Responsible Contracting Project

Tea Sector Model Contact Clauses (TMCs)

In Collaboration with ETP

Tea Sector Model Contact Clauses (TMCs)

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We would like to thank and acknowledge the ETP members, suppliers and civil society organizations including Fairtrade, IDH and THIRST who provided valuable support and feedback in the development of the TMCs.

Definitions

Adverse Impact: means a potential or actual Adverse Environmental Impact and/or Adverse Human Rights Impact [human rights harm, including human rights harms resulting from harms to the environment] which one or both parties have either caused, jointly-caused, or are directly linked to through their products, services, and business relationships [resulting from the violation of one of the prohibitions and obligations pursuant to Supplier Code of Conduct or Responsible Purchaser Code of Conduct].

CSRD: means the EU Corporate Sustainability Reporting Directive, Directive (2022/2464 of 14 December 2022).

Decent Livelihoods / Living Wage and Income: means workers and farmers receive [a wage] [income level] [for a standard work week] that allows all members of the household to afford a decent standard of living for all members of that household, taking into account country circumstances [, as determined using a reputable benchmark to be agreed between the parties]. Elements of a decent standard of living include food, water, housing, education, healthcare, transportation, clothing, and other essential needs including provisions for unexpected events.

Effective Date: means the date on which obligations implemented in this Agreement become effective.

Goods: means the products or materials provided by Supplier as listed in Annex [x] to this Agreement.

Human Rights and Environmental Due Diligence (HREDD): means an on-going, risk-based process that is appropriate to the size and circumstances of the parties implementing it to identify, prevent, mitigate, cease, minimise, track and remedy Adverse Impacts.

HREDD Obligations: means the Human Rights and Environmental Due Diligence related obligations as set out in Article 1 and Article 2

OECD Guidance: means the Organisation for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises for Responsible Business Conduct (2023), the OECD Due Diligence Guidance for Responsible Business Conduct (2018), and OECD-FAO Guidance for Responsible Agricultural Supply Chains.

Representatives: means the [officers, directors, employees,] agents and all subcontractors, consultants and any other person providing staffing for Goods or services to Buyer required by this Agreement.

Responsible Purchaser Code of Conduct: means a list or other document (e.g. a Human Rights policy, Buyer Code) attached to this Agreement setting forth the commitments by Buyer (and Supplier where, acting as a Buyer) to engage in responsible purchasing practices and to cooperate with Supplier to uphold the standards contained in the Supplier Code of Conduct that Buyer shall

make a best effort to implement. Non-compliance with the Responsible Purchaser Code may cause or contribute to an Adverse Impact.[1]

Small Garden: means a micro, small or a medium-sized enterprise, irrespective of its legal form, that is family-owned and employs or engages less than _____ non-family members and is not part of a larger group.

Supplier: means a Party [Y] to this Agreement, which may include a producer or Small Garden, or an entity or individual(s) acting as both buyer and supplier by aggregating tea products from multiple tea gardens, including intermediaries such as brokers, auction houses, leaf factories, packers or others, when they are overseeing the work of suppliers to meet shared HREDD Obligations under this Agreement.

Supplier Code of Conduct: a list or other document (e.g. a Human Rights policy) attached to this Agreement reflecting the environmental and human rights standards, as agreed upon by the Parties, to which Supplier (, acting as a Buyer or Supplier) is expected to adhere and the non-compliance of which may contribute to or cause an Adverse Impact.

Article 1 – Mutual Obligations for Due Diligence in Supply Chains

As of the Effective Date of this Agreement, Buyer and Supplier each agree to perform the following HREDD Obligations:

1.1 Joint commitment to Human Rights and Environmental Due Diligence

(a) Buyer and Supplier, each agrees to establish and cooperate in implementing a HREDD policy and maintaining a HREDD process in connection with this Agreement, in accordance with the standards set out in the OECD Guidance. The HREDD process shall be appropriate to each party's size and circumstances.

Where Supplier is an intermediary, it agrees to support Buyer's HREDD and to extend the relevant requirements and support contemplated in this Agreement, including responsible purchasing practices and reasonable assistance, to its own Suppliers. Where Supplier is a Small Garden, it can opt to establish its own HREDD policy or process or to participate and cooperate in Buyer's HREDD process with clear instruction from Buyer.

(b) Stakeholder Engagement: Buyer and Supplier must meaningfully engage stakeholders such as workers, farmers, local communities and their Representatives, as well as other individuals or groups potentially or actually affected by an Adverse Impact at each step of the HREDD process set out in Clause 1.1. Such stakeholder engagement must be ongoing, responsive, effective, and conducted in a culturally appropriate format and in a manner that is free of manipulation, discrimination, interference, coercion, and intimidation. The parties shall provide stakeholders with the information necessary for them to

[1] An example of such a list can be found in Schedule Q of the ABA Model Clauses accessible at https://www.americanbar.org/content/dam/aba/administrative/human_rights/contractual-clauses-project/scheduleq.pdf

meaningfully engage in the HREDD process. The parties may prioritise engagement according to the severity and likelihood of Adverse Impacts, as set out in the OECD Guidance [and in the Supplier Code of Conduct and the Responsible Purchaser Code of Conduct (collectively, the Codes)].

(c) HREDD Contact Points: Supplier and Buyer shall each designate [at least one] member of their staff as a HREDD contact point ("HREDD Contact Points" [insert (name) (title) at (email address)] to send/receive HREDD-related information and administer the HREDD Obligations under this Agreement. [Notices related to other business terms shall be given as specified in Section ____ for general notices]. [The HREDD Contact Points [,in addition to a mutually agreed upon neutral and experienced mediator,][2] shall collaborate with stakeholders in order to identify a stakeholder representative with whom to form a HREDD monitoring committee ("HREDD Monitoring Committee") charged with monitoring, in an on-going and collaborative fashion, the implementation of the HREDD Obligations under this Agreement.]

(d) Information Disclosure: [Buyer and Supplier each] [Supplier] shall provide [yearly] [bi-annually][regularly, as agreed] reports on the implementation of their HREDD process(es). Such reports shall be forward and backward-looking for a period of [X] months and contain both qualitative and quantitative information concerning the HREDD measures implemented by [Buyer and Supplier] [Supplier]. The parties shall agree on the format, scope and content of the required disclosure of such measures. [Where Supplier is a Small Garden, Buyer shall adapt its requests for information to each party's size and circumstances]. [This obligation shall be deemed satisfied if [the disclosing party] [Supplier] has met the EU CSRD reporting obligations under domestic law].

[Buyer and Supplier each] [Supplier] shall also disclose any actual Adverse Impacts as they occur and potential Adverse Impacts as [Buyer and Supplier become] [Supplier becomes] aware of them.

Each party may request additional HREDD-related information, so long as such requests are sufficiently defined, limited in scope, and necessary for the requesting party to effectively carry out its own HREDD Obligations under this Agreement and under applicable law. This includes requests by Buyer to Supplier to disclose information concerning the location and identity (including the names) of Supplier's sub-suppliers and subcontractors.

The parties shall use the information obtained under this Section solely for the purpose of meeting their HREDD Obligations under this Agreement and to meet the requirements of

[2] Consider identifying a neutral person from ETP, an NGO or other civil society to avoid protracted arbitration or litigation. The findings of the HREDD Monitoring Committee may be contractually agreed upon as binding, absent fraud, or simply a required step before access to further available legal remedies.

applicable laws, if any. They shall keep such information confidential except as required by applicable laws.

(e) HREDD shall include implementation and monitoring of a prevention plan and, if applicable, Corrective Action Plan in accordance with Article 3.3 to address issues identified by due diligence conducted prior to the Effective Date.

(f) For the avoidance of doubt, each party is independently responsible for upholding its HREDD obligations under this Agreement, and a breach by one party of its obligations under this Clause 1.1 shall not relieve the other party of its obligations under this Agreement.

1.2 HREDD throughout the Supply Chain

As part of meeting its HREDD Obligations, (a) Each party shall make a best effort to ensure that each of its Representatives and its sub-suppliers and subcontractors and each of their sub-suppliers and subcontractors acting in connection with this Agreement, engages in and supports the HREDD process set out in this Agreement. [Buyer and any Supplier, when acting as a buyer, shall provide a mapping of subcontractors and make a best effort to ensure that its own suppliers, including Small Gardens, other producers and any other Representatives, implement the [same][comparable][at least as protective] obligation on their suppliers and/or any other representatives. Such relationships shall be formalised in written contracts.]

(b) Supplier shall keep records of such written contracts and of any failed attempts to agree to such contracts and make them available to Buyer upon request, in accordance with Clause 1.1(d) (Information Disclosure).

1.3 Grievance Mechanism

(a) During the term of this Agreement, Buyer and Supplier (Supplier acting in both capacities) shall each maintain or support an adequately funded and governed non-judicial Operational-Level Grievance Mechanism (OLGM) to effectively prevent, identify, address, and remedy any Adverse Impacts that may occur in connection with this Agreement.

(b) Buyer and Supplier shall each ensure that the OLGM, which may be an external [multi-stakeholder] mechanism, is legitimate, accessible, predictable, equitable, transparent, rights-compatible, a source of continuous learning, and based on regular meaningful engagement and dialogue with stakeholders, including workers of Supplier, its subcontractors and in its supply chain. Buyer and Supplier and the HREDD Contact Points [HREDD Monitoring Committee] shall consult with workers, farmers and their Representatives in the development and functioning of the OGLM. Where Buyer and Supplier (including where Supplier acts as a buyer) rely on an external OLGM,

responsibility for ensuring the accessibility and effectiveness of the OGLM remains with Buyer and Supplier.

(c) Buyer and Supplier (acting in either capacity) shall each maintain open channels of communication with those individuals or groups of stakeholders that are likely to be adversely impacted by environmental or human rights violations. This includes representatives of these stakeholders and/or whistleblowers, so that the occurrence or likelihood of Adverse Impacts may be reported without fear of retaliation. These individuals or groups and their Representatives shall be informed of the existence and functioning of the OLGM in writing as well as verbally. Both Buyer and Supplier shall establish and implement a policy to prevent such retaliation that includes an option for anonymous complaints. Complainants shall be entitled to request an appropriate follow-up regarding the complaint and, if appropriate, to meet with the HREDD Contact Points and Supplier's Representatives to discuss the Adverse Impacts that are the subject matter of the complaint.

(d) Supplier, unless a Small Garden, shall, at Buyer's request, demonstrate to the extent allowed by the applicable law, that the OLGM is functioning by providing written reports to Buyer on the OLGM's activities, describing, at a minimum, the number and nature of grievances received and processed over the reporting period, documentary evidence of consultations with affected Stakeholders, and all actions taken to address such grievances.

(e) Buyer and Supplier shall each ensure that waiver or release of the right to file a grievance in another mechanism or to commence legal proceedings is not a requirement for access to the OLGM, and that the use of the OLGM is not a prerequisite for the filing of grievances in other mechanisms or for the initiation of otherwise available legal proceedings.

1.4 Recognition

Where Buyer seeks to employ HREDD measures such as, but not limited to, questionnaires, audits, and scorecards in its HREDD processes, Supplier may, to the extent allowed by law, provide Buyer with a recent equivalent document, and Buyer shall accept such equivalent document [or a portion of the equivalent document to the extent that it meets Buyer's minimum standards], unless it reasonably considers that such equivalent document [entirely] fails to satisfy Buyer's minimum standards. A recent CSRD-aligned report [or prior agreed upon certification process report] will be recognised as an equivalent document. [Upon request, and where Supplier is a Small Garden, Buyer shall share audit reports with Small Garden, so that the latter can use this information to strengthen its efforts to uphold HREDD standards, as well as to work with other Buyers].

At the request of Supplier, Buyer shall, to the extent permissible under competition laws, coordinate with Supplier and other buyers to minimise inconsistencies between various due diligence measures employed, including sharing reports with audited Small Gardens.

Article 2 - Buyer's Commitment to Support Supplier Efforts to Uphold Human Rights and Environmental Standards

2.1 Commitment to Responsible Purchasing Practices

To satisfy its HREDD Obligations, and as part of its HREDD Obligations, Buyer shall engage in responsible purchasing practices and only impose fair, reasonable, and non-discriminatory obligations on Supplier [in accordance with the Responsible Purchaser Code of Conduct].

2.2 Reasonable Assistance

Buyer shall employ commercially reasonable efforts to support and implement these provisions and the required HREDD, and to provide such assistance [, which may include Supplier training, upgrading facilities, certification and audit costs, advice on measures to verify compliance [and] strengthening management systems] [, and financing, for example, through direct financing, low-interest loans, guarantees of continued sourcing, and assistance in securing financing] to the extent legally permitted. Buyer's assistance shall not be deemed a waiver by Buyer of any of its rights, claims or defences under this Agreement or under applicable law. Supplier shall collaborate with Buyer and provide reasonable assistance to Buyer to the extent required to implement the due diligence process as referred to in Clause 1.1.

2.3 Fair Trade and Sustainability

Buyer and Supplier agree to adopt and comply with key principles of fair trade and sustainability [in line with the joint Code of Conduct or Human Rights Policy, Certification Scheme] which include fair prices, fair and safe labour conditions, inclusive stakeholder engagement, and transparent community and environmental safeguards. Wages for workers should not only meet minimum legal standards but also allow for a decent standard of living for workers and their families that includes access to education, health care, and savings for the future. [Buyer and Supplier commit to supporting collective bargaining and tripartite social dialogue as the modality for setting and adjusting wages where possible]. [Buyer and Supplier shall collaborate to agree on a price [, taking into account the size of the contract ,] that accommodates the costs associated with implementing and upholding HREDD across their supply chains, including the provision of a [Living Wage and Income] [Decent Livelihoods] for employees, informal workers and farmers that is appropriate to the region, sector, and skill level].

2.4 Commercial Terms (Payment and Delivery)

(a) Buyer and Supplier will agree on commercial terms, including payment and delivery terms, that will support Buyer and Supplier's performance of their HREDD Obligations [, including certification and mandatory audit costs] under this contract and to prevent and mitigate Adverse Impacts [and which commercial terms are in alignment with Responsible Purchaser Code of Conduct]. The terms will clearly indicate the time and place for (a) the

transfer of ownership; (b) the transfer of risk of loss; (c) Buyer's obligation to accept the Goods; and (d) Buyer's obligation to pay.

(b) If there is a material increase in input costs that increases the risks of Adverse Impacts, Buyer and Supplier shall collaborate to agree on alternative terms to mitigate such risks and prevent the occurrence of actual Adverse Impacts. Such alternative terms may include, among other things, price and payment term adjustments, advance payments, credit facilities, schedule changes, and extended contract terms. Buyer may require Supplier to provide documentation of the increase in input costs.

2.5 Commercial Compliance and Order Changes

To further ensure that commercial conduct does not result in Adverse Impacts, and in keeping with the obligation of good faith, Buyer shall not vary the terms of its purchase order unilaterally, nor shall Buyer impose additional costs or employ other commercial devices to obtain unnegotiated benefits.

2.6 Excused Non-Performance

If (i) Supplier provides notice and reasonably satisfactory evidence to Buyer that an Adverse Impact is reasonably likely to occur because of a requested modification or because of a reasonably unforeseeable, industry-wide or geographically specific, material change to a condition affecting Supplier; (ii) the parties cannot agree on a solution that avoids this Adverse Impact (which may include subcontracting); and (iii) Supplier elects not to perform in order to avoid this Adverse Impact, then the parties agree that this Agreement or a specific purchase order hereunder may be terminated in whole or in part by Supplier and that Supplier shall not be in default of its obligations under this Agreement as a result of such non-performance.

2.7 Termination for persistent non-cooperation

Notwithstanding any other provision of this Agreement, this Agreement may be terminated by Buyer where Supplier has engaged in activities resulting in repeated Adverse Impacts and where Supplier persistently refuses to engage in good faith efforts to address those impacts and there is no reasonable expectation that these efforts would succeed. Prior to temporarily suspending or terminating the business relationship, the company shall still seek a responsible exit in line with Clause 2.8 (Responsible exit) and assess how Adverse Impacts of exiting can be reasonably mitigated. This does not absolve Buyer from participating in the corrective action process set out in Clause 3.3 (Actual Adverse Impact and Corrective Action Plan).

2.8 Responsible exit

In any termination of this Agreement other than that pursued under Clause 2.7, whether due to a failure by a party to comply with this Agreement or for any other reason (including the occurrence of a force majeure event as defined in Section [X] or any other event that lies beyond the control of the parties), the terminating party shall, where

possible and as appropriate under the circumstances, (a) engage with stakeholders or their Representatives to identify potential Adverse Impacts of exit and employ achievable, proportionate, and reasonable efforts to avoid or mitigate such Adverse Impacts; and (b) provide reasonable notice to the other party of its intent to terminate this Agreement. Termination of this Agreement shall be without prejudice to any rights or obligations accrued prior to the date of termination, including, without limitation, payment that is due for acceptable Goods produced by Supplier pursuant to Buyer's purchase orders before termination.

2.9 Positive incentives for compliance

Buyer and Supplier shall collaborate to establish clear and transparent benchmarks to assess HREDD performance. Where possible, given the state of business commitments and market demand, Supplier {and Buyer] shall be rewarded for superior HREDD-related performance that's reflected in pricing or other such preferential terms. Rewards may also include, without limitation, contract renewals, further or expanded orders, contracts of a longer term, investment in increasing Supplier's capacity, or the payment of bonuses. Buyer's evaluation of Supplier with respect to such matters as potential expansion or continuation of the commercial relationship shall give weight to HREDD-related performance [equal] [as well as] to criteria such as quality, price, timely delivery, and the like.

Article 3 - Remediating Adverse Environmental and Human Rights Impacts Linked to Contractual Activity

Where an Adverse Impact has occurred, the parties each agree to perform the following HREDD Obligations:

3.1 Detailed summary of Potential or Actual Adverse Impacts

Within _____days of (i) Buyer having reason to believe and informing Supplier that there is an potential or actual Adverse Impact, or (ii) Supplier's receipt of any oral or written notice of any Adverse Impact, Supplier and the HREDD Contact Points shall prepare a detailed summary of (x) the factual circumstances surrounding such impact; (y) the specific environmental or human rights issues implicated including details with respect to the scope, scale and severity of the issues; (z) the investigation and remediation that has been conducted and/or that is planned and the timeline for each step as informed by implementation of the grievance process set forth in Clause 1.3. [Buyer shall keep the summary confidential unless Buyer is legally bound to disclose it as required by law.]

3.2 Investigation

(a) Upon receipt of the detailed summary under Clause 3.1, Buyer and Supplier shall, to the extent legally allowed, fully cooperate with any investigation by the other party or their Representatives. [This may include a neutral third party when there is a material

breach or allegation of an Adverse Impact]. Such cooperation shall include, upon request of a party, working with governmental authorities to enable both Supplier and Buyer or their agents to enter the country, to be issued appropriate visas, and to investigate fully.

(b) Each party shall provide, to the extent legally permitted, the HREDD Contact Points with every report on the results of any investigation carried out under this Clause; provided that any such cooperation does not require Buyer or Supplier to waive attorney-client confidentiality, nor does it limit the defences Supplier or Buyer may raise.

3.3 Actual Adverse Impact and Corrective Action Plan

This Clause 3.3 shall apply where an actual Adverse Impact has occurred.

(a) If Supplier caused or jointly caused the actual Adverse Impact, Supplier shall, in consultation with adversely affected stakeholders, prepare, share with stakeholders, and implement a corrective action plan (the Corrective Action Plan) to remedy the actual Adverse Impact within a reasonable time. In situations where Supplier did not cause or jointly cause the actual Adverse Impact, Supplier shall cooperate in implementing any Corrective Action Plan that Buyer may develop.

(b) The Parties shall notify the HREDD Contact Points immediately upon becoming aware of the occurrence of an actual Adverse Impact.

(c) The Corrective Action Plan should:

a. Ensure that the affected stakeholders are, to the extent possible, put in the position they would have been in had the actual Adverse Impact not occurred;
b. Enable remediation that is proportionate to the actual Adverse Impact, noting that such remediation could take the form of apologies, restitution, rehabilitation, and financial or non-financial compensation; and
c. ensure that the actual Adverse Impact in question does not recur and that additional Adverse Impacts are prevented.

(d) Buyer contribution: If Buyer jointly caused the actual Adverse Impact by failing to meet its HREDD Obligations, it shall provide adequate financial and non-financial assistance to support the preparation and implementation of the Corrective Action Plan, that is at least proportionate to its contribution.

(e) The Parties shall cooperate to implement the Corrective Action Plan in a manner that is reasonably satisfactory to the adversely affected stakeholders and/or their Representatives [and/or a third party acting on behalf of such stakeholders].

(f) The parties shall ensure that any engagement with stakeholders and/or their Representatives [and/or a third party acting on behalf of such stakeholders] pursuant to this Clause 3.3 shall be carried out in a manner that does not cause, contribute to, or exacerbate any Adverse Impacts, is free of manipulation, interference, coercion, and/or intimidation, and is conducted in a culturally appropriate format.

(g) A failure by the responsible Party or Parties to prepare or properly implement a Corrective Action Plan shall constitute a material breach of this Agreement. This obligation shall be deemed satisfied if [the disclosing party] [Supplier] has or is in the process of implementing a Corrective Action Plan in line with requirements under the EU CSDDD or equivalent domestic law that requires remedial action.

3.4 Failure of Corrective Action Plan

If an actual or potential Adverse Impact is not cured or corrected within the period designated by the parties or is incapable of being corrected or cured, Buyer may, in accordance with Clause 2.8, terminate this Agreement if Buyer has not contributed to the Adverse Impact. Termination may only proceed in accordance with Clause 2.8, after Buyer has assessed risks and impacts to the Sustainability of workers, farmers, their communities and/or the environment likely to arise from termination and sought to prevent and mitigate such risks and impacts.

RCP Disclaimer

Disclaimer: The TMCs are the product of the Responsible Contracting Project and ETP. Nothing contained herein, including the clauses to be considered for adoption, is intended, nor should it be considered, as the rendering of legal advice for specific cases or particular situations, and readers are responsible for obtaining such advice from their own legal counsel. The TMCs are intended for educational and informational purposes only, and ultimately the contractual parties are to decide whether and which of the contractual clauses they use in their supply relationships. The lawyer who advises on the use of these clauses must take responsibility for the legal advice offered. Integration of these clauses does not guarantee compliance with any applicable laws or regulations.

ETP Disclaimer

ETP is aware that its members and partners may have mandatory obligations relating to human rights and environmental due diligence (“HREDD”). Accordingly, ETP has prepared this material containing information and guidance which may assist ETP members and the sector in formulating their own approaches to set up HREDD compliance programmes (the “HREDD Framework”).

Although this material has been prepared in good faith, nothing in this material or which otherwise may be said or done or provided by ETP to its members or any other person, including in relation to HREDD, the HREDD Framework or any associated or similar laws or regulations, constitutes professional advice by ETP to its members or any other person. ETP accepts no duty of care in connection with any materials, information, or guidance it provides to its members or to any other person. ETP does not give any warranty or representation, express or implied, or provide any other assurance to its members or to any other person as to the accuracy or completeness of the

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