement.

16 FORCE MAJEURE

- 16.1 Force Majeure means an event or circumstance which prevents a party ("the Affected Party") from complying with any of its obligations under this Agreement and which that the Affected Party:
 - 16.1.1 did not cause;
 - 16.1.2 cannot control or influence; and
 - 16.1.3 cannot prevent or avoid through prudent management processes, policies and precautions, including the use of alternative resources, the procuring of services from another source and work around plans.
- 16.2 The Affected Party must notify the other party if the Force Majeure is preventing it from complying with any of its obligations as soon as it becomes aware of the Force Majeure.

- 16.3 The Affected Party's rights and obligations will be suspended to the extent and for so long as the performance of the Affected Party's rights and obligations are prevented or delayed by the Force Majeure.
- 16.4 The Affected Party must keep the other party informed of the continuation and expected duration of the Force Majeure and of measures taken to comply with this clause.
- 16.5 The Affected Party must recommence performance of its obligation as soon as possible without delay after the Force Majeure has ceased to exist.

17 TERMINATION

- 17.1 At any time after a default event occurs Coffey may terminate the Services Agreement with immediate effect by giving notice in writing to the Service Provider.
- 17.2 A default event will be taken to have occurred if any of the following events occurs:
- 17.2.1 the Service Provider fails to start providing the Services on the date specified in the Services Agreement;
 - 17.2.2 the Service Provider fails to proceed at a rate likely to achieve completion of the Services by the Completion Date (if any) specified in the Services Agreement;
 - 17.2.3 the Service Provider fails to complete the Services by the Completion Date (if any) specified in the Services Agreement;
 - 17.2.4 the Service Provider ceases to provide the Services at any time during the Term (if any) specified in the Services Agreement;
 - 17.2.5 the Service Provider fails to:
 - 17.2.5.1 provide and pay for appropriate insurance as required by clause 15; or
 - 17.2.5.2 provide Coffey with proof of appropriate insurance upon request by Coffey as required by clause 15;
 - 17.2.6 the Service Provider breaches any other provision of the Services Agreement (including these Conditions) and fails to remedy the breach within 30 days after receiving written notice requiring that to be done;
 - 17.2.7 any step is taken to enter into any arrangement between the Service Provider and the Service Provider's creditors;
 - 17.2.8 the Service Provider ceases to be able to pay the Service Provider's debts as they become due;
 - 17.2.9 the Service Provider ceases to carry on business; or
 - 17.2.10 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.
- 17.3 Where, before its termination of the Services Agreement under this clause 17 Coffey has paid an amount on account of the Contract Price to the Service Provider, the Service Provider must on termination repay that amount to Coffey. If not so paid, the amount is recoverable by Coffey from the Service Provider as a debt.
- 17.4 DFAT may review the profile of the Project annually and reserves the right to review and adjust the project profile in consultation with Coffey International Development. Therefore, Coffey International Development may adjust the level and timing of the services to be provided by the Service Provider following such review in conjunction with the Service Provider.
- 17.4.1 Upon reasonable notice being given by DFAT to Coffey International Development of policy or funding decisions under Clause 17.4, the Service Provider will negotiate with Coffey reasonably reduced fees and costs to be paid under this Contract.

17.4.2 This clause 17.4 prevails over the remainder of the Agreement (including implied terms) or any other arrangement between the Service Provider and Coffey International Development.

If the Services Agreement is terminated under this clause 17:

17.4.3 the parties are relieved from future performance without prejudice to any right of action that has accrued at the date of termination;

17.4.4 rights to recover damages are not affected; and

17.4.5 the Service Provider indemnifies Coffey in respect of any loss Coffey may incur in purchasing similar services from alternative suppliers.

18. COMPLIANCE WITH DFAT POLICIES

18.1 The Contractor and its Personnel will ensure it is compliant with all DFAT policies as applicable including:

- (a) the child protection compliance standards in the *Child Protection Policy* for the DAFT – Australian Aid Program, accessible on the DFAT website at: www.dfat.gov.au;
- (b) Disability Action Strategy: <http://dfat.gov.au/about-us/publications/Pages/disability-action-strategy-2017-2020.aspx>
- (c) *the Family Planning and the Aid Program: Guiding Principles (2009)* for the DAFT – Australian Aid Program, accessible on the DFAT website at: www.dfat.gov.au;
- (d) information accessibility requirements contained in the *Guidelines for preparing accessible content* for the DAFT – Australian Aid Program, accessible on the DFAT website at: www.dfat.gov.au;
- (e) the *Environment Management Guide for Australia's Aid Program (2012)* for the DAFT – Australian Aid Program and the *DFAT Environment Protection Policy (2014)* accessible on the DFAT website at: www.dfat.gov.au;
- (f) 'Promoting Opportunities for All: Gender Equality and Women's Empowerment' (November 2011), accessible on the DFAT website at: www.dfat.gov.au;

EXECUTED as an Agreement

SIGNED for and on behalf of **Coffey International Development Pty Ltd**

Signature

Name

Position

In the presence of

Witness.....

SIGNED for and on behalf of

Signature

Name

Position

In the presence of

Witness.....

SCHEDULE 1
SCOPE OF SERVICE

To be added later.

SCHEDULE 2

Commencement date:

Completion date:

Delivery address:

Prices:

Milestones:

Milestone Number	Description of Milestone	Milestone Payment Amount AUD (Ex- GST)	Due Date	Means of Verification/ Acceptance
1	TBC	TBC	TBC	Written acceptance by nominated Coffey Representative
2	TBC	TBC	TBC	Written acceptance by nominated Coffey Representative
3	TBC	TBC	TBC	Written acceptance by nominated Coffey Representative

INSURANCE POLICIES REQUIRED:

Public and products liability

\$20 million

Professional indemnity

\$5 million

Workers compensation

As legislated

REPRESENTATIVES

Coffey's Representative

Name:

Position:

Address:

Telephone:

Email:

Service Provider's Representative

Name:

Position:

Address:

Telephone:

Email: