



CATHOLIC EDUCATION WESTERN AUSTRALIA

Contract Title

CONTRACT NO: Insert Contract Number

INSERT CONTRACTOR NAME

ACN/ABN:

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FORMAL INSTRUMENT OF AGREEMENT

THIS CONTRACT is made on the.....day of.....**2021**

BETWEEN:

CATHOLIC EDUCATION WESTERN AUSTRALIA LIMITED a body corporate having its office at 50 Ruislip Street, West Leederville, Perth in the State of Western Australia, **ABN: 47 634 504 135**, trading as **INSERT SCHOOL NAME** of **insert school address** **ABN: insert schools ABN** ("CEWA"); and:

INSERT CONTRACTOR'S NAME of **insert Contractor's address** in the State of Western Australia ("the Contractor"), **ACN: insert Contractor's ACN/ABN**

BACKGROUND:

CEWA requires that certain services relating to the supply of **insert the Goods to be supplied**, being the Goods as defined in the Contract should be performed and has accepted an offer by the Contractor for the supply of those Goods.

AGREEMENT:

In consideration of their mutual promises, the parties agree:

- 1) In this Contract, words and expressions have the same meanings as are respectively assigned to them in the General Terms and Conditions.
- 2) The following documents comprise this Contract, namely:
 - (a) the Formal Instrument of Agreement;
 - (b) the General Terms and Conditions; and
 - (c) the Annexure to the General Terms and Conditions.
- 3) In consideration of the payment by CEWA to the Contractor of the Contract Price at the times and in the manner prescribed in the Contract, the Contractor covenants with CEWA to carry out the supply of the Goods in conformity in all respects with the provisions of the Contract.
- 4) In consideration of the supply of the Goods by the Contractor, CEWA covenants with the Contractor to pay to the Contractor the Contract Price at the times and in the manner prescribed by the Contract and observe any other obligations on its part contained in the Contract.
- 5) This Contract is the entire agreement between the parties in respect of its subject matter.

SIGNED for and on behalf of **CATHOLIC EDUCATION WESTERN AUSTRALIA LIMITED**, ABN 47 634 504 135 trading as **INSERT SCHOOL NAME**, ABN **insert ABN** by its duly authorised representative in the presence of:

Authorised Representative Date

Name of Authorised Representative

Position (please print)

Execution clauses of the Contractor to be inserted, examples as follows:

Where the Contractor is signing under an Authorised Representative

SIGNED for and on behalf of **INSERT CONTRACTOR**, ABN **insert ABN** by its duly authorised representative:

Authorised Representative Date

Name of Authorised Representative

Position (please print)

Where the Contractor is signing under a Common Seal

THE COMMON SEAL of **INSERT CONTRACTOR ACN insert ACN** was affixed by authority of its Directors in accordance with Section 127 of the Corporations Act 2001 (*Cth*):

Signature of Director/Secretary Date

Name (please print)

Signature of Director Date

Name (please print)

Where the Contractor is a Company with two Directors

EXECUTED by **INSERT CONTRACTOR ACN insert ACN** in accordance with Section 127 of the Corporations Act 2001 (*Cth*):

Signature of Director/Secretary Date

Name (please print)

Signature of Director Date

Name (please print)

Where the Contractor is a Company one person appointed as sole Director and sole company Secretary

EXECUTED by **INSERT CONTRACTOR ACN insert ACN** by its Sole Director and Sole Company in accordance with Section 127 of the Corporations Act 2001 (*Cth*):

Sole Director/Secretary Date

Name (please print)

Where the Contractor is an individual (if more than two individuals, produce a separate sealing clause for each)

SIGNED by **Insert Name:**

Signature Date

Name (please print)

GENERAL TERMS AND CONDITIONS

1 DEFINITIONS

1.1 In this Contract, the terms set out below have the following meaning:

ACAN means the Australian Catholic Anti-Slavery Network.

Modern Slavery Supplier Code of Conduct means the standards and practices specified in Schedule 6 to the Annexure.

Annexure means the Annexure to these Conditions of Contract.

Australian Standards means the Australian Standards applicable to the provision of the Goods published by Standards Australia Limited from time to time.

Business Day means any weekday that is not a gazetted public holiday in the state of Western Australia.

CEWA means Catholic Education Western Australia Limited.

CEWA's Representative means the representative of CEWA specified in the Contract Details, as may be replaced by CEWA from time to time by notice to the Contractor.

Claim means any claim, action, demand, damage, loss, liability, cost, charge, expense (including legal costs on a full indemnity basis), outgoing, fine or payment whether in contract of tort or under statute or otherwise.

Commencement Date means the commencement date of the Contract as specified in the Contract Details.

Confidential Information means the Contract and any information (in whatever form it is received), object, document, data, programs, techniques, systems, processes, or other information (whether an original or copy) of a confidential nature which relates to the business, affairs, or activities of CEWA, or its Related Bodies Corporate.

Consequential Loss means indirect loss or damage of any nature whatsoever based on contract, warranty, tort (including negligence) or otherwise and includes but is not limited to indirect loss because of loss of sales, loss of profit, loss of revenue, loss of goodwill or business opportunities and damage to reputation, loss of product, loss of production and business interruption.

Contract means the General Terms and Conditions and any other annexures, schedules, addendum or other documents attached thereto or provided by CEWA to the Contractor in relation to the Contract including:

- (a) Contract Details;
- (b) Contract Price Schedule; and
- (c) any Purchase Orders issued pursuant to this Contract.

Contract Details means Schedule 1 to the Annexure attached to these General Terms and Conditions.

Contract Price means the amount payable by CEWA to the Contractor for the supply of the Goods under this Contract as calculated pursuant to the rate or rates set out in Schedule 2 to the Annexure in accordance with clause 33.

Contractor means the party so described in the Formal Instrument of Agreement and, where and to the extent the context permits, includes the Contractor's personal representatives, successors and permitted assigns, employees and permitted sub-contractors, consultants, and agents responsible for the supply of the Goods under this Contract.

Contractor's Representative means the representative of the Contractor specified in the Contract Details.

Data means:

- (a) all content, data, information, and other materials provided to, or generated by or on behalf of, the Contractor relating to CEWA for the purposes of providing the Goods under the Contract (including Personal Information) (**Raw Data**); and
- (b) all content, data, information, and other materials in any format whatever generated, stored, processed, retrieved, printed, or produced by or on behalf of the Contractor utilising the Raw Data,

and includes:

- (c) data created by the operation of any computer language or software, regardless of where such software is operated, executed or resident; and
- (d) information (including reports) produced by, or outputs from, Contractor systems or tools

Deficient Goods means where, after acceptance in accordance with clause 26, the Goods are subsequently found not to be in accordance with the Contract, or of an inferior quality or differing from those ordered (whether by sample or quality).

Delivered means when the Goods have been delivered to the Delivery Point and received and signed by CEWA or its agent.

Delivery Date means:

- (a) Where the Contract Details or Purchase Order specifies a date for delivery of the Goods, that date; or
- (b) Where the Contract Details or Purchase Order specifies a period for delivery, the last day of that period

subject to any adjustment of the relevant date(s) in accordance with the Contract.

Delivery Docket means a document prepared by the Contractor including the Purchase Order number, description, date of dispatch, quantity, and unit of measure of the Goods delivered, quantity of Goods on back order, consignment note number and freight carrier.

Delivery Point means the delivery point specified in the Contract Details.

Expiry Date means the expiry date of the Contract specified in the Contract Details.

Force Majeure Event means a circumstance beyond the reasonable control of the Parties which results in a Party being unable to observe or perform on time an obligation under this Contract, but only where the event could not be overcome by the relevant party exercising all due diligence and care, including but not limited to:

- (e) Governmental, semi-governmental or judicial law, regulation, order, decree, directive, restriction, restraint, prohibition, intervention, expropriation, or advice including but not limited to Australian governmental travel advice from the Department of Foreign Affairs and Trade (DFAT);
- (f) failure of any governmental or semi-governmental or judicial entity to act and which act is necessarily required in the performance of a party's obligations under the Contract;
- (g) acts of God, lightning strikes, earthquakes, floods, storms, tornado, hurricane or other form of inclement weather, conditions resulting from inclement weather, explosions, fires and any natural disaster;
- (h) acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage, insurrection, revolution, epidemic, pandemic or quarantine;

- (i) an industry-wide, State-wide or Australia strike, lock-out, ban or other industrial disturbance; or
- (j) order of any court or government agency (excluding an order attributable to a Party's failure to comply with this Contract).

General Terms and Conditions means these terms and conditions.

Good Industry Practice means the exercise of the degree of skill, diligence, prudence, and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator engaged in Australia in the same type of undertaking under the same or similar circumstances having regard to prevailing common industry practice in Australia.

Goods means the goods described in the Contract Details and associated Schedules to the Contract to be supplied by the Contractor in accordance with the terms of the Contract, or where the context permits, such Goods as described in the Purchase Order.

GST means goods or services tax levied or imposed in Australia pursuant to the *New Tax System (Goods and Services Tax) Act 1999* (Cth).

Intellectual Property means the following whether existing in Australia or any other part of the world:

- (a) any patents, utility models, copyright (including future copyright), designs, registered or unregistered trademarks or service marks, trade names, brand names, company names, semiconductor and circuit layout rights, registered designs and commercial names and designations;
- (b) any invention, discovery, trade-secret, know-how, computer software or scientific, technical or product information;
- (c) any other rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields whether industrial, commercial, agricultural, or extractive and whether dealing with manufactured or natural products; and
- (d) any other intellectual property rights, and any rights to registration of those rights, and whether existing in Australia or elsewhere.

Law means the law applicable in the State of Western Australia.

Lead Time means the number of days set out for the Goods to be Delivered (if any) as listed in the Contract Details.

Legislative Requirements means any relevant legislation and Government policy, including but not limited to:

- (a) *School Education Act 1999* (WA);
- (b) *Australian Education Act 2013*;
- (c) *Privacy Act 1988* (Cth); and
- (d) *Work Health and Safety Act 2020* (WA);

Modern Slavery has the meaning given in the *Modern Slavery Act 2018* (Cth).

Modern Slavery Act means the *Modern Slavery Act 2018* (Cth).

Modern Slavery Code of Conduct means Schedule 6 to the Annexure.

Occupational Health and Safety Requirements means Schedule 5 to the Annexure.

Operational Documentation means all manuals and other documentation relating to the Goods including without limitation, installation, and operation (where relevant), warranty information and anything else reasonably requested by CEWA from time to time.

Party means a party to this Contract, being either the Contractor or CEWA and **Parties** means both CEWA and the Contractor.

Personal Information has the meaning given in the Privacy Act 1988 (Cth).

Personnel means the directors, officers, employees, subcontractors, suppliers, and agents of the Contractor or CEWA or their respective Related Bodies Corporate, as the context requires.

Policies and Procedures means all rules, regulations, standard procedures, directives, and policies of CEWA as specified in the Contract Details or other notified by CEWA to the Contractor from time to time.

PPSA means the *Personal Property Securities Act 2009* (Cth).

PPS Register means the Personal Properties Securities Register established under the PPSA.

Privacy Laws means all Laws relating to data security and the protection of Personal Information in force from time to time, including the Privacy Act 1988 (Cth).

Purchase Order means a Purchase Order from CEWA to the Contractor requiring the supply of a specific quantity of the Goods in accordance with this Contract.

Regional and Aboriginal Business Commitments means Schedule 7 to the Annexure.

Rejected Goods means those Goods that have been rejected in accordance with clause 27.

Related Body Corporate has the meaning given in the *Corporations Act 2001* (Cth).

Reputable Insurance Company means a duly registered insurance company, domiciled and carrying on business in Australia, with an "Insurer Financial Strength Rating" of "A" or better, as rated and determined by Standard & Poor's rating agency from time to time with reference to the Insurance Contracts Act 1984 (Cth) or such other rating agency as determined by CEWA.

Schedule means any schedule attached to the General Terms and Conditions.

Security Interest has the meaning given in the PPSA.

Site means the site specified in the Contract Details.

SOP Legislation means to the extent applicable to the Contract:

- (a) the *Construction Contracts Act 2004* (WA); and/or
- (b) the *Building and Construction Industry (Security of Payment) Act 2021* (WA).

Specification means the Specification at Schedule 3 to the Annexure.

Special Conditions means the special conditions (if any) set out in the Contract Details.

Term means the duration of this Contract commencing on the Commencement Date and ending on the Expiry Date, subject to extension or early termination in accordance with this Contract.

Third Party Claim means any claim in respect of loss or destruction of, or injury or damage to or loss of use of any real or personal property; or any personal injury or death of a person arising out of, or caused by, the supply or non-supply of the Goods by the Contractor.

Warranty Period means the period of time detailed in the Contract Details that the Goods will be warranted for any defects in design, material and workmanship.

Working with Children Act means the *Working with Children (Criminal Record Checking) Act 2004*.

2 INTERPRETATION

2.1 In the Contract, unless the context otherwise requires:

- (a) the words “include”, “includes”, “including” and other words introducing one or more examples of a thing are not to be construed as words of limitation;
- (b) words indicating the singular include the plural and vice versa;
- (c) words indicating a gender include any gender;
- (d) any capitalised term has the meaning as stated in clause 1.1, or if the term is not defined in clause 1.1, as stated in the Contract Details;
- (e) reference to a person includes:
 - (i) reference to a natural person, firm, any company, partnership, joint venture, association, corporation, or other body corporate and any Government Agency; and
 - (ii) reference to the successors and permitted assigns of any of the entities mentioned in sub-clause (i);
- (f) reference to a Party includes that Party’s successors and permitted assigns;
- (g) reference to a body of any nature (other than a party to the Contract) which ceases to exist or whose powers or functions are transferred to any other body, refers to the body which replaces it or which substantially succeeds to its powers or functions;
- (h) clause and other headings and marginal notes are for convenience only and do not affect interpretation of the Contract;
- (i) reference to a part, clause, party, schedule, annexure or exhibit includes a reference to any part, clause, party, schedule, annexure (including any attachment described as an Annexure) or exhibit of the Contract in each case, if applicable, as amended in accordance with the Contract;
- (j) reference to a sub-clause is a reference to a sub-clause of the clause in which the reference appears;
- (k) reference to a document includes a reference to every agreement or deed which varies that document;
- (l) reference to a thing (including a right or obligation) includes a part of that thing;
- (m) reference to Legislative Requirements, a statute, regulation, proclamation, ordinance or by-law includes any legislative requirement, statute, regulation, proclamation, ordinance or by-law varying, consolidating or replacing it, and a reference to a statute includes any regulation, proclamation, ordinance or by-law under the statute;
- (n) unless otherwise specified, all amounts are expressed in Australian dollars; and
- (o) when the day on which something must be done is not a Business Day, that thing must be done on the following Business Day.

3 GENERAL

3.1 Each party to this Contract warrants to the other party that:

- (a) Where it is an incorporated entity, it is duly incorporated and validly exists under Law;
- (b) It is not insolvent, and no action has been threatened against it or other action proposed which may result in it being insolvent; and

- (c) This Contract constitutes a legal, valid, and binding obligation enforceable in accordance with its terms.
- 3.2 Except where otherwise provided:
- (a) all documents and communications between the parties shall be in the English language;
 - (b) measurements and quantities shall be in the metric units prescribed by the laws of Australia; and
 - (c) references to currency are to Australian currency.
- 3.3 The Contract contains the full and complete understanding of the Parties and supersedes any agreement and any representation made or dated prior to the commencement of the Contract.
- 3.4 This Contract may be executed in any number of counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall constitute one agreement.
- 3.5 Each Party agrees that this Contract and any other documents to be delivered in connection with this Contract may be signed electronically, and that any electronic signature appearing on this Contract, or such other documents shall have the same legal validity as a handwritten signature for the purpose of enforceability, and admissibility.
- 3.6 No provision of the Contract will be construed adversely to a Party solely on the ground that it was responsible for the preparation of the Contract or that provision.
- 3.7 No waiver by or on behalf of a Party of any breach of any provision of the Contract will take effect or be binding on that Party unless it is expressed in writing under the authority of that Party. Any waiver will extend only to the particular breach waived and will not limit or affect any right with respect to any other or further breach.
- 3.8 Any consent or approval of CEWA required under the Contract must be in writing and may be given conditionally, unconditionally or withheld in each case in CEWA's absolute discretion unless otherwise expressly provided. If a consent or approval is given conditionally, the Contractor must comply with each condition. A consent or approval of one thing does not apply to any other thing. The grant of consent or approval by CEWA does not in any way affect the obligations of the Contractor in respect of the subject of the consent or approval.
- 3.9 Where more than one person comprises a Party, each person:
- (a) is jointly and severally liable for the performance by that party of that party's obligations under the Contract; and
 - (b) must act jointly in relation to the exercise by that party of its rights under the Contract.
- 3.10 Unless a contrary intention is specifically expressed, no provision of the Contract limits any right of CEWA whether under the Contract or under any Law.
- 3.11 Figured prevail over scaled dimensions in a discrepancy.

4 CONTRACTOR'S OBLIGATIONS

- 4.1 Without limiting its obligations elsewhere in the Contract, the Contractor warrants that:

- (a) it is able and qualified and has access to all necessary resources to provide the Goods in accordance with the requirements of this Contract;
- (b) all Goods (including packaging and transport of the Goods) supplied under this Contract will strictly comply with any description notified by CEWA to the Contractor, the Specification, applicable Australian Standards and all applicable Laws;
- (c) the Goods will not infringe the Intellectual Property Rights of any person;
- (d) the Goods are of merchantable quality, are new and are fit for the purposes which CEWA has communicated to the Contractor (if any);
- (e) the Goods have a life expectancy commensurate with that which would be expected for the same or similar Goods provided by a competent and reputable supplier;
- (f) the Goods are free from defects in design, material and workmanship and will remain so for the duration of the Warranty Period;
- (g) all information about the Goods provided by the Contractor to CEWA is true and correct in all respects, and no material information regarding the Goods has been withheld from CEWA;
- (h) CEWA will not have to pay any license fee, royalty, or other amount to any person in connection with the ownership, use or operation of the Goods by CEWA other than as expressly provided for in this Contract; and
- (i) there are no terms, conditions, or restrictions (such as patent conditions) which will become binding on CEWA as a result of the sale of the Goods by the Contractor, other than as disclosed in writing to CEWA by the Contractor prior to execution of this Contract.

4.2 The Contractor warrants that it will comply and ensure compliance of its Personnel with all Policies and Procedures, the Law and all reasonable and lawful directions made by CEWA.

4.3 The express warranties set out in this Contract are additional to any warranties implied by Law, custom or usage.

4.4 Each of the warranties in this Contract is a separate warranty. No warranty is to be read down by reference to any other warranty.

5 OCCUPATIONAL HEALTH AND SAFETY

5.1 The Contractor shall comply with all applicable occupational health and safety laws including to the *Work Health and Safety Act 2020 (WA)*, any amendment or replacement of that Act and to the Occupational Health and Safety Requirements detailed in the Schedule 5 to the Annexure.

5.2 The Contractor shall when attending CEWA's Site, premises, or facilities, comply with all reasonable directions and procedures relating to occupational health and safety and security in effect for those premises or in regard to those facilities as notified by CEWA or its nominated representative from time to time.

6 NO EXCLUSIVITY

6.1 Nothing in this Contract shall place any obligation on CEWA to buy Goods from the Contractor, nor does this Contract confer upon the Contractor any exclusivity in respect of the supply of Goods to CEWA. CEWA, at its discretion, may engage other contractors to supply goods to CEWA, including goods of the same type or nature as the Goods under this Contract.

7 NO MINIMUM PURCHASE

- 7.1 Except where the Contract requires CEWA to purchase a specified amount or number of Goods:
- (a) nothing in this Contract requires CEWA to purchase any minimum number of the Goods from the Contractor. For the avoidance of doubt, any estimated annual volume stated within the Contract is an estimate only, and will not require CEWA to purchase any minimum amount of Goods; and
 - (b) no provision of this Contract specifying that CEWA is to purchase a specified or minimum number of the Goods prevents CEWA, in accordance with any rights under this Contract, from terminating this Contract for convenience or otherwise directing a variation, such that CEWA does not in fact purchase a specified or minimum amount of the Goods.

8 PERIOD OF CONTRACT AND TERMINATION

- 8.1 The Contract shall commence on the Commencement Date and expires on the Expiry Date unless either extended or terminated earlier in accordance with this Contract.
- 8.2 CEWA may extend the Contract for the extended term or terms specified in the Contract Details by giving notice to the Contractor at any time during the Term, or any extension of the Term.
- 8.3 In the event the Contractor fails to carry out the Contract to CEWA's satisfaction (acting reasonably), this will be deemed to be a material breach of the Contract subject to termination in accordance with clause 59.

9 ACCEPTANCE BY PERFORMANCE

- 9.1 In the absence of formal written acceptance of the terms of the Contractor by the Contractor, the commencement of any part of the Contract by the Contractor, including but not limited to the delivering of the Goods, will be deemed to an acceptance by the Contractor of the terms and conditions of the Contract.

10 NATIONALLY COORDINATED CRIMINAL HISTORY CHECK

- 10.1 The Contractor's Personnel engaged in the supply of the Goods to CEWA shall obtain at the Contractor's Cost a Nationally Coordinated Criminal History Check (NCCHC) coordinated by the Department of Education.
- 10.2 If the NCCHC details that any of the Contractor's Personnel has committed a criminal offence, then CEWA may, without prejudice to its other rights under these general terms and conditions, request that the Contractor promptly remove that Personnel from the supply of the Goods at the Contractor's cost.
- 10.3 The replacement of Contractor's Personnel under clause 10.2 shall be subject to the approval of CEWA acting reasonably.

11 WORKING WITH CHILDREN

- 11.1 If the supply of the Goods under the Contract involves "child related work" as defined in section 6 of the Working with Children Act, then:

- (a) The Contractor shall ensure:
 - (i) that all Personnel who undertake child related work shall provide to CEWA an assessment notice under section 12 of the Working with Children Act before it commences the supply of the Goods under the Contract;
 - (ii) the Contractor shall otherwise always comply, and ensure that all Contractor Personnel comply with the Working with Children Act; and
- (b) a breach of this clause 11.1 shall be deemed a material breach of the Contract which cannot be remedied.

12 PRECEDENCE OF DOCUMENTS

- 12.1 Where there is a conflict between the Conditions of Contract and any other document the provisions of the Conditions of Contract shall prevail unless otherwise agreed between the parties.

13 DISCLOSURE OF CONTRACT INFORMATION AND DOCUMENTS

- 13.1 Documents and other information relevant to the Contract may be disclosed when required by Law or under a Court Order.

14 COMPLIANCE WITH LAWS AND PROCEDURES

- 14.1 The Contractor must comply, and ensure its Personnel:
- (a) comply with the requirements of all relevant Laws (including without limitation occupational health and safety laws, environmental laws, privacy laws), Legislative Requirements, Australian Standards and Good Industry Practice;
 - (b) comply with CEWA's reasonable directions and procedures in respect to site security, safety and occupational health, including all Policies and Procedures;
 - (c) take all reasonable precautions to prevent pollution, damage or injury to air, soil, water, animal or plant life and property; and
 - (d) avoid environmental harm or nuisance arising through the provision of the Goods.

15 REPRESENTATIVES

- 15.1 CEWA's Representative:
- (a) The Contractor shall only deal with the CEWA Representative nominated in the Contract Details.
 - (b) CEWA may replace the CEWA Representative by notice to the Contractor. The CEWA Representative will have such powers and functions set out in the Contract and such other powers and functions of CEWA as notified by CEWA to the Contractor from time to time.
 - (c) CEWA may by notice to the Contractor appoint or change delegates of the CEWA Representative and their powers or functions. Those delegates will have the power and functions notified by CEWA to the Contractor.
- 15.2 Contractor's Representative:
- (a) The Contractor may replace the Contractor's Representative by giving 7 days' notice of the request to the CEWA Representative.

- (b) The Contractor's Representative may appoint delegates and change the delegate of the Contractor's Representative by giving 7 days' notice to the CEWA Representative.
- (c) The Contractor's Representative is responsible for representing the Contractor in any dealings with CEWA and the CEWA Representative. Any communication made to the Contractor's Representative will be a communication to the Contractor. The Contractor is bound by all acts or omissions of the Contractor's Representative.
- (d) CEWA may, acting reasonably, direct the Contractor to replace the Contractor's Representative, or the delegate, with a person acceptable to CEWA. The Contractor must ensure such replacement is made within 5 Business Days of the request by CEWA.

16 SUPPLY OF GOODS

- 16.1 The Contractor shall carry out the supply of the Goods in a conscientious, expeditious and professional manner. Where the Contractor is required to provide or use equipment, such equipment shall be suitable for the work undertaken and shall be maintained by the Contractor in good and proper working conditions.
- 16.2 The Contractor warrants that its employees and agents are competent and have all necessary skills, training, and qualifications to carry out the supply of the Goods in accordance with this Contract.

17 SUPPLY OF GOODS BY PURCHASE ORDER

- 17.1 CEWA may order Goods from time to time in accordance with, and subject to, the terms and conditions contained in this Contract.
- 17.2 Where the Contract, in the Contract Details, provides that Goods must only be supplied upon receipt of a Purchase Order, CEWA will send to the Contractor a Purchase Order electronically or by such other means as reasonably determined by CEWA. The Contractor must fulfil all Purchase Orders for Goods placed by CEWA during the Term of the Contract.
- 17.3 Where the Contract Price Schedule of the Contract is for the supply of Goods by Purchase Order by reference to:
 - (a) **Variable Quantities**, CEWA will not be bound to purchase any Goods and the actual quantity purchased, if any, will be as ordered by CEWA.
 - (b) **Approximate Quantities**, the quantities stated must be regarded as an estimate only of the quantity that may be required. CEWA will not be bound to purchase the exact quantity of Goods stated and the quantity ordered may vary within a margin not exceeding 25 percent above or below the approximate quantity stated. Any variance within this margin will not affect the unit price of the Goods.
 - (c) **Fixed Quantities**, CEWA will purchase the actual quantity stated.
- 17.4 The Purchase Order will identify this Contract and include the description and quantity of the Goods ordered, the Delivery Date of the Goods and any other information specified by CEWA at its discretion. If the Purchase Order does not contain the description, quantity, and Delivery Date, CEWA may advise the Contractor separately in writing of the required information which will be deemed to form part of the Purchase Order.
- 17.5 The time between receipt of the Purchase Order by the Contractor and the proposed Delivery Date specified by CEWA must not be less than the Lead Time as specified in the Contract Details (if any) or 1 Business Day, whichever is greater.

- 17.6 Notwithstanding any other provision of this clause 17, it is the responsibility of the Contractor to ensure that it obtains all necessary information from CEWA to ensure that the Contractor fulfils the supply of the Goods.
- 17.7 The Contractor shall confirm receipt of the Purchase Order to CEWA within 1 Business Day.
- 17.8 CEWA may order any one type or item of the Goods either in one single lot, in instalments or in such quantities as may be required.

18 QUALITY OF GOODS

- 18.1 All Goods delivered must conform to the Specification and to the samples provided (if any) specified in the Contract Details.
- 18.2 Without reducing the Contractor's obligation to comply with the quality standards specified elsewhere in the Contract, the Goods must comply with the appropriate and current standard of the Australian Standards or, if there is no such standard, with the appropriate and current standard of the International Standards Organisation.
- 18.3 The Goods supplied must be fit for their purpose as stated in the Specification and be fully capable of their intended use.
- 18.4 All Goods must be new, sound, of uniform quality and be free from any defects.

(If second-hand goods are being sought or may be supplied by the Contractor the reference to "new" must be deleted).

19 SPECIFIED BRANDS

- 19.1 Where a particular brand of Goods or part number is specified in the Contract, another brand or part number must not be supplied unless approved in writing by CEWA. Where CEWA provides such approval, such approval shall not relieve the Contractor of any of its warranties or obligations under this Contract and the Contractor shall remain responsible for all material selections.

20 VARIATIONS

- 20.1 The CEWA Representative may direct any variation to the scope, timing, form, quality, or quantity of the supply of Goods which in the CEWA Representative's opinion is necessary and the value of the variation will be considered in determining the final Contract Price.
- 20.2 Variations to which clause 20.1 apply must be valued at the applicable rates or prices referred to in the Contract Price Schedule. If the Contract Price Schedule does not contain any applicable rates or prices or the rates are not applicable to the variation, reasonable rates or prices must be agreed between the CEWA Representative and the Contractor, failing which the rates or prices will be determined solely by the CEWA Representative (acting reasonably).
- 20.3 A variation of the Contract must be in writing and signed by CEWA.
- 20.4 No variation to the supply of Goods will vitiate the Contract and no variation may be made by the Contractor without a written CEWA direction issued pursuant to this clause 20.

21 DELIVERY OF GOODS

- 21.1 The Contractor must notify the CEWA Representative in writing of the date and time of each dispatch of Goods, including the Purchase Order number, the quantity and description of the Goods dispatched, and the expected date and time of arrival at the Delivery Point.
- 21.2 The Contractor must deliver the Goods in full to the location and in the manner stated in the Contract Details by the Delivery Date. In this respect, time is of the essence.
- 21.3 Unless otherwise provided in the Contract, the Goods must be unloaded at the Delivery Point by the Contractor. CEWA will provide all reasonable assistance to facilitate the unloading of the Goods by the Contractor.
- 21.4 Delivery of the Goods is complete when the Goods have been delivered to the Delivery Point and signed for by CEWA or its agent.
- 21.5 In supplying the Goods, the Contractor shall comply with any reasonable directions given by CEWA.

22 PACKAGING

- 22.1 The Contractor must ensure that all Goods are properly, safely, and securely packaged for transport and labelled for identification as specified in the Contract Details, as required by Law and in accordance with any requirements pertaining to the transportation of dangerous Goods (where applicable) and Good Industry Practice.
- 22.2 The Contractor shall clearly display a copy of the Purchase Order number on all packages and all delivery and invoicing documentation.
- 22.3 The Goods shall be adequately protected from damage and deterioration, having due regard to the conditions and environment at the Delivery Point and areas through which the Goods will traverse, including climate, roads, and requirements for multiple handling. In packaging, marking, and transporting the Goods, the Contractor shall abide by applicable international and national Laws regarding the transportation of Goods and the protection of safety, health, and the environment.
- 22.4 All dangerous, hazardous, or toxic Goods shall be clearly labelled and must include a material safety data sheet (describing the properties and uses of a substance, the substance's name, chemical and physical properties, health hazard information, precautions for use and safe handling information), necessary shipping certification and any other appropriate information requested by CEWA.
- 22.5 All costs arising from failure of the Contractor to follow proper packaging, marking and transport procedures and instructions as specified in the Contract, Specification or related Purchase Order are borne by the Contractor.
- 22.6 Each delivery of the Goods shall be accompanied by a Delivery Docket. Where the Contractor fails to provide a Delivery Docket CEWA's count will be accepted as final and conclusive of the quantity of Goods Delivered.

23 EXPENSES OF DELIVERY

- 23.1 Unless otherwise provided in the Contract, the Contractor must pay all packaging, freight, insurance, and other applicable charges in connection with the delivery of the Goods and the return of the Goods wrongly supplied including the cost of repackaging the Goods.

24 DELAY IN DELIVERY

- 24.1 The Contractor acknowledges it is a fundamental obligation of the Contractor to keep CEWA fully informed of both possible and actual delays to the delivery of the Goods to the Delivery Point by the Delivery Date and the nature and extent thereof, so as to give CEWA the opportunity to take steps to:
- (a) avoid actual delay and, to the extent possible, mitigate the extent of a delay or the effects of a delay;
 - (b) minimise the loss and damage that CEWA may suffer as a result of a delay to the delivery of the Goods; and
 - (c) monitor and investigate, at the earliest possible point in time:
 - (i) the causes and effects of possible and actual delays;
 - (ii) the Contractor's mitigation of possible and actual delays including whether the Contractor has taken all reasonable steps to preclude the occurrence of the cause and minimise the consequences of a delay; and
 - (iii) the extent to which the Contractor is or will be actually delayed in delivery of the Goods.
- It shall be a condition precedent to the Contractor's entitlement to any extension of time that the Contractor has strictly complied with all of the requirements of this clause 24.
- 24.2 Upon it becoming evident to the Contractor that delivery of the Goods is likely to be delayed beyond the Delivery Date, the Contractor shall promptly notify CEWA in writing. Notification of delay will not release the Contractor from its obligation to deliver by the Delivery Date or from any other obligation under the Contract, unless CEWA otherwise agrees in writing.
- 24.3 The Contractor shall, following consultation with CEWA, and without limiting CEWA's rights under this Contract, take such steps as directed by CEWA so that the Goods are Delivered on or as close to the Delivery Date as reasonably possible.
- 24.4 The Contractor shall be responsible for all damages, costs and expenses arising from any delay in the delivery of the Goods, except to the extent that CEWA or its Personnel has contributed to the delay.
- 24.5 If the Goods are not Delivered to the Delivery Point by the Delivery Date, then without limiting any other right or remedy available to it, CEWA may:
- (a) refuse to accept delivery of the Goods;
 - (b) cause the Contractor to use another reasonable form of delivery as nominated by CEWA at the expense of the Contractor;
 - (c) cause the Contractor to obtain the Goods from a third-party;
 - (d) cancel the relevant Purchase Order and source substitute Goods from a third-party supplier and recover any costs and expenses incurred by CEWA in obtaining the substitute Goods from the Contractor;
 - (e) withhold payment and claim damages for any other costs, expenses or losses resulting from the Contractor's failure to deliver the Goods on the Delivery Date, except to the extent the failure or delay is caused by CEWA's failure to comply with its obligations under this Contract or is caused by an event of Force Majeure; or
 - (f) terminate the Contract with immediate effect.

- 24.6 The Contractor shall only be entitled to an extension of the Delivery Date (determined by CEWA acting reasonably) if the following criteria are satisfied:
- (a) the Contractor has been or will be prevented from delivering the relevant Goods by the relevant Delivery Date by an act of prevention caused by CEWA;
 - (b) the said delay is not attributable to a breach of Contract or negligence on the part of the Contractor;
 - (c) the Contractor has complied with its obligations under this clause; and
 - (d) the Contractor has, within 7 days of the CEWA's act of prevention, made written request to CEWA for an extension of time setting out full particulars of the basis of the claim.

Otherwise, the Contractor is only entitled to such extensions of time for compliance with the Contract as CEWA, upon the written application of the Contractor, in its absolute discretion grants in writing.

25 LIQUIDATED DAMAGES

- 25.1 The agreed rate of liquidated damages that will be payable for each week or part of a week that the Goods remain undelivered after the Delivery Date is as stated in the Contract Details. If no rate for liquidated damages is stated (or liquidated damages are agreed to be inapplicable), unliquidated damages remain applicable.
- 25.2 The parties agree that the rate of liquidated damages represents a genuine pre-estimate of the loss and damage that CEWA will suffer as the result of delay.

26 RECEIPT AND ACCEPTANCE OF GOODS

- 26.1 Delivery and receipt of the Goods will not of itself constitute acceptance of the Goods by CEWA, with acceptance being subject to the approval of the CEWA Representative.
- 26.2 CEWA will be deemed to have accepted the Goods when the CEWA Representative notifies the Contractor that the Goods have been accepted or when, after the lapse of 14 days from delivery at the Delivery Point, CEWA retains the Goods without notifying the Contractor that the Goods have been rejected.
- 26.3 The risk of any damage, deterioration, theft, or loss of the Goods after delivery but prior to acceptance will pass to CEWA once the Goods have been Delivered to CEWA at the Delivery Point in accordance with this Contract. Prior to that point, such risk is with the Contractor which is responsible for the care of the Goods.
- 26.4 Title in the Goods will pass to CEWA on Delivery of the Goods to the Delivery Point in accordance with this Contract unless CEWA has paid for the Goods prior to Delivery, in which case title will pass upon the payment of the Goods by CEWA.
- 26.5 The Contractor warrants and agrees that, at the time of Delivery of the Goods:
- (a) the Contractor has the right to sell the Goods; and
 - (b) the Goods shall be free from any charge, Security Interest, or encumbrance in favour of any third party.

27 REJECTION AND REMOVAL OF GOODS

- 27.1 Where, prior to acceptance, the Goods are found to be defective, not in compliance or conformance with the terms of the Contract or the Specification, then without limiting any other right or remedy that CEWA may have, CEWA may reject any or all of the Goods (the **Rejected Goods**).
- 27.2 The CEWA Representative must notify the Contractor of any Rejected Goods within 14 days of delivery of the Goods and may direct that the Contractor to:
- (a) repair or replace the Rejected Goods at the Contractor's risk and expense within 5 Business Days of being requested to do so or within such other timeframe agreed between the Parties; and
 - (b) repay the price of the Rejected Goods in full (whether or not CEWA has previously required the Contractor to repair or replace the Rejected Goods); and
- 27.3 If the Contractor fails to duly and properly remove, replace, or rectify the Rejected Goods within the time specified in the notice of rejection, CEWA will be entitled to:
- (a) exercise a general lien upon the Rejected Goods to cover all expenses incurred by CEWA with respect to the Rejected Goods;
 - (b) sell the Rejected Goods; or
 - (c) have the Rejected Goods delivered at the Contractor's risk and expense to the Contractor's premises, where the Contractor must afford every facility to accept delivery of the Rejected Goods.
- 27.4 CEWA shall not be responsible for the care or custody of any Rejected Goods.
- 27.5 If the Contractor fails repair or replace Rejected Goods in accordance with this clause, CEWA will be entitled to:
- (a) purchase from another supplier substitute Goods of the kind and quality ordered; or
 - (b) where it is not possible or practicable to purchase from another supplier substitute Goods of the kind or quality ordered, purchase Goods which in the opinion of CEWA are most suitable, even though those Goods are of a superior kind and quality.

In both cases, any extra cost or expense incurred over and above the Contract Price is a debt due from the Contractor to CEWA.

28 MATERIALS AND WORK

- 28.1 The Contractor must only employ Personnel who are careful, skilled and experienced in their respective trades and callings and whose standards of workmanship are suitable for the performance of the requirements of the Contract.
- 28.2 All materials and work required to complete the supply of the Goods, including all safety or warning equipment, must be consistent with the nature and character of the Goods and of a kind suitable for its purpose and in conformity with the Contract. If not described in the Contract or Specification, materials and work must be in accordance with the relevant Australian Standard or, if there is no relevant Australian Standard, the standard as directed by CEWA in writing.
- 28.3 All Contractor's plant, equipment or facilities must be operated and maintained in a safe manner by appropriately trained and competent operators. All safety and warning devices that form part of the plant, equipment or facilities must be used and functional.

28.4 Goods must not be hammered, filed, or treated to conceal any defects.

29 TESTING OF MATERIALS AND WORK

29.1 Materials and work required to complete the supply of the Goods are subject to such tests as are required by the Contract or as may be reasonably directed by the CEWA Representative to establish the conformity of materials and workmanship with the Contract.

29.2 Except as otherwise stated in the Contract Details, the testing of materials and work and the related costs are the responsibility of the Contractor.

30 ACCESS TO CONTRACTOR'S PREMISES

30.1 The Contractor shall at all reasonable times allow CEWA's Personnel access to the premises occupied by the Contractor where the Goods are being undertaken and shall permit those persons to inspect the performance of the Contractor and any material relevant to this Contract.

31 WARRANTY

31.1 The Contractor must obtain and provide all warranties specified in the Contract including any warranties that are obtained or provided by any subcontractor (or supplier) and must ensure that CEWA will have the benefit of those warranties.

31.2 A Warranty Period for the period stated in the Contract Details must be provided to cover all Goods from defects in design, materials, and workmanship.

31.3 The warranty must cover the cost of all materials, transport, and labour to make good defective Goods during the Warranty Period.

31.4 The Warranty Period must apply from the date of acceptance of the Goods for the period stated in the Contract Details.

32 DEFICIENT GOODS

32.1 Where, after acceptance, the Goods are subsequently found to be Deficient Goods, CEWA may notify the Contractor of the deficiency and require the Contractor to immediately:

- (a) remove the Deficient Goods from CEWA's premises at the Contractor's expense and either replace them with Goods conforming to the Contract or rectify them to conform to the Contract at no cost to CEWA within the time specified in the notice and in accordance with the reasonable directions of CEWA; or
- (b) refund the price paid and remove the Deficient Goods from CEWA's premises.

32.2 Upon a refund of the price paid for the Deficient Goods, property in the Deficient Goods will revert to the Contractor.

32.3 Any expense incurred by CEWA with respect to the Deficient Goods will be a debt due from the Contractor to CEWA.

32.4 CEWA will not be entitled to exercise any rights under this clause in respect of any defects or deficiencies that ought to have been apparent on reasonable examination of the Goods prior to acceptance.

- 32.5 If the Contractor fails to remedy the Deficient Goods within the time specified in the notice, CEWA may, without limiting its rights pursuant to this Contract or otherwise:
- (a) purchase from another supplier substitute Goods of the kind and quality ordered; or
 - (b) where it is not possible or practicable to purchase from another supplier substitute Goods of the kind or quality ordered, purchase Goods which in the opinion of CEWA are most suitable, even though those Goods are of a superior kind and quality.

In both cases, any extra cost or expense incurred over and above the Contract Price is a debt due from the Contractor to CEWA.

- 32.6 Nothing in this clause 32 limits any other remedies (including in damages) CEWA has against the Contractor in respect of a defect in the Goods or other breach by the Contractor of this Contract.

33 PAYMENTS

- 33.1 The Contract Price is inclusive of all costs and expenses in relation to the supply and delivery of the Goods whatsoever, including but not limited to all taxes, duties, imposts, levies, and other government charges (other than GST).
- 33.2 With the exception of GST, which this Contract expressly provides is to be paid by CEWA, the Contractor is solely liable for the payment of all taxes, duties, imposts, levies and other government charges (including but not limited to corporate taxes, personal income tax, fringe benefits tax, payroll tax, stamp duty, withholding tax, turnover tax, and excise taxes) payable in respect of the supply of the Goods under the Contract or any payment made by CEWA to the Contractor in respect of the supply of the Goods.
- 33.3 Unless otherwise stated in the Contract Details and subject to the General Terms and Conditions, at the end of every calendar month during the Term, the Contractor will be entitled to submit to the CEWA Representative an invoice for those Goods Delivered to CEWA during that calendar month in accordance with the Contract Details accompanied by all necessary supporting documents. Where relevant for the purposes of SOP Legislation, the Contractor agrees with CEWA that the times or stages for payment claims stated in this clause 33.3 and the Contract Details are for the purposes of the SOP Legislation the times or stages for making a 'payment claim for a progress payment'.
- 33.4 The invoice shall not exceed the amount specified in a Purchase Order or this Contract unless first approved by CEWA in writing.
- 33.5 Invoices must be submitted by the Contractor to CEWA by email at payables@cewa.edu.au (or such other email address as notified by CEWA to the Contractor) and copied to the CEWA Representative.
- 33.6 Each invoice must be in a form acceptable to CEWA and shall contain the following information:
- (d) the Purchase Order number;
 - (e) the Contract number;
 - (f) the identity and ABN of the Contractor;
 - (g) a description of the Goods that were supplied, including CEWA's stock code and manufacturer part number (if any) as specified in the Contract Price Schedule;
 - (h) the quantity of the Goods supplied;

- (i) any further information as required by Law; and
- (j) any such other information as reasonably requested by CEWA from time to time.

- 33.7 If CEWA requests further information or evidence under subclause 33.6(j), an invoice will be deemed not to have been submitted until the further information or evidence has been provided and the time for assessing the invoice will only commence from the time that the requested information or evidence is provided.
- 33.8 Subject to clause 37, CEWA must, within 30 days of receipt by the CEWA Representative of a claim for payment under clause 33.3, make payment to the Contractor equal to the undisputed value of the Goods as determined by the CEWA Representative in accordance with the Contract Price Schedule.
- 33.9 CEWA may deduct from monies due to the Contractor under clause 33.3, any monies due from the Contractor to CEWA under the Contract.
- 33.10 CEWA will make payment to the Contractor by electronic funds transfer (EFT) to the Contractor's nominated bank account in Australia. CEWA will not split invoice payments across multiple bank accounts.
- 33.11 The Contractor shall provide at least 45 days' notice to CEWA of any changes to its nominated bank account, setting out the details of the new account on the Contractor's official company letterhead and signed by the Contractor's Representative.

34 GOODS AND SERVICES TAX

- 34.1 Receipt and payment of invoices and any financial transactions shall be undertaken in accordance with A New Tax System (Goods and Services Tax) Act 1999 and (where the context permits) includes the Regulations and Commissioner of Taxation's Goods and Services Tax Rulings and Determinations made there under, and any other written law dealing with GST applying for the first time being in the State of Western Australia.
- 34.2 The Contract Price shall be inclusive of all applicable GST at the rate in force for the time being.

35 CUSTOMS AND EXCISE DUTIES

- 35.1 The Contract Price is inclusive of all applicable customs excise, levies, duties, taxes, and charges unless otherwise stated.

36 RISE AND FALL IN COSTS

- 36.1 Unless otherwise stated in the Contract Details, all the rates and prices specified in the Contract Price Schedule that are used to calculate the Contract Price are fixed and are not subject to adjustment for rise and fall for any reason, including but not limited to changes in the cost of labour materials or any other items or for fluctuations in currency exchange rates.
- 36.2 If a rate review is specified in the Contract Details, the rates payable for the Goods as specified in the Contract Price Schedule will be subject to adjustment using the formula, and at the times specified in the Contract Details.

37 DISPUTED INVOICES

- 37.1 Where CEWA disputes the accuracy of an invoice, it must, subject to clause 37.2, pay the Contractor the undisputed amount of that invoice (if any) not in dispute in accordance with clause 33.8 and may withhold payment of the amount in dispute until such time as the dispute is resolved.
- 37.2 Where CEWA withholds the payment of an invoice in accordance with this clause 37, then the Contractor shall issue a new invoice to CEWA for the undisputed amount as soon as reasonably practicable, and in any event within no more than 7 days after CEWA provides notice to the Contractor in accordance with this clause 37.
- 37.3 Where CEWA withholds payment (in whole or part) of an invoice in accordance with this clause 37, then within 14 days of receipt by the CEWA Representative of a claim for payment under clause 33.3 it must notify the Contractor via a written schedule (**Payment Schedule**) of:
- (a) the amount that is undisputed;
 - (b) the amount it has withheld; and
 - (c) why payment of that amount is disputed.
- 37.4 Insofar as is necessary to ensure compliance with the SOP Legislation, each such Payment Schedule shall constitute a payment schedule of CEWA for the purposes of the SOP Legislation.
- 37.5 The Contractor agrees that the undisputed amount referred to in the Payment Schedule is, for the purposes of the SOP Legislation, the amount of the 'progress payment' (as defined in the SOP Legislation) calculated in accordance with the terms of the Contract which the Contractor is entitled to in respect of the Contract.

38 DEFAULT OF CONTRACTOR

- 38.1 If the Contractor fails to comply with any reasonable direction of CEWA under the Contract, CEWA may, after the expiry of three days following the default, do or cause to be done all acts which may be necessary to ensure compliance. All costs incurred must be paid by the Contractor within five days following written demand by CEWA.

39 PERFORMANCE REVIEW

- 39.1 The Contractor shall meet the key performance indicators (**KPIs**) specified in the Contract Details (if any).
- 39.2 CEWA and the Contractor shall meet at regular intervals at a time and place agreed between the parties or failing agreement at a time and place CEWA reasonably chooses and notifies to the Contractor, to discuss the Contractor's performance against the KPIs and any other obligations under the Contract and attempt to resolve any issues arising in relation to the KPI or obligations.
- 39.3 Within two weeks following each meeting that takes place under clause 39.2, or if the Contractor fails to attend a meeting notified by CEWA under clause 39.2 then within two weeks of the notification by CEWA under clause 39.2, CEWA will assess the Contractor's performance of the Goods against the KPI's and will, in respect of each KPI, rate the performance of the Contractor.

39.4 If, at any time during the Term the Contractor's performance against the KPI's is below the expectation of CEWA, the Contractor must remedy that failure for that KPI within the time specified in writing to the Contractor by CEWA, acting reasonably.

39.5 If, at any time during the Contract Term the Contractor:

- (a) fails to comply with clause 39.4; or
- (b) fails to rectify underperformance against the KPI's,

then without limitation to the operation of any other rights under the Contract, CEWA may, in its discretion elect to terminate the Contract by written notice to the Contractor.

39.6 The Parties acknowledge and agree that a failure by the Contractor to meet the KPIs will constitute a material breach of this Contract.

40 APPROVALS

40.1 Except as specifically outlined in the Contract, the Contractor shall obtain all necessary approvals required for the discharge of its obligations under this Contract, including the supply of the Goods.

41 INFORMATION

41.1 The Contractor shall provide CEWA with whatever information CEWA might reasonably request from the Contractor in relation to the Goods within such reasonable time as specified by CEWA.

41.2 The Contractor acknowledges that, unless expressly provided in this Contract to the contrary or warranted by CEWA to be true and correct, any information provided to the Contractor by or on behalf of CEWA:

- (a) is provided for the convenience of the Contractor only and it is the responsibility of the Contractor to verify the accuracy, appropriateness and sufficiency of that information;
- (b) shall not form part of this Contract; and
- (c) is not warranted or guaranteed by CEWA in regard to the accuracy, sufficiency or otherwise of such information.

42 MEETINGS

42.1 If requested by CEWA, the Contractor's Representative will attend meetings to discuss the progress and status of the supply of the Goods at such times and at such places as reasonably directed by CEWA from time to time.

43 RECORD KEEPING

43.1 The Contractor shall maintain, complete and keep accurate records to substantiate the accuracy of all claims, reports, invoices, documents, and plans prepared or issued by the Contractor under this Contract for a period of seven years following the end of the Term and shall make those records available for inspection and copying by CEWA upon CEWA's request.

44 MANUALS AND REPORTS

- 44.1 The Contractor shall provide to CEWA all relevant Operational Documentation at the time that the Goods are Delivered.
- 44.2 The Contractor shall ensure that the Operational Documentation:
- (a) Is prepared in accordance with, and complies with Good Industry Practice and the Law,
 - (b) Complies with any requirements as set out in this Contract;
 - (c) Is fit for its intended purpose; and
 - (d) Is accurate and error free.

45 CONFIDENTIALITY

- 45.1 The nature of this Contract is such that the Contractor and all the Personnel working under this Contract shall be required to treat the terms and conditions of this Contract, including oral as well as written material made available to the Contractor during the Term as Confidential Information.
- 45.2 The Contractor shall:
- (a) Not disclose to any person or company, directly or indirectly, Confidential Information except with the prior written approval of CEWA;
 - (b) Not copy or reproduce or distribute any materials or documents containing Confidential Information except in fulfilling its obligations under the Contract;
 - (c) Upon termination of this Contract, or by demand from CEWA, return all materials containing any Confidential Information; and
 - (d) Comply with all reasonable requests by CEWA regarding the protection of Confidential Information.
- 45.3 A breach of confidentiality by the Contractor is a material breach of the Contract and shall be grounds for termination of the Contract.
- 45.4 This Clause 45 does not apply to information that (whether before or after the date of this Contract):
- (a) is rightfully known to, or in the possession of, the Party and not subject to a confidentiality obligation on the Party;
 - (b) is public knowledge (except because of a breach of confidentiality by the Party or its representatives or employees); or
 - (c) a Party or its representatives or employees must disclose by Law (including the rules of any relevant stock exchange).
- 45.5 If the Contractor must disclose CEWA's Confidential Information under clause 45.4, it shall first:
- (a) give notice to CEWA of the details of the proposed disclosure;
 - (b) give CEWA a reasonable opportunity to take any steps it considers necessary to protect the confidentiality of the information;
 - (c) give any assistance reasonably required by CEWA to protect the confidentiality of the information; and

- (d) inform the proposed disclosee that the information is Confidential Information of CEWA.

46 PUBLIC DISCLOSURE FOR PROMOTIONAL PURPOSES

- 46.1 The Contractor must not use this Contract or CEWA's name for promotional purposes, without the prior written consent of CEWA.

47 CONFLICT OF INTEREST

- 47.1 The Contractor warrants that no conflict of interest exists or is likely to arise in the performance of its obligations under this Contract. If, during the Term a conflict or risk of conflict of interest arises, the Contractor undertakes to notify CEWA immediately in writing of that conflict or risk.
- 47.2 The existence of, or failure to declare such conflict of interest will entitle CEWA to terminate the Contract.

48 PRIVACY

- 48.1 The Contractor:
- (a) shall comply with the Australian Privacy Principles and all other Privacy Laws with respect to the supply of the Goods under this Contract to the same extent as CEWA would have been bound had the supply of the Goods had been completed by CEWA;
 - (b) without limiting clause 40.1(a), shall, and ensure the Contractor Personnel, comply with:
 - (i) the Australian Privacy Principles and all other applicable Privacy Laws; and
 - (ii) CEWA's privacy or related Executive Directives, procedures or policies, as advised by CEWA from time to time.
- 48.2 Without limiting its obligations under this clause 40, if the Contractor collects or has access to Personnel Information in connection with the provision of the Goods under this Contract, the Contractor:
- (a) shall take all reasonable steps to ensure that the Personal Information is protected against misuse and loss, and from unauthorised access, modification or disclosure;
 - (b) may only disclose the Personal Information to the Contractor Personnel who need to know that information for the purposes of providing the Goods (and only to that extent) and who have undertaken in writing to comply with the obligations set out in this clause 40; and
 - (c) shall not otherwise disclose (directly or indirectly) the Personal Information to any person without CEWA's prior written consent.
- 48.3 If the Contractor becomes aware that the Contractor or the Contractor's subcontractor (or any of their respective personnel) is using or disclosing, or has used or disclosed, Personal Information in breach of this clause 40, the Contractor shall promptly notify CEWA of the full details of the breach. CEWA's knowledge of, or response to any notice of the breach, shall not affect any other rights of CEWA under this Contract.

49 DATA PROTECTION

- 49.1 The Contractor shall not (and shall ensure that the Contractor Personnel do not):

- (a) use Data held by the Contractor, or to which the Contractor has access in connection with the provision of the Goods under the Contract, other than for the purposes of fulfilling its obligations under this Contract;
 - (b) intend to commercially exploit the Data; or
 - (c) alter Data in any way, other than in performing the Goods under the Contract.
- 49.2 The Contractor shall not cause or have caused any pledge, lien, charge, mortgage, encumbrance of a third party or any other Security Interest to be placed on the Data or any database (whether electronic or otherwise) on which such Data is stored.
- 49.3 The Contractor shall maintain appropriate operational and technological processes and procedures to prevent:
- (a) any misuse, destruction, loss, or theft of;
 - (b) any unauthorised or unlawful access to, or use, modification, disclosure, or other handling of; and
 - (c) any damage to, any Data in the possession, custody, or control of the Contractor.
- 49.4 Without limiting the generality of clause 41.3, the Contractor shall ensure that the operational and technological processes and procedures referred to in that clause:
- (a) are no less rigorous than those safeguards that meet generally accepted industry standards; and
 - (b) comply with all applicable Laws regarding privacy and data protection.
- 49.5 The Contractor shall ensure that the Data is stored in a consistent format (and in a manner) from which specific information can be:
- (a) located quickly and accurately;
 - (b) erased and able to have data portability for that Data; and
 - (c) provided to CEWA in a form reasonably required by CEWA that is compatible with CEWA's system requirements and permits the records to be ordered for reports and analysed and stored.
- 49.6 Where requested by CEWA, the Contractor shall promptly provide CEWA with:
- (a) access to the Data in the possession or control of the Contractor or its related bodies corporate or their respective personnel; or
 - (b) An electronic copy of part or all of the Data, in the file format(s) and using the data structures required by CEWA.
- 49.7 In providing the Goods under the Contract, the Contractor shall not store or process any Data or other Personal Information collected by the Contractor in connection with the provision of the Goods in any country outside of Australia without CEWA's prior written consent.

50 DATA INCIDENTS

- 50.1 In the event of any loss or corruption of, or damage to, any Data, the Contractor shall (without prejudice to any other remedies that may be available to CEWA under this Contract or otherwise) promptly:
- (a) notify CEWA;

- (b) after the incident causing the loss, corruption, or other damage (Data Incident), restore or procure the restoration of that Data to the last available backup (or other copy) of that Data; and
- (c) take all further available steps to restore or procure the restoration of the Data to its former state immediately prior to the Data incident (or, if requested by CEWA, have a third party nominated by CEWA do so at the cost of the Contractor).

50.2 The Contractor must take such steps as are necessary to ensure that it can comply with clause 42.1 in the event of a Data Incident.

50.3 To the extent that the Contractor is unable to restore any lost, corrupt, or damaged Data in accordance with clause 42.1, CEWA may recover from the Contractor any costs and expenses that CEWA reasonably incurs in taking its own action (including engaging third parties) to restore that Data.

51 INTELLECTUAL PROPERTY RIGHTS

51.1 The Contractor grants (and must ensure that any other owner of any Intellectual Property grants) to CEWA an irrevocable, unconditional, perpetual, royalty free, non-exclusive, worldwide, and transferrable (including sub-licensable) licence to exercise all the Intellectual Property in or arising out of the Goods to ensure CEWA receives the full benefit of the Goods. The Contractor warrants that it is entitled to grant this licence and indemnifies CEWA from any loss resulting from any non-compliance or breach of Intellectual Property in connection with the provision of the Goods under the Contract.

51.2 Nothing in this Contract shall change the ownership of any pre-existing Intellectual Property.

51.3 CEWA grants to the Contractor a non-exclusive, non-transferrable royalty free license to use any CEWA pre-existing Intellectual Property only to the extent required to supply the Goods under the Contract.

51.4 Unless the Parties provide otherwise in writing, the title, copyright, ownership and all other rights to any Intellectual Property created in the supply of the Goods under the Contract (including all documents, photographs, drawings, pictures, designs, films, slides, video tapes, audio tapes, objects, displays and other materials of whatsoever kind produced, created, designed, devised or made by, or on behalf of the Contractor) shall vest with CEWA free of all encumbrances and third-party rights.

51.5 These conditions do not affect the Intellectual Property rights in items that existed prior to the commencement of the Contract (the **Pre-existing Intellectual Property**). The Contractor hereby grants and must ensure that relevant third parties grant to CEWA, a perpetual, non-exclusive, non-transferable, irrevocable licence to use and reproduce the Pre-existing Intellectual Property for the installation, use, repair, maintenance, support, or alteration of the Goods by or on behalf of CEWA.

51.6 The Contractor shall, at its own cost, do all things necessary to grant the assignment under clause 48.1, including executing any required documents or effecting any required registrations.

51.7 The Contractor warrants that:

- (a) the Contractor has the right to grant the licences granted by it; and
- (b) the Goods which it supplies to CEWA pursuant to the Contract will not infringe the intellectual property rights of a third party.

- 51.8 The Contractor agrees to indemnify CEWA and its respective Personnel, employees and agents (“those indemnified”) from and against any loss (including reasonable legal costs and expenses) or liability incurred or suffered by any of those indemnified where such loss of liability was caused by the Goods supplied by the Contractor, or the Intellectual Property made available by the Contractor to CEWA, infringing the Intellectual Property of any third person.
- 51.9 The Contractor hereby irrevocably appoints any duly authorised CEWA Representative of CEWA as their attorney and agent to execute all documents and do all things necessary to give effect to this clause if the Contractor fails to do so in accordance with their obligations.

52 SUB-CONTRACTING

- 52.1 The Contractor may not assign, transfer, novate or otherwise deal with its rights or obligations under this Contract, in whole or in part (including its entitlements to payment under this Contract) unless it has the prior written consent of CEWA.
- 52.2 Any approval to engage a subcontractor to provide any part of the Goods required under this Contract shall not relieve the Contractor from any of its liabilities or obligations under this Contract. The Contractor shall be responsible for the work of the subcontractor or any employee or agent of the subcontractor and guarantee that all the goods or services provided by the subcontractor as if the Contractor had provided these goods and services itself under the Contract and being free from deficiencies in design, performance, materials and workmanship.

53 AWARDS AND WORKPLACE AGREEMENTS

- 53.1 The Contractor must observe, perform, and comply in all material respects with all relevant industrial awards, agreements, instruments and orders applicable to the provision of the Goods.
- 53.2 The Contractor shall ensure that the remuneration and terms of employment of all its Personnel shall be consistent with the remuneration and terms of employment that reflect the industry standard as expressed in awards and agreements and any code of practice that may apply to a particular industry.
- 53.3 Failure by the Contractor to comply with this requirement shall entitle CEWA, without prejudice to any other rights or remedies, to terminate the Contract by notice in writing to the Contractor.

54 MODERN SLAVERY

- 54.1 In performing its obligations under this Contract, the Contractor shall and shall ensure all its agents, contractors, subcontractors, and suppliers comply with the requirements of the Modern Slavery Act and take all reasonable steps to ensure there is no Modern Slavery in its operations and supply chain, including but not limited to:
- (a) implementing and complying with the ACAN Modern Slavery Policy, or alternatively by agreement with CEWA, a policy that:
 - (i) acknowledges that the Contractor will treat all its workers with dignity and respect and will not apply any form of deception, threat, coercion or violence;
 - (ii) requires the Contractor to identify, assess and address the risk of Modern Slavery in its supply chains;
 - (iii) requires the Contractor to undertake Modern Slavery due diligence on its suppliers;
 - (iv) commits to a modern slavery awareness training program;
 - (v) commits to a victim centred grievance and remediation processes; and
 - (vi) establishes internal reporting, review and accountability structures;
 - (b) conducting due diligence of the Contractors subcontractors and suppliers to ensure that any risks of Modern Slavery in the Contractors operations or supply chains are identified, assessed, and addressed. This due diligence shall involve the investigation of all suppliers at high risk of Modern Slavery practices to obtain information about:

- (i) the registered name and address of the supplier or subcontractor, the nature and geographical source and origin of commodities and production of goods, the geographical location of labour used in the supply of services and the way labour is sourced and engaged by suppliers; and
 - (ii) The supplier's and subcontractor's systems, processes and actions to identify, assess and address these risks;
- (c) implementing a training program, including retaining records of training, for the Contractor's employees by subscribing to the ACAN e-learning modules or providing alternative training that addresses the following matters to the satisfaction of CEWA:
 - (i) the nature of Modern Slavery and how it manifests;
 - (ii) the requirements of the Act and how it manifests;
 - (iii) the requirements of the Act and the need for supply chain transparency;
 - (iv) how to recognise risks of modern slavery and the steps required to interrogate and mitigate those risks;
 - (v) procedures and processes for assessing and addressing identified risks of modern slavery; and
 - (vi) established grievance and remediation processes;
- (d) taking all reasonable steps to procure the Contractor's suppliers to implement a training program, including retaining records of training, by subscribing to the ACAN e-learning modules or by agreement with CEWA, providing an alternative program that meets the requirements of clause 51.1(c)(i) to (vi) above;
- (e) implementing a victim centred grievance and remediation process through subscription to Domus 8.7 or implementation of an alternative grievance and remediation process to the satisfaction of CEWA; and
- (f) monitoring compliance with, and the effectiveness of, the requirements in clause 51.1(a) to (f).

54.2 The Contractor must

- (a) notify CEWA as soon as the Contractor becomes aware of, or has a reasonable basis for suspecting that, any people working in its operations or supply chain are experiencing Modern Slavery;
- (b) undertake, at its own cost within timeframes agreed with CEWA, appropriate actions to provide remedy for people experiencing Modern Slavery in its operations or supply chains and take actions to cease and address any instances of Modern Slavery in its operations and supply chains; and
- (c) ensure that any remediation action taken addresses Modern Slavery to the full satisfaction of CEWA;
- (d) upon request, provide information and access to documents that demonstrate to the satisfaction of CEWA that the Contractor has complied with this clause 51 and to enable CEWA to comply with its obligations under the Modern Slavery Act;
- (e) agree with CEWA a corrective action plan where CEWA is not satisfied that the Contractor has adequate measures in place to identify, assess and address risks of Modern Slavery;
- (f) support and authorises CEWA to conduct its own due diligence of the Contractor's operations or supply chains for the purpose of ensuring any risks or occurrences of Modern Slavery are identified, assessed, and addressed;

- (g) provide CEWA with access to all relevant documents;
- (h) take all reasonable steps to arrange for CEWA (or its agent carrying out such due diligence) to access the records, operations, premises, and sites, and to interview workers, of suppliers with the Contractor's supply chains.

54.3 Despite any other provision of this Contract if the Contractor refuses or fails to:

- (a) meet any of its obligations under this clause 51;
- (b) comply with clause 51.1(b); or
- (c) immediately cease and within a reasonable time remediate instances of Modern Slavery in its operations or supply chains to the satisfaction of CEWA,

this shall be deemed to be a material breach of the Contract subject to termination in accordance with clause 59.

54.4 If the Contractor is a reporting entity as defined in the Modern Slavery Act, the Contractor must comply with the requirements of the Modern Slavery Act.

54.5 The Contractor acknowledges that:

- (a) the Modern Slavery Code of Conduct is an important part of CEWA's approach to procurement and describes its minimum expectations regarding the conduct of its suppliers; and
- (b) it has read the Modern Slavery Code of Conduct and shall comply with the Code of Conduct at all times.

55 REGIONAL AND ABORIGINAL ENGAGEMENT COMMITMENTS

55.1 The Contractor warrants that it will meet in full the commitments detailed in Schedule 7 to the Annexure for Regional and Aboriginal Engagement.

55.2 At any time during the Contract, the Contractor may be required to provide to the CEWA Representative information confirming compliance with the regional and aboriginal engagement commitments.

55.3 If the information given by the Contractor under this clause indicates that full compliance with the regional and aboriginal engagement commitments may not be achieved, the Contractor must submit to the CEWA Representative for approval, details of how it proposes compliance will be achieved.

55.4 Failure of the Contractor to achieve compliance with the regional and aboriginal engagement commitments will be deemed to be a material breach of the Contract subject to termination in accordance with clause 59.

56 INSURANCES

56.1 The Contractor shall, at its own expense, arrange and maintain for the duration of the Term the following insurance policies with a Reputable Insurance Company to the satisfaction of CEWA as follows:

- (a) **Goods Insurance:** For so long as any Goods are at the risk of the Contractor, insurance in respect of any loss, damage, destruction to the Goods (including while in transit and during loading and unloading), for not less than the replacement value of the Goods. Such insurance must note the interest of CEWA and include a cross-liability

clause, the intention being that each insured party shall be deemed to be separate insureds under the policy.

- (b) **Public Liability Insurance:** Covering all legal liability for loss, damage, or injury to person (including death) or property caused by the Contractor or its Personnel and the amounts of all Claims which may be paid, suffered, or incurred by CEWA in respect of any loss, damage, or injury (including death) to the minimum value of \$20,000,000 for any one occurrence.
- (c) **Products Liability Insurance:** Covering all legal liability for loss, damage, or injury to person (including death) or property arising out of or in connection with any products or goods manufactured, constructed, erected, installed, repaired, serviced, sold, or supplied by the Contractor and the amounts of all Claims which may be paid, suffered, or incurred by CEWA in respect of any loss, damage or injury (including death) to the minimum value of \$10,000,000 for any one occurrence and in the annual aggregate.
- (d) **Professional Indemnity:** Covering all legal liability to claims for financial losses arising from any act, error, or omission in the conduct of the Contractor or its Personnel and the amounts of all Claims which may be paid, suffered, or incurred by CEWA in respect of any loss, damage, or injury (including death) arising from breach of professional duty of care to the minimum value of \$10,000,000 for any one occurrence and in the aggregate for the duration of the Term and for at least 7 years following the termination of the Contract.
- (e) **Workers Compensation:** Covering Western Australian statutory liability and common law claims arising out of any work-related injury or incapacities suffered by any person engaged in the supply of the Goods (or their dependants) giving rise to a Claim under any statute relating to workers accident compensation or for employers liability at common law to a minimum value of \$50,000,000.
- (f) **Motor Vehicle Third Party:** Motor vehicle comprehensive and third-party liability insurance (in addition to any statutory third-party insurance requirements) covering legal liability to pay compensation for property damage or personal injury (including third party, personal injury, and property damage), which arises out of the use of any motor vehicle used by the Contractor or its Personnel in connection with the supply of the Goods to a minimum value of \$20,000,000.

Delete as required for the Goods under Contract. Note Professional Liability is typically not required in a pure Goods contract and may only be appropriate where design work is being undertaken in respect of the Goods being supplied under the Contract.

- 56.2 To the maximum extent possible, the Contractor's public liability and products liability insurance policy shall include CEWA as joint insured principal and contain a cross liability clause and shall contain a provision that the insured Parties under the policy will be entitled to be indemnified by the insurer under that policy in respect of any claims arising out of or in connection with the Contract for a period of not less than 7 years from the expiry or earlier termination of this Contract.
- 56.3 The Contractor shall provide copies of the certificate of currency for each insurance policy under the Contract within 5 days of the Commencement Date and within 5 days of renewal of the Contractor's insurance policy during the Term of the Contract or on request by CEWA.
- 56.4 If the Contractor fails to maintain the currency of any of its insurances as required under this Contract, then CEWA may in addition to any other rights and remedies it may have:
 - (a) procure and maintain any such insurances and pay any such premiums that may be necessary and recover the cost as a debt due from the Contractor; and

- (b) suspend payment of any monies due under this Contract until the Contractor fulfils its obligations.

57 LIABILITY AND INDEMNITY

57.1 Liability whether in contract or tort (including negligence), which arises under or in connection with this Contract will be limited to an amount of **\$20,000,000**. This limitation will not apply to liability for:

- (a) personal injury, including sickness and death;
- (b) loss of, or damage to, tangible property; and
- (c) infringement of Intellectual Property Rights.

57.2 The Contractor indemnifies and releases CEWA and its Related Bodies Corporate, including all their Personnel, from and against any Claims for loss or damage or expense suffered or incurred by the Contractor (whether direct, indirect, economic, consequential, or otherwise) resulting from or in connection with:

- (a) loss, destruction or damage to real or personal property, including loss of use thereof, and including any property employed in undertaking the supply of the Goods or associated services;
- (b) injury to, or disease or illness (including mental illness) or death of, any person; and
- (c) Claims by third parties against CEWA in connection with the supply of the Goods and associated services;
- (d) any infringement of CEWA's Intellectual Property Rights;
- (e) any written representations made by the Contractor in any document provided to CEWA which are not true and correct in all material respects;
- (f) any misuse of any Confidential Information by the Contractor;
- (g) the Contractor's breach of this Contract, applicable Laws or the Contractor's negligent act or omission in connection with this Contract; and
- (h) the Contractor's wilful act or omission,

arising out of or in connection with:

- (i) the discharge of the Contractor's obligations under this Contract in the supply of the Goods and associated services; or
- (j) the Contractor's presence on or use of the Site.

The Contractor agrees not to bring any Claim which it has released or purported to release under this clause 54.

57.3 The Contractor's liability pursuant to any indemnity given under this Contract will be reduced proportionately to the extent that any loss, damage, or cost to which that indemnity relates was caused by CEWA's negligent act, omission, or breach of this Contract.

57.4 Subject to clause 54.5, but not withstanding anything else in this Contract to the contrary, neither CEWA or the Contractor shall be liable to each other for any Consequential Loss and CEWA and the Contractor agree that such loss or damages will not be claimed as direct loss or damage.

57.5 Nothing in this Contract limits the Contractor's liability in connection with liability for:

- (a) personal injury, including sickness and death;
- (b) fraudulent, malicious or criminal conduct;
- (c) wilful default;
- (d) property damage;
- (e) infringement of Intellectual Property Rights.

57.6 The indemnities and limitations in this clause 54 shall survive the termination or expiry of this Contract.

58 DISPUTE RESOLUTION

58.1 Neither Party will commence court proceedings or action against the other Party under or in connection with this Contract (**Dispute**), other than where urgent interlocutory relief is required, unless the Party has first attempted to resolve the Dispute in accordance with this clause 55.

58.2 If a dispute arises in connection with the Contract, a Party to the dispute must give to the other Party notice specifying the dispute and requiring its resolution under this clause 55 (**Dispute Notice**).

58.3 If the dispute is not resolved within 21 days after the Dispute Notice is given to the other Party in accordance with clause 55.1, the Parties will refer the Dispute for mediation by an agreed mediator independent to the Parties or, failing agreement, by a person appointed by the Resolution Institute. The mediation must be conducted in Perth, Western Australia and the Institute of Arbitrators Australia Rules for the Mediation of Commercial Disputes apply to the mediation, except where they conflict with this clause 55.

58.4 If the Dispute is not settled following mediation, then either Party may within 28 days of the Dispute Notice, give notice to the other Party (Arbitration Notice) to the other Party referring the Dispute to a single arbitrator appointed by the President of the Law Society of Western Australia to make a determination on the Dispute in accordance with the provisions of the Commercial Arbitration Act 2012 (WA).

58.5 The Parties shall continue to perform the obligations under this Contract while any Dispute is being resolved in accordance with this clause 55, except where the Dispute relates to an invoice, in which case CEWA may withhold payment of the disputed portion of the invoice in accordance with clause 37 of this Contract.

59 PERSONAL PROPERTY SECURITY ACT

59.1 CEWA may register any Security Interest granted under this Contract in any manner it chooses. The Contractor shall provide CEWA with any information it requires for the purposes of effecting this registration.

59.2 The Contractor waives its right under section 157(3) of the PPSA to receive any notice from CEWA in relation to the registration of a Security Interest arising under this Contract.

59.3 The Contractor shall take such steps as reasonably requested by CEWA to ensure the enforceability and first ranking priority of any Security Interest granted to CEWA under this Contract.

- 59.4 If the Contractor believes that a Security Interest arises under this Contract, it must notify CEWA at least 10 days prior to the Contractor taking steps to register a Security Interest on the PPS Register.
- 59.5 Within 10 days of the expiry or termination of this Contract, the Contractor shall (at its cost), remove from the PPS Register each Security Interest it has registered in relation to this Contract, and shall provide CEWA with verification of the removal of the Security Interest in compliance with section 157 of the PPSA.

60 FORCE MAJEURE

- 60.1 A Party will be relieved from non-performance of an obligation or condition required to be performed under this Contract during the time and to the extent that such performance is prevented, wholly or in part, as a result of a Force Majeure Event.
- 60.2 Each Party agrees to give notice to the other Party immediately upon becoming aware of a Force Majeure Event, including the details of the circumstances giving rise to the Force Majeure Event.
- 60.3 Any Party that is, by reason of a Force Majeure Event, unable to perform any obligation of the Contract must:
- (a) Use all reasonable due diligence and employ all reasonable means to remedy or abate the Force Majeure Event as expeditiously as possible;
 - (b) Resume performance as expeditiously as possible after termination of the Force Majeure Event or the force majeure has abated to an extent which permits resumption of such performance;
 - (c) Notify the other Party when the Force Majeure Event has terminated or abated to an extent which permits resumption of performance to occur; and
 - (d) Notify the other Party when resumption of performance must occur.
- 60.4 If the parties have used such reasonable endeavours to remedy or abate the Force Majeure Event and the event of force majeure is continuing, all monies due under this Contract for the period immediately prior to the Force Majeure Event will be payable immediately.
- 60.5 The period of time during which performance of any obligation or condition is prevented by a Force Majeure Event must be added to the time provided in the Contract for performance of such obligation or condition and to the time required for the performance of any act.
- 60.6 If by any reason of force majeure any Party is unable to perform any fundamental obligation or condition of the Contract and such non-performance continues for a period of six months, the other Party may, upon giving 30 days' notice to the Party affected by the force majeure, terminate this agreement.
- 60.7 A Force Majeure Event does not include the failure to pay invoices as and when they fall due.

61 TERMINATION OF CONTRACT

- 61.1 CEWA may at any time, for any reason, and without cause, terminate or cancel this Contract or any associated Purchase Order by giving the Contractor 30 days written notice (**Termination Notice**).

- 61.2 Where CEWA issues a Termination Notice, CEWA's liability will be to pay for the Goods Delivered to CEWA in accordance with the Contract prior to the date of termination specified in the Termination Notice.
- 61.3 Further, if this Contract covers Goods that have been manufactured to the specification of CEWA, upon receipt of the Termination Notice, the Contractor shall cease manufacture, supply and any other work related to the supply of the Good and take all possible actions required to mitigate all costs incurred by it from such termination. Provided that the Contractor is not in default as of the date of the Termination Notice (and has complied with the obligation to mitigate all costs incurred) CEWA shall (provided that Delivery is effected as per clause 58.4 below) pay the Contractor for the Goods already manufactured by the Contractor for CEWA prior to the date of termination specified in the Termination Notice.
- 61.4 The Contractor shall Deliver any Goods paid for by CEWA under clause 58.3 in accordance with this Contract.
- 61.5 For the avoidance of doubt, CEWA will under no circumstances be liable to pay for any Goods other than those manufactured for CEWA in accordance with this Contract. CEWA's maximum liability shall not exceed any amounts payable to the Contractor pursuant to this Contract.
- 61.6 CEWA may from time-to-time request that the Contractor provide an estimate of the costs that would be payable by CEWA to the Contractor if CEWA serves a Termination Notice. The Contractor shall provide the estimate within 10 Business Days of the request by CEWA. If the Contractor fails to provide the estimate within 10 Business Days of the request, this will be deemed to be a material breach of the Contract subject to termination in accordance with clause 59.
- 61.7 In the event of a termination in accordance with this clause 58, CEWA will not be liable for any costs, losses or Claims except as specifically provided under this clause 58.

62 TERMINATION FOR BREACH

- 62.1 In the event that the Contractor, in the reasonable opinion of CEWA, breaches any material term of this Contract, CEWA may serve a written notice to the Contractor (Notice of Default) stating:
- (a) The nature of the breach that has been committed and either requiring the remedy of the breach by the Contractor within 14 days after the service of the Notice of Default or stating that the breach is incapable of remedy; and
 - (b) That if the breach is not remedied within 14 days of the Notice of Default, or is incapable of remedy, then CEWA may by further notice to the Contractor do one or more of the following:
 - (i) Elect wholly or partly to suspend payment under the Contract until the breach has been remedied;
 - (ii) Take such action as CEWA deems necessary to cure the breach (at the cost of the Contractor); or
 - (iii) Terminate the Contract either in whole or in part from a specified date determined by CEWA.
- 62.2 Notwithstanding any other provision of this Contract, the following will be considered material breaches of the Contract entitling CEWA to serve a Notice of Default, namely if the Contractor:

- (a) Ceases to carry on a business;
- (b) Disposes of the whole or any part of its assets, operations or business other than in the ordinary course of business;
- (c) Ceases to pay its debts as and when they become due; or
- (d) Subject to the maximum extent permitted at Law, goes into liquidation or receives a winding up order or has an administrator, receiver, manager, trustee in bankruptcy or liquidator appointed.

62.3 The Contractor may subject to this clause terminate this Contract by notice to CEWA in the event that CEWA fails to pay a material amount due and owing to the Contractor under this Contract (but excluding an amount that CEWA is entitled to deduct, withhold or set-off or any amount in respect of which there is a dispute as to CEWA's liability to pay).

62.4 A notice of the Contractor's intent to terminate shall state:

- (a) The material amount purportedly owing and require CEWA to remedy the breach within 14 days of the service of the notice to CEWA; and
- (b) If the breach is not remedied with the 14 day period, then the Contractor may by further notice to CEWA:
 - (i) Suspend the Contract in whole or in part until the breach has been remedied; or
 - (ii) Terminate the Contract in whole or in part.

63 CONSEQUENCES OF TERMINATION

63.1 Following termination of the Contract, the Contractor shall promptly return to CEWA any Confidential Information in whatever form in its possession, custody or control, including without limitation, any information in relation to any Intellectual Property developed under the Contract.

63.2 Termination of the Contract will not affect the rights of the Parties which accrued prior to the date of termination, including rights arising in respect of the breach giving rise to the right to terminate.

64 CONFLICT OF INTEREST

64.1 If a conflict of interest arises in respect of the Contractor, the Contractor shall:

- (a) Promptly notify the CEWA Representative that the conflict has arisen and provide full details; and
- (b) Take all reasonable steps in consultation with the CEWA Representative to remove the conflict.

65 NOTICE

65.1 Any notices to be given hereunder will be in writing and will be signed for or on behalf of the party giving such notice and will be given to the party at the address set alongside that party's name at the commencement of this Agreement (or such other address as the party may hereafter nominate by notice in writing to the other parties) or at such facsimile number as a party may hereafter nominate by notice in writing to the other parties and will be deemed to be given or served:

- (a) Where sent by post: seven days after the date of posting;

- (b) Where sent by e-mail, when the messaging system has delivered the e-mail to the other Party and the sender has not received a delivery failure notice;
- (c) Where sent by facsimile: on the same day as despatched, provided that a confirmation copy is posted; and
- (d) Where delivered personally, on the date of actual delivery.

66 ASSIGNMENT

- 66.1 The Contractor shall not without the previous consent of CEWA in writing, assign, transfer, mortgage, charge encumber, sub-let or sub-contract any of its rights under the Contract, which consent may be granted or withheld or made subject to condition at the absolute discretion of CEWA.

67 RELATIONSHIP OF PARTIES

- 67.1 Nothing in the Contract creates a relationship of partnership, employment, joint venture, or agency between the parties.
- 67.2 The Contractor must not represent itself and must ensure that its Personnel do not represent themselves as being employees, partners, or agents of CEWA.

68 SEVERABILITY

- 68.1 If any provision of this Contract becomes invalid, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions will not be affected or impaired and the remaining provisions of this Contract will continue in full force and effect as if the offending provision had been deleted from this Contract.

69 GOVERNING LAW

- 69.1 This Contract will be read and construed according to the laws of Western Australia and the parties hereby irrevocably submit to the non-exclusive jurisdiction of the courts of Western Australia and the Federal Court of Australia.

ANNEXURE TO THE GENERAL TERMS AND CONDITIONS

This Annexure comprises the following Schedules:

SCHEDULE 1	CONTRACT DETAILS	43
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SCHEDULE 1 CONTRACT DETAILS

Contract Number	[insert Contract Number]	
Contractor	Name	[insert Contractor's full name]
	ABN/ACN	[insert ABN/ACN/ARBN]
	Address	[insert address]
Contractor's Representative Clause 1.1	Name	[insert full name of the Contractor's Representative]
	Address	[insert address]
	E-mail	[insert e-mail]
CEWA Representative Clause 1.1	Name	[insert full name of the CEWA Contract Manager]
	Address	[insert address]
	E-mail	[insert e-mail]
Commencement Date Clause 1.1	[insert date on which the Contractor must commence the Services]	
Expiry Date Clause 1.1	[insert date on which the Contractor must commence the Services]	
Option to Extend Clause 8.2	[insert the term or terms that CEWA may extend the operation of the Contract]	
Subject to Purchase Order issue Clause 17.2	[insert whether the Contract is subject to the issue of a Purchase Order]	
Lead Time Clause 17.5	[insert Lead Time for purposes of clause 17.5]	
Delivery Date Clause 1.1	[insert date on which the Contractor must deliver the Goods]	
Site Clause 1.1	[insert the CEWA site where the Goods will be delivered or that the Contractor may have access to for the purpose of supplying the Goods]	
Delivery Point Clause 21.3	[insert the location where the Goods are to be delivered if different to the Site] <i>If nothing stated, the Delivery Point is the Site</i>	

Party Responsible for Unloading Clause 21.4	[insert the party responsible for unloading the Goods]
Packaging and Transport Requirements Clause 22.1	[insert any special packaging required for the Goods]
Samples Clause 18.1	The Contractor shall provide the following samples to CEWA: [detail the samples and delivery timeframes (if any) required under the Contract]
Warranty Period Clause 1	Twelve (12) calendar months from completion of the Goods under the Contract.
Testing Clause 29.2	The following testing is not the responsibility of the Contractor: [detail the testing that is not the responsibility of the Contractor, if any]
Liquidated Damages Clause 25.1	\$ Per Week
Payment Clause 33	The Contractor will submit to CEWA a tax invoice for the Goods provided on delivery of the Goods to the Site.
Price Adjustment Formula Clause 36.1	[Insert the mechanism or formula by which the rates payable for Goods will be adjusted or reference the relevant clause in the Price Schedule]
Timing for Price Adjustment Clause 36.2	[Insert the timing for adjustment of rates payable for the Goods (e.g., annually) or reference the relevant clause in the Price Schedule]
Key Performance Indicators Clause 39.1	[Insert any KPI's applicable to the Contract or reference the relevant schedule of the Contract]
Policies and Procedures Clause 4.2	[List the policies, procedures and rules that the Contractor is required to follow or reference the relevant schedule of the Contract]
Special Conditions Clause 1.1	[Insert any special conditions applicable to the Contract]

SCHEDULE 2 CONTRACT PRICE

The Schedule of Prices as finally agreed will be transferred to this Schedule from the Tender submission and any subsequent negotiations.

SCHEDULE 3 SPECIFICATION

This Schedule sets out a detailed description of the Goods to be supplied under the Contract.

SCHEDULE 4 KEY PERFORMANCE INDICATORS

This Schedule sets out the Key Performance Indicators for the purpose of assessing the Contractor's performance of the Goods under clause 39. Each Key Performance Indicator needs to be listed and the requirements to meet each Key Performance Indicator must be clearly stated.

SCHEDULE 5 OCCUPATIONAL HEALTH & SAFETY

- 1.1 For the purposes of this clause, a worker includes an employee or independent Contractor.
- 1.2 The Contractor acknowledges that it has control of the manner that the Goods are supplied under this Contract.
- 1.3 The Contractor acknowledges and agrees that it is aware of, and will comply with, its obligations under CEWA's policies and procedures relating to safety and the relevant safety legislation. The Contractor has and will continue to take all reasonably practicable measures to ensure that it complies with these obligations.
- 1.4 The Contractor will provide a safe working environment such that the Contractor and its workers are able to safely undertake tasks related to this Contract.
- 1.5 The Contractor will do all things reasonably practicable to ensure the safety of CEWA's workers, non-workers and members of the public who may be exposed to the supply of the Goods by the Contractor under this Contract.
- 1.6 The Contractor must notify CEWA immediately, or as soon as reasonably practicable, of any potential risk or hazard at the workplace that it identifies during the Contract.
- 1.7 The Contractor must notify CEWA of any safety incidents that occur during the Contract as soon as practicable after the incident occurs.

SCHEDULE 6

MODERN SLAVERY CODE OF CONDUCT

1 BACKGROUND

- 1.1 CEWA is implementing systems and controls to ensure that modern slavery is not taking place anywhere within its operations or supply chains.
- 1.2 The Contractor is an independent entity; however, the Contractor's business practices and actions may impact workers and CEWA's reputation.
- 1.3 Accordingly, CEWA expects the Contractor and the Contractor's suppliers, employees, agents, and subcontractors to adhere to this Code of Conduct.

2 PRINCIPLES

- 2.1 In addition to any specific obligations under this Contract, the Contractor shall, without limitation:
 - (a) Not knowingly cause or contribute to modern slavery in any form.
 - (b) Actively take measures to identify, assess, address, and eliminate modern slavery from its operations.
 - (c) Undertake due diligence of its suppliers and subcontractors to ensure that any risks or people and workers impacted by modern slavery in the Contractor's supply chains or any parts of the Contractor's business are identified, assessed, remedied, eliminated, and monitored.
 - (d) Comply with all applicable local and national laws, statutes, acts, rules, codes, standards, guidelines, and regulations of the jurisdictions in which the Contractor is conducting business.
 - (e) Comply with all applicable State, Australian and international anti-slavery and human trafficking laws, statutes, regulations, and codes.

3 EMPLOYMENT PRACTICES

- 3.1 The Contractor's employment practices shall be in full compliance with all applicable laws and regulations and in accordance with the following requirements.
- 3.2 The Contractor shall:
 - (a) Take all reasonable steps to ensure that no forced or involuntary labour of any kind (see Appendix 1. for definitions) is used and that employment must be voluntary, and workers shall not be mentally or physically coerced to provide their labour.
 - (b) Ensure that deceptive means regarding the nature and conditions of work or labour are not used to trap workers in modern slavery (see Appendix 1. for definitions)
 - (c) Ensure compliance with all child labour laws. The term "child labour" refers to any employed person under the age of 15 (and under the age of 18 for hazardous work) and means work that deprives children of their childhood, their potential, and their dignity, and that is harmful to physical and mental development.
 - (d) Ensure that workers have the terms of employment or engagement set out in a written document that is easily understandable by workers and which clearly sets out rights and obligations.
 - (e) Comply with all applicable wage laws and regulations, including those relating to minimum wages, piece rates, and proper classification, and provide legally required benefits.

- (f) Ensure workers do not exceed maximum hours of work prescribed by law and ensure that overtime is voluntary, communicated to the worker and appropriately compensated in accordance with local (and international) laws and regulations and collective agreements.
- (g) Ensure workers have the right to terminate employment freely following a reasonable period of notice in accordance with applicable laws and collective agreements, and without the imposition of any improper penalties.
- (h) Treat all employees with respect and dignity and not engage in physical discipline or abuse or the threat thereof or other forms of physical coercion or harassment.
- (i) Ensure that workers do not have identity or travel permits, passports, or other official documents or any other valuable items confiscated or withheld as a deposit for or condition of employment.
- (j) Respect freedom of association and the right of employees to associate with unions, community, and faith-based organisations
- (k) Provide a safe and healthy workplace and comply with all applicable health and safety laws, regulations and practices.
- (l) Only employ or use workers who have a legal right to work in the applicable jurisdiction and implement procedures to ensure compliance with regulations regarding these requirements.
- (m) Ensure that fees or costs associated with the recruitment of workers (including but not limited to fees related to work visas, travel costs and document processing costs) are not be charged to workers whether directly or indirectly.
- (n) Only retain reputable and where applicable registered recruitment, employment or labour hire agencies. All such agencies must have the necessary licences and registrations under local laws, agree to adhere to this Code of Conduct and agree to be audited to ensure their compliance with this Code of Conduct
- (o) Where accommodation is provided, the Contractor shall not deduct more than a reasonable proportion of income from workers' wages.

3.3 The Contractor shall have systems and procedures in place (including staff and contractor training programs) to ensure compliance with this Code and applicable laws and regulations.

4 REPORTING BREACHES OF THE CODE

4.1 Any person concerned about a breach of this Code of Conduct may report concerns on a confidential basis to the CEWA Representative listed in the Contract Details.

5 VIOLATION OF THE CODE

5.1 In case of a violation of the Code, CEWA will contact the Contractor within 24 hours and request that the violation be remedied in consultation with CEWA.

5.2 If the Contractor repeatedly violates the code and refuses to collaborate with CEWA in implementing improvement plans, CEWA may terminate this Contract for a material breach in accordance with the General Terms and Conditions of Contract.

5.3 CEWA reserves the right to amend or modify this Code to adhere to legal, regulatory and industry codes.

APPENDIX 1 TYPES OF MODERN SLAVERY

1 DEBT BONDAGE (OR BONDED LABOUR)

- 1.1 Debt bondage is the most common form of slavery. This occurs when a person is forced to work to pay off an excessive debt unfairly imposed on them by a recruitment agent or employer. The person works for little or no pay, with no control over their debt. Over time, the value of their work becomes greater than the original debt.
- 1.2 Examples of debt bondage are associated with recruitment fees, travel, visas, work materials or schemes where a person must pay to get a job.

2 DECEPTIVE RECRUITING FOR LABOUR OR SERVICES

- 2.1 Deceptive recruiting occurs when a victim is misled about the nature and conditions of the job they are recruited for, and it leads to them being trapped in modern slavery.
- 2.2 Types of deceptive conduct used by recruiters include offering exaggerated rates of pay, reasonable work hours and inclusions of and deductions for accommodation, food, transport, and other expenses.

3 FORCED LABOUR

- 3.1 Forced labour is any work or service which people are forced to do against their will under threat of penalty. A victim is not free to stop working or to leave their place of work because of physical and/or psychological coercion. This may include threats and violence against themselves, other workers, family members or others.

4 HUMAN TRAFFICKING

- 4.1 The legal definition of human trafficking in Australia is:
...the recruitment, transportation, transfer, harbouring or receipt of a person through means such as threat or use of force, coercion, deception, or abuse of power or vulnerability; for the purpose of exploiting that person...
- 4.2 Human trafficking is a serious crime which often, ends up with the trafficked people being exploited through modern slavery, forced labour, servitude, debt bondage, organ removal or other forms of exploitation

5 WORST FORMS OF CHILD LABOUR

- 5.1 The worst forms of child labour include where children are:
 - (a) exploited through slavery, forced labour or similar practices;
 - (b) engaged in hazardous work which may harm their health, safety, or morals; and
 - (c) used to produce or traffic drugs.
- 5.2 The worst forms of child labour can occur in a variety of contexts and industries. This may include orphanage trafficking and slavery in residential care institutions, as well as child labour in factories and manufacturing sites, mining, and agriculture.
- 5.3 Importantly, not all child labour is illegal if the correct controls are in place such as children being engaged in the light physical labour only, not be subjected to hazardous work, and where working hours are limited and outside school time etc.

6 SLAVERY OR SLAVERY LIKE OFFENCES

- 6.1 Slavery is defined in the Australian Criminal Code Act 1995 (Section 270) as where the 'powers attaching to the right of ownership are exercised': people are dehumanised to the point where they are literally owned by others.
- 6.2 Slavery is the exploitation and control of others through coercion, such as:
- (a) Restricting where people live, work, move or communicate with others.
 - (b) Using threats or actual violence against the person or their family.
 - (c) Forcing them to work, withholding food or water, pay and other forms of abuse.
- 6.3 Examples include people forced to work on farms or construction sites, people working in cleaning or children in factories - they don't have the choice to live in freedom and with dignity.
- 6.4 People who are trapped in modern slavery are often manipulated in ways that do not allow them to escape, to ask for help or to gain an understanding that they are in fact victims of criminal activity. Slavery is a major risk for Australian businesses both within Australia and in extended supply chains.

SCHEDULE 7 REGIONAL AND ABORIGINAL BUSINESS COMMITMENT

The Regional and Aboriginal Business commitments as finally agreed will be transferred to this Schedule from the Tender submission and any subsequent negotiations.